

The Allen Consulting Group



Review of the Aboriginal Heritage Regulations 2007

November 2008

Conducted by Lily D'Ambrosio (Parliamentary Secretary, Community Development) and Aboriginal Affairs Victoria, in conjunction with the Allen Consulting Group

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Executive summary

This report sets out the results of the review of the Aboriginal Heritage Regulations 2007 ('the Regulations') conducted by Lily D'Ambrosio, Parliamentary Secretary, Community Development, and Aboriginal Affairs Victoria. The Allen Consulting Group assisted with the review in terms of the evaluation of the Regulations and the revised cost estimates.¹

Background

The Regulations are intended to provide for the effective protection and management of Aboriginal cultural heritage in Victoria by — amongst other things — specifying the circumstances in which a cultural heritage management plan (CHMP) is required, prescribing standards for the preparation of CHMPs, and prescribing a range of fees.

The *Aboriginal Heritage Act 2006* ('the Act') commenced operation on 28 May 2007. The commencement of the Act proceeded as soon as practicable after the completion of the Regulations. This new legislation substantially changed the management and protection of Aboriginal heritage in Victoria.

Given the substantial change to the legislation, it was accepted that a period of operation was required before some aspects of the Regulations could be reasonably evaluated. Firstly, the Regulatory Impact Statement (RIS) process had highlighted that the cost of the Regulations could only be accurately assessed after the Regulations had been in operation for a period. Secondly, the then Minister for Aboriginal Affairs wanted to ensure that the list of High Impact Activities in the Regulations was sufficiently targeted, and considered that an operational period may be needed to identify corrections (if any) in this list. In addition to these issues, a review was considered beneficial in assessing the effectiveness of the Regulations in meeting the aims of the Act.

Consequently, the RIS included an evaluation strategy, and the Minister commenced operation of the Act with a commitment that the Regulations would be reviewed after twelve months operation.

Evaluation of the Regulations

The evaluation concludes that the Regulations have:

- been effective in protecting Aboriginal cultural heritage —
 - based on reports to AAV, there has been a significant reduction in developments occurring without assessment or approvals compared to the previous system

¹ The Allen Consulting Group relied solely on information provided by — or to — Aboriginal Affairs Victoria in the context of the review, and information provided by the heritage consultants that were interviewed, to evaluate the Regulations and their cost.

- those CHMPs that have been prepared have consistently related to developments potentially impacting on Aboriginal cultural heritage, as was intended
- ensured a reasonably consistent CHMP system –
 - there has been a greater reduction in the number of unnecessary assessments than was estimated, suggesting that the new system is providing ever greater clarity around obligations to protect Aboriginal cultural heritage
 - although it is difficult to be definitive based on the data available, the indications are that CHMPs are being prepared across the State, in relation to developments with the potential to harm heritage, and that local government areas that *should* have comparatively more CHMPs generally *do* have more
 - generally resulted in consistent and appropriate assessment methodologies and CHMP recommendations.

It is too early to evaluate the fees being paid to RAPs, as there is insufficient data to draw meaningful conclusions.

Changes to the Regulations

The submissions suggested a number of specific changes to the Regulations in order to improve clarity and consistency, maintain adequate protection for Aboriginal heritage, reduce unnecessary assessment, and reduce unnecessary regulation. These changes seek to:

- clarify the types of developments covered
- include a new land clearing process, which has been increasingly used since the Regulations were introduced
- ensure that the Regulations do not needlessly impede small scale works
- maintain heritage protection for extractive industry projects
- further refine standard assessments and avoid unnecessary assessments
- reduce permit fees for some classes of activity, such as protection works
- improve the workability of permits
- clarify transitional provisions.

Other mechanisms to assist implementation

Other mechanisms to assist in implementing the legislation have also been identified, namely:

- revising the Areas of Cultural Heritage Sensitivity – pilot project upgrade of the Aboriginal Cultural Heritage Registry and Information System
- input into the review of the Planning and Environment Act
- a review of the Guidelines and Approved Form for CHMPs

- the development of Guidelines for lower order assessments
- the development of information material to assist in interpreting definitions.

Revised cost estimates

The RIS estimated that the Regulations would lead to an increase in the administrative burden of \$5.7 million, driven by estimated additional costs of preparing plans, and the cost of additional plans that it was estimated would need to be prepared as a result of the Regulations.

After further consultations with heritage consultants, and based on actual data in relation to the number of plans, the overall change in the administrative burden is now estimated to be an increase of \$374 707 (rather than \$5.7 million), comprising:

- an increase in the cost of preparing plans of \$2 609 157
- offset by a reduction in the number of plans required of \$2 234 450.

Chapter 1

Background

This Chapter provides background to the review, including the review process, submissions received, and CHMP activity since the Regulations and new legislative scheme have come in to effect.

1.1 The Aboriginal Heritage Regulations 2007

The Aboriginal Heritage Regulations 2007 ('the Regulations'):

- specify the circumstances in which a cultural heritage management plan (CHMP) is required for an activity or class of activity
- prescribe standards for the preparation of a CHMP including the carrying out of assessments
- prescribe standards for the preparation of a map included in a cultural heritage agreement
- prescribe fees for evaluating a CHMP
- prescribe fees for an application for a cultural heritage permit
- prescribe fees for an application to the Secretary for advice as to whether a record exists on the Register in relation to a nominated area of land.

The Regulations are intended to provide for effective procedures for the protection and management of Aboriginal cultural heritage in Victoria.

1.2 The circumstances of the review

The *Aboriginal Heritage Act 2006* ('the Act') commenced operation on 28 May 2007. The commencement of the Act proceeded as soon as practicable after the completion of the Regulations. The development of the Regulations included public release of a draft, the production of an associated Regulatory Impact Statement (RIS), and changes to address comments received during the public comment period. This new legislation substantially changed the management and protection of Aboriginal heritage in Victoria.

Given the substantial change to the legislation, it was accepted that a period of operation was required before some aspects of the Regulations could be reasonably evaluated. Firstly, the RIS process had highlighted that the cost of the Regulations could only be accurately assessed after the Regulations had been in operation for a period. Secondly, the then Minister for Aboriginal Affairs wanted to ensure that the list of High Impact Activities in the Regulations was sufficiently targeted, and considered that an operational period may be needed to identify corrections (if any) in this list. In addition to these issues, a review was considered beneficial in assessing the effectiveness of the Regulations in meeting the aims of the Act.

Consequently, the RIS included an evaluation strategy, and the Minister commenced operation of the Act with the commitment that the Regulations would be reviewed after twelve months operation. The evaluation strategy from the RIS listed the following issues:

- effectiveness of the Regulations in protecting Aboriginal cultural heritage
- consistency of the implementation of the CHMP system
- effectiveness of the adoption of the CHMP system
- appropriateness of heritage assessment procedures and methodologies
- consistency and appropriateness of CHMP recommendations
- application of evaluation fee structure.

1.3 The review process

The following process has been followed for the review. A call for public submissions was placed in the Government Gazette, The Age, the Herald Sun and the Koorie Mail on 24 May 2008. Submissions were specifically sought from over seventy key stakeholders, by direct mail. Targeted consultation sessions were also held with the Aboriginal Heritage Council and Registered Aboriginal Parties (RAPs), the planning sector, the housing industry sector, the primary industry sector, the Departments of Primary Industry and Sustainability and Environment, heritage advisors, and heritage consulting company owners/principals.

All the submissions were analysed, along with issues raised in the consultation sessions. Every issue was considered in the context of the review questions. Those issues that could be addressed by regulatory change were then further analysed. Major recurrent themes in relation to the operation of the *Aboriginal Heritage Act 2006* and its administration were also identified, to be addressed outside the regulatory process.

1.4 Public submissions

Submissions were received from forty-nine organisations and individuals (see Appendix A).

Submissions were generally supportive of the aim and function of the Regulations, and the effectiveness of the Regulations in protecting Aboriginal cultural heritage. However, most submissions also used the opportunity to provide feedback on a broad range of issues surrounding the operation of the legislation, rather than the substance of the Regulations, see Box 1.1.

Box 1.1

SUMMARY OF PUBLIC SUBMISSIONS

- Submissions provided commentary on the 'Areas of Cultural Heritage Sensitivity', some focussing on the need to improve the accuracy of the area covered, and others on the need to improve the representation of the Areas of Cultural Heritage Sensitivity on mapping sources.
- The definition of 'significant ground disturbance' was raised in submissions as a difficult part of the Regulations to interpret. Whilst there was only one amendment to the definition requested (to include rock crushing), many submissions requested more assistance with interpreting the existing definition.
- Some submissions highlighted that any delay in registration of Aboriginal places and the provision of Victorian Aboriginal Heritage Register numbers can be an impediment to the timely completion of CHMP projects.
- The accessibility of the Victorian Aboriginal Heritage Registry information was raised in many submissions as an area that can be improved, specifically through the provision of on-line access. Heritage Consultants and the development industry particularly raised this as an area where improvements could reduce red-tape and improve CHMP timelines.
- The standards required for a CHMP were discussed from different angles in many of the submissions. However, no dominant view emerged. Changes to the standards, particularly revolving around the use of 'proper archaeological practice', were argued from both sides (often in the same submission). The benefits of the applied standards were argued, as were financial reasons for lowering standards, and heritage protection reasons for increasing standards.
- Comment was received on an emerging range of cultural heritage management processes being adopted in an unregulated environment, below the level of a CHMP requirement. Problems with this unregulated arena were raised from three different perspectives: that RAP sign off or participation is not a requirement (although the ethical codes of most professional associations would require RAP involvement in assessment); that other cultural heritage assessment documentation is not required to be lodged with the Registrar (which diminishes the information available for other assessments, and the usefulness of Register); and that processes are unclear when a CHMP is not required.

Source: Aboriginal Affairs Victoria

A number of specific changes to the Regulations were also suggested to improve clarity and consistency, maintain adequate protection for Aboriginal heritage, reduce unnecessary assessment, and reduce unnecessary regulation. These are discussed further in Chapter 3.

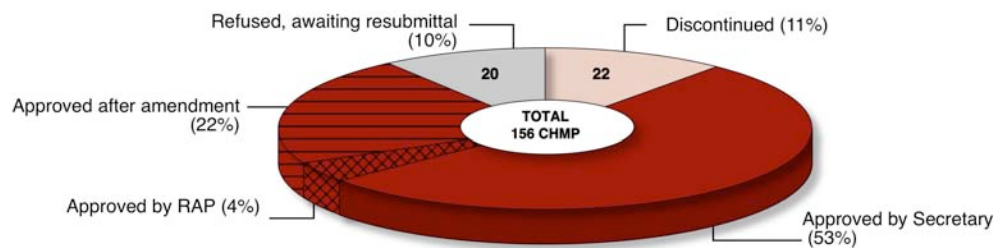
1.5 CHMP activity

Based on data collected for the 2007-2008 financial year, in total 156 CHMPs were approved (eight by RAPs, the remainder by the Secretary of DPCD). Of these, 142 were required by the legislation, and fourteen were voluntary.²

In addition to approved CHMPs, a further twenty-two CHMPs were discontinued, due to the activity not proceeding (for reasons unrelated to heritage management) or the CHMP no longer being needed, and another twenty were refused, awaiting resubmission at the time the data was gathered (see Figure 1.1).

² During this time 128 other Aboriginal heritage assessments (not CHMPs) were also lodged with the Registry.

Figure 1.1

CHMP ACTIVITY 2007-2008

Source: Aboriginal Affairs Victoria. Of the 156 CHMPs, 14 were prepared voluntarily.

Overall, 60 per cent of approved CHMPs included specific Aboriginal cultural heritage recommendations for Aboriginal cultural heritage found in the activity area, and all included contingency plans for unexpected finds. It should be remembered that contingency plans still apply for the remaining 40 per cent, which may be relevant should Aboriginal cultural heritage be located during the conduct of the activity.

Of the approved CHMPs, 51 (over one-third) completed the CHMP with a standard assessment, and 105 (two-thirds) undertook a complex assessment to complete the CHMP. For those undertaking a complex assessment, the assessment resulted in the location or investigation of Aboriginal cultural heritage in over 70 per cent of these cases. Conversely, for those 51 CHMPs that were completed with a standard assessment, over 80 per cent did not find Aboriginal cultural heritage. Where Aboriginal cultural heritage is likely to be present and a complex assessment is then completed to assess it, in over 70 per cent of cases Aboriginal cultural heritage has been found. Where no Aboriginal cultural heritage issues have been identified in the standard assessment, the assessment has stopped at the standard assessment stage (80 per cent).

Average number of CHMPs required by regulation per year

The number of CHMPs completed during the 2007-2008 financial year that were required by legislation (142) is substantially less than was predicted in the RIS (501-600), however it has been raised with Aboriginal Affairs Victoria (AAV) that capacity may have been constrained in the first year of operation as the heritage industry grew to meet demand, and many projects would have been subject to the transitional provisions. The capacity of the heritage industry has now substantially increased, and it is possible that the number of CHMPs completed will increase in the coming years. Given this information, the 142 figure may not be the best to base calculations on how many CHMPs may be required by regulation each year.

In this regard, the Better Regulation Unit has issued a guidance note on calculating the impact of a regulation where that impact is expected to vary over time, for the purpose of estimating changes in the administrative burden. The note requires that the total nominal change over 10 years be found, and then divided by 10 to produce an average annual figure.

To determine how many plans are likely to be prepared longer term, AAV examined 'Notices of Intent to Prepare a CHMP' (notices) that have been received since the commencement of the legislation. Once notices in relation to CHMPs likely to be discontinued or be voluntary were subtracted, the analysis suggested that 303 plans were likely to be prepared each year longer term. Assuming a steady increase in plans over the first three years (after which 303 are expected to be produced), this implies that around 271 CHMPs are estimated to be produced each year on average over the 10 year life of the Regulations.³

³ $[(142 + 196 + 249) + (303 * 7)]/10 = 270.8.$

Chapter 2

Evaluation of the Regulations

This chapter evaluates the Regulations according to the criteria set out in the Regulatory Impact Statement. The chapter concludes that the Regulations have:

- *been effective in protecting Aboriginal cultural heritage:*
 - *based on reports to AAV, there has been a significant reduction in developments occurring without assessment or approvals compared to the previous system*
 - *those CHMPs that have been prepared have consistently related to developments potentially impacting on heritage, as was intended*
- *ensured a reasonably consistent CHMP system:*
 - *there has been a greater reduction in the number of unnecessary assessments than was estimated, suggesting that the new system is providing even greater clarity around obligations to protect Aboriginal cultural heritage*
 - *although it is difficult to be definitive based on the data available, the indications are that CHMPs are being prepared across the State, in relation to developments with the potential to harm heritage, and that those local government areas that should have more CHMPs generally do have more*
- *generally resulted in consistent and appropriate assessment methodologies and CHMP recommendations.*

It is too early to evaluate the fees being paid to RAPs as there is insufficient data to do so.

2.1 Protection of Aboriginal cultural heritage

The ultimate objective of the Regulations is to improve the protection and management of Aboriginal cultural heritage in Victoria. The Regulations clarify how to consider and manage Aboriginal cultural heritage from the outset of the development process. This reduces and ideally eliminates instances that occurred under the former arrangements of developments proceeding that have not adequately considered, and thus destroy, Aboriginal cultural heritage.

The RIS used two measures to gauge the extent of this problem:

- estimates of the extent to which sites were destroyed or disturbed without any assessment or consent
- the extent to which developments with the potential to impact on Aboriginal cultural heritage were the subject of a cultural heritage management plan.

Assessment

Many of the submissions acknowledged the Regulations as providing effective protection for Aboriginal cultural heritage, representing a significant improvement on the previous legislative regime. The CHMP assessment and recommendations system has introduced a process which brings ‘avoiding’ and ‘minimising’ harm to Aboriginal cultural heritage to the forefront, and allows for mitigation measures to be adopted if impact cannot be avoided.

Site destruction/disturbance occurring without assessment or consent

The reports of site disturbances point to a reduction in the number of sites destroyed/disturbed without assessment or consent.

Although these reports of site destruction are at about the same level as before the legislation began (as at 30 June 2008, thirteen inspections had been carried out):

- previously all such reports involved situations of land development occurring without any consideration of Aboriginal cultural heritage
- now, of the thirteen investigations:
 - there had been no breaches of the Act in nine of these
 - three were still under investigation
 - documentation of one potential breach of the Act was also being prepared.⁴

Further, only five of these investigations were related to land development projects, with the others relating to sale of objects or ongoing existing use of land. Moreover, of the five, only one development activity did not consider heritage (relating to minor works, road widening). The others either had a consent or had a CHMP.

Cultural heritage management plans for developments potentially impacting on heritage

AAV advised that — of the approved 142 CHMPs required by the legislation and the fourteen voluntary CHMPs — all were undertaken for development activities with the potential to impact on Aboriginal cultural heritage. During this time, 128 other Aboriginal heritage assessments (not CHMPs) were also lodged with the Registry. Although these figures are a decrease from the number of assessments lodged in the previous year, they reflect a reduction in the number of unnecessary assessments.

Of approved CHMPs in which Aboriginal cultural heritage was found, 38 per cent avoided harm to Aboriginal cultural heritage, 32 per cent adopted ways of minimising harm to Aboriginal cultural heritage, and 60 per cent included mitigation measures as impact could not be avoided (note: 34 per cent employed a combination of these outcomes). Only 13 per cent did not include measures to avoid, minimise, or mitigate harm, and in all these cases the Aboriginal cultural heritage was assessed as being of low significance (such as isolated artefacts).

These figures would suggest that the Regulations have been effective in steering the interaction between development projects and Aboriginal cultural heritage towards protection, which is the purpose of the Act.

⁴ One stop order had been issued to prevent destruction of a possible Aboriginal heritage place.

2.2 Consistency of the implementation of the CHMP system

The previous system saw inconsistent protection of Aboriginal cultural heritage by decision makers:

- many local authorities historically referred Aboriginal cultural heritage issues to Aboriginal Affairs Victoria (in particular, for advice as to whether a heritage assessment should be conducted)
- authorities could potentially require Aboriginal cultural heritage assessments to be prepared when this may not technically have been necessary
- some decision makers did not consider the impact on Aboriginal cultural heritage because they did not fully appreciate their obligations or know how to go about meeting them.

In response to these problems, the Regulations clearly establish the circumstances when a heritage management plan is required. Where an activity requires a heritage management plan, decision makers (generally local Councils) are required to ensure that the heritage management plan has been approved by the Registered Aboriginal Party (or the Secretary of DPCD where no RAP exists), before they grant a statutory authority for the activity (such as a planning permit by a local Council).

Assessment

A number of submissions questioned whether all municipal councils across the state were adequately implementing the CHMP system, although evidence was anecdotal. Indeed, one of the other issues raised in submissions was that there were not adequate systems to examine whether Municipal Councils (and other statutory bodies) were complying with their responsibilities under the Aboriginal Heritage Act. It may be feasible to introduce more detailed systems to monitor compliance, but for this review we have used information available from the CHMP database.

Referrals

Previously, many local authorities referred Aboriginal cultural heritage issues to Aboriginal Affairs Victoria (in particular, for advice as to whether a heritage assessment should be conducted). Aboriginal Affairs Victoria received between 300 and 500 referrals a year (from councils, developers and government authorities).

The first year of the operation of the Regulations saw a significant reduction in the number of such referrals (92), another reflection of the increased clarity afforded by the new system. If anything, this figure should further decrease over time as councils become more familiar with the system.

Unnecessary Aboriginal cultural heritage assessments

Rather than increasing the number of plans, the Regulations are now expected to lead to a reduction in the number of plans prepared, from 380 in 2006 to around 271 on average over the course of the Regulations. This means that around 109 unnecessary assessments will be avoided on average each year as a result of the Regulations.

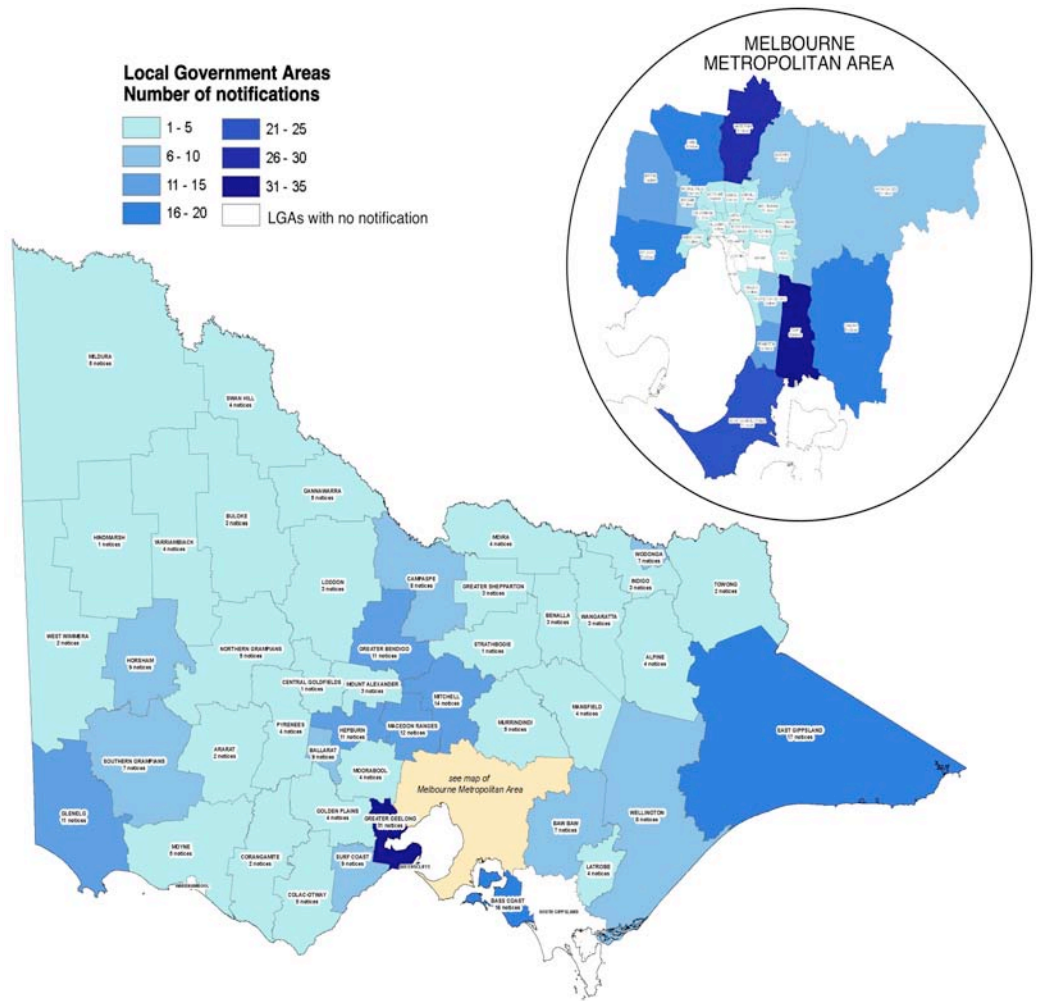
Consideration of Aboriginal cultural heritage by decision makers

There have been CHMPs prepared across the state, and most municipal areas have had a development project where notice (Figure 2.1) has been given, or a CHMP (Figure 2.2) has been prepared.

If this is examined further, the types of developments attracting a CHMP across the state also mirror the types of developments prominent in each Municipal area (Appendix B).

Figure 2.1

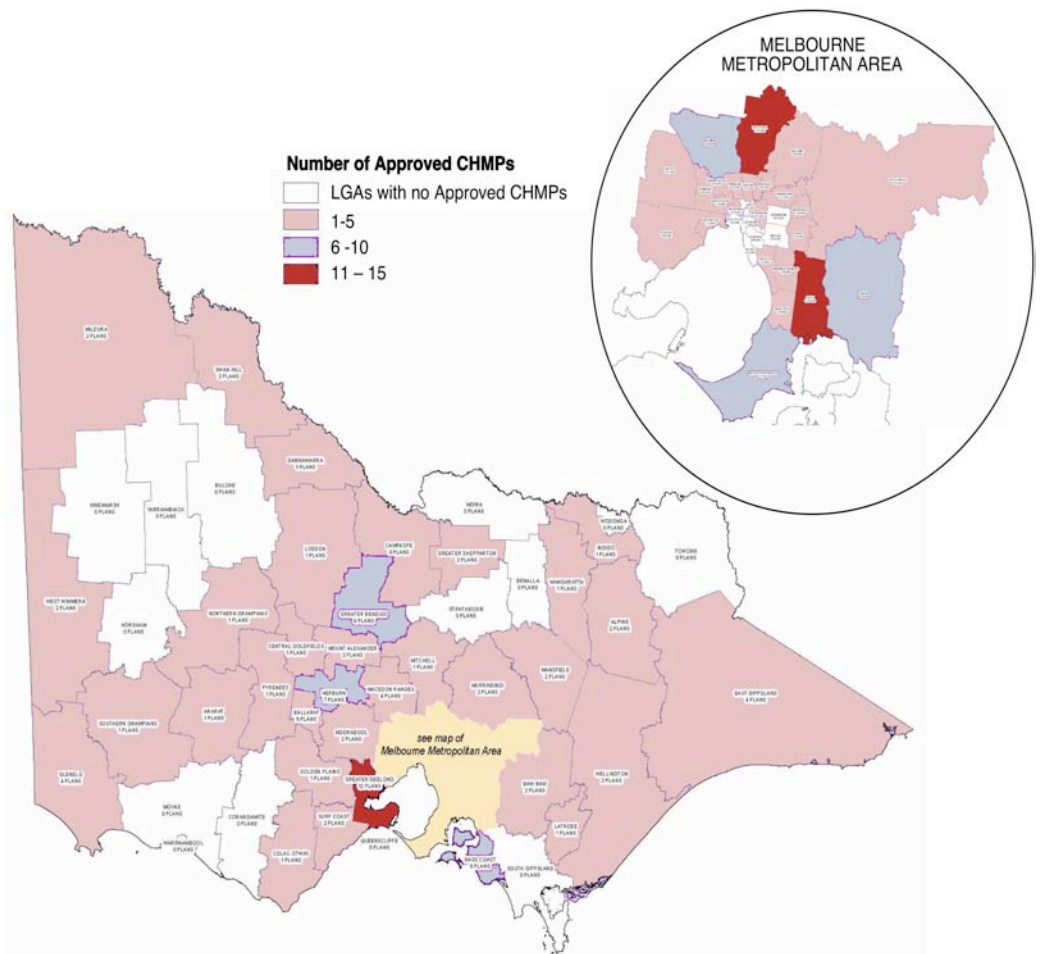
NOTICES OF INTENT TO PREPARE A CHMP BY MUNICIPALITY 2007-2008



Source: Aboriginal Affairs Victoria

Figure 2.2

NUMBER OF APPROVED CHMPs BY MUNICIPALITY 2007-2008



Source: Aboriginal Affairs Victoria

Importantly, as would be expected, in municipalities with comparatively more areas of cultural heritage sensitivity and/or that feature more high impact activities, more CHMPs have generally been prepared (see Appendix C).

2.3 Effectiveness of the adoption of the CHMP system

It was envisaged that one measure of the effectiveness of the adoption of the CHMP system would be the extent to which voluntary CHMPs are prepared (as provided for in the new legislation). In other words, it was anticipated that the benefits of CHMPs would be acknowledged by those who technically did not need to prepare such plans.

Assessment

Apart from those CHMPs being prepared as a mandatory requirement, a further 14 (or 9 per cent of the number of CHMPs required by the legislation) have been prepared voluntarily. This indicates that the new CHMP system is being adopted outside of the mandatory regime.

As the capacity of the heritage industry may have served to limit the uptake of voluntary CHMPs in the first year, it is expected that the voluntary uptake rate may rise.

2.4 Consistency and appropriateness of CHMP recommendations

Because of a lack of guidance as to what should be contained in an assessment under the previous system, the findings and recommendations sometimes did not adequately address how to manage any Aboriginal cultural heritage that is discovered. In other words, the findings and recommendations of assessments were sometimes inconclusive.

To address this, the Regulations require that CHMPs must include recommendations for measures to be taken to manage and protect heritage identified in the assessment.

Assessment

Of the approved CHMPs, 54 per cent located Aboriginal cultural heritage during the assessment phase, and provided recommendations for the management of that heritage, and a further 6 per cent provided recommendations for areas likely to contain Aboriginal cultural heritage, which were subsequently avoided. Whilst the remaining 40 per cent did not locate Aboriginal cultural heritage during the assessment, they provided contingency plans for management of Aboriginal cultural heritage in the event that Aboriginal cultural heritage is identified during development. According to AAV, there is consistency across the CHMPs in providing recommendations for Aboriginal cultural heritage and contingency plans for unexpected finds.

AAV advises that recommendations in the approved CHMPs are broadly significance based. For example, where Aboriginal cultural heritage will be harmed during the conduct of the activity and the Aboriginal cultural heritage is assessed as being of low significance, it may be proposed that this harm should be allowed given the necessity of the activity. However, where Aboriginal cultural heritage is assessed as being of higher significance, harm is avoided, measures to avoid harm are more substantial, and/or more substantial mitigation measures are proposed. This significance based approach to recommendations is considered appropriate, and is consistent with the approach promoted by heritage industry benchmarks such as the Burra Charter.

2.5 Appropriateness of heritage assessment procedures

Aboriginal Affairs Victoria previously estimated that approximately 33 per cent of assessments undertaken under the previous system (which equated to 126 assessments) were in some way 'inadequate', either in assessing and reporting on the heritage found, advising the client appropriately, providing appropriate heritage management recommendations, or reflecting appropriate consultation with the right Aboriginal community organisations.

The possible implications of inadequate assessments are a greater risk of inadvertent damage to Aboriginal cultural heritage, and that Aboriginal communities may not be fully consulted, which may in turn mean that they are less likely to ultimately consent to the activity in question or may take longer to provide consent than would otherwise be the case. In response to these issues, the Regulations provide a framework for heritage advisors to use when conducting assessments.

Assessment

According to AAV, the assessment procedures and methodologies employed in CHMPs are generally consistent with proper archaeological practice and appear consistent with proper practice for other investigations (such as historical or anthropological investigations).

CHMP investigations have proceeded from a standard assessment to a complex assessment where it is likely Aboriginal cultural heritage may be present, with over 70 per cent of complex assessments finding Aboriginal cultural heritage. Similarly, assessments have stopped at a standard assessment where it was not likely Aboriginal cultural heritage would be found (27 per cent of approved CHMPs fall into this category).

2.6 Application of evaluation fee structure

Under the previous system, Aboriginal organisations with ‘consent to disturb’ authorisation under the legislation were able to charge developers a fee for providing consent to disturb or destroy identified Aboriginal heritage places in areas where development or other works are proposed. This was done in a completely unregulated manner. The Regulations establish a prescribed fee for Registered Aboriginal Parties to evaluate a management plan, based on estimates of the cost to RAPs of providing this service.

Assessment

During this first financial year of operation there have not been many CHMPs evaluated by Registered Aboriginal Parties (RAPs), as only five RAPs were appointed during the year (and most in the later half of the year). According to AAV, there is general acceptance that a fee structure is an improvement of the previous system. However, as the evaluation fee is only relevant where a RAP is evaluating the CHMP, there is insufficient data (eight CHMPs in total) to draw meaningful conclusions about whether the fee structure is being appropriately applied.

A number of submissions to AAV on the Regulations suggested that it was too early to examine the application of the evaluation fee structure, and that AAV should revisit this after a few more years of operation. Given that the operation of the Act must be reviewed by the Minister within five years of commencement, the evaluation fee structure will be reconsidered at that time.

Chapter 3

Changes to the Regulations

This chapter identifies a number of changes to the Regulations that were suggested in submissions, in order to improve clarity and consistency, maintain adequate protection for Aboriginal heritage, reduce unnecessary assessment, and reduce unnecessary regulation.

These changes seek to:

- *clarify the types of developments covered*
- *include a new land clearing process, which has been increasingly used since the Regulations were introduced*
- *ensure that the Regulations do not needlessly impede small scale works*
- *maintain heritage protection for extractive industry projects*
- *further refine standard assessments and avoid unnecessary assessments*
- *reduce permit fees for some classes of activity, such as protection works*
- *improve the workability of permits*
- *clarify transitional provisions.*

An exposure draft of the proposed Aboriginal Heritage Amendment Regulations is attached (Appendix E), which is intended to enact these changes.

3.1 Retirement Village

It has been raised that a ‘Retirement Village’ is not listed under regulation 43(1), even though the impact of this type of development is similar to other activities listed under regulation 43(1).

For clarity, Retirement Village (as defined in the Victorian Planning Provisions) will be added to the appropriate Regulation.

It should be noted that this addition is unlikely to have any impact on the requirement to prepare a CHMP, as the development of a Retirement Village is likely to involve the construction of three or more dwellings, which is also a High Impact Activity under Regulation 45.

3.2 Office

It has been raised that an ‘Office’ is not listed under Regulation 43(1), even though the impact of this type of development is similar to other activities listed under regulation 43(1).

For consistency, an Office (as defined in the Victorian Planning Provisions) will be added to the appropriate Regulation.

While Office was not previously included in the Regulations, most office developments take place in areas likely to have been subject to significant ground disturbance or are part of large subdivisions. For this reason it is unlikely to have any impact on the number of CHMPs required. However, it is consistent that Office is included in the appropriate Regulation.

3.3 Crushing volcanic stone on the stony rises

Since the legislation was enacted, a new land clearing process has become more widely used for crushing volcanic stone on the stony rises. This process is destructive to Aboriginal cultural heritage found on the stony rises (some of the most significant in Victoria), but does not involve significant ground disturbance as defined in the Regulations.

For the adequate protection of Aboriginal cultural heritage, this new stone crushing technique will be considered a High Impact Activity under the appropriate Regulation.

3.4 Walking track, bike track, railway and road

While it is seen as appropriate to have the construction of walking tracks, bike tracks, railways and roads listed as High Impact Activities, concern has been expressed about the scale of activity which is relevant, and the interpretation of the term 'minor works' in the Regulations in relation to these activities.

For clarity and to ensure the legislation does not needlessly impede small scale construction works for a walking track, bike track, railway or road, these high impact activities will be limited to those with a length exceeding 100 metres.

Many of these works could previously have been considered to be minor works, exempt from the requirement to prepare a CHMP. For this reason it is unlikely this change will have any notable impact on the amount of CHMPs required. However, it will provide greater clarity concerning when a CHMP is required, and will lessen the need to consider whether small scale walking, bike, rail and road works are minor works for the purpose of the Regulations.

3.5 Scale of CHMP triggered for Utility Installation

While it is seen as appropriate to have Utility Installations listed as High Impact Activities, concern has been expressed about the scale of activity that is relevant, and the interpretation of minor works in the Regulations in relation to these activities.

For clarity and to ensure the legislation does not needlessly impede small scale works for a Utility Installation, these high impact activities will be limited to those with an activity area of more than 25 square metres or that exceed 100m in a linear project in the appropriate Regulation.

Many of these works may have been considered to be minor works, exempt from the requirement to prepare a CHMP. For this reason it is unlikely this change will have any notable impact on the amount of CHMPs required. However, it will provide greater clarity concerning when a CHMP is required, and will lessen the need to consider whether small scale Utility Installation works are minor works for the purpose of the Regulations.

3.6 Extractive Industries

The Victorian Government is considering legislative reforms to streamline the *Extractive Industries Development Act 1995*, including changing the scale at which an earth resource authorisation would be required for extractive industry operations. As an unintended consequence, this would change the scale at which a CHMP would be required under the Regulations.

To ensure any changes to the *Extractive Industries Development Act 1995* do not unintentionally impact on the operation of the Regulations, and to maintain the current level of heritage protection for extractive industry projects, the appropriate Regulation will be altered so as not to rely on the requirement for an earth resource authorisation.

This change will not have any effect on the number of CHMPs currently required by the Regulations. However, it will ensure heritage protection remains adequate for extractive industry projects regardless of changes to the *Extractive Industries Development Act 1995*.

3.7 Inspection of only 'indigenous' trees

The Regulations currently require a standard assessment to include an on ground examination of any mature tree in the activity area. Whilst this requirement is appropriate for a standard assessment, the requirement can be further refined to include examination of only mature indigenous trees without reducing protection to Aboriginal cultural heritage.

To refine standard assessments and to avoid unnecessary assessment, the requirement to examine any mature tree in the activity area will be limited to mature indigenous trees.

3.8 Reduction of certain Cultural Heritage Permit fees

It has been noted that some circumstances warrant the reduction of a Cultural Heritage Permit fee, such as where the works are being undertaken to protect Aboriginal cultural heritage, or an undergraduate research project where the permit cost would be an undue burden.

For particular classes of activity, namely for heritage protection works, undergraduate research and applications previously withdrawn, the permit fee will be reduced.

3.9 Purchasing an Aboriginal object at auction

Currently, the legislation requires every bidder at an auction of an Aboriginal object to have obtained a Cultural Heritage Permit. This poses numerous administrative and practical problems in the operation of the legislation, and for the practical protection of Aboriginal cultural heritage. This imposes an unnecessary administrative burden, as even unsuccessful bidders must have a Cultural Heritage Permit to bid. The inherent unworkability of this system may also discourage compliance with the legislation, reducing the legislative protection of Aboriginal cultural heritage.

The aims of the Act can be achieved without a buyer's permit, as a RAP can object or require conditions on the seller's permit, which will still be required for the transaction to proceed lawfully. Similarly, the Secretary will include conditions on every permit to sell at public auction to ensure that, before the object passes into the possession of the purchaser, the seller must inform the Secretary of the relevant personal details of the purchaser and the address at which the purchaser intends to store the object. This is consistent with the registration requirements of collections of Aboriginal objects.

To reduce the regulatory burden and ensure the system of Cultural Heritage Permits is workable (remembering that a Cultural Heritage Permit to sell an Aboriginal object at public auction will still be required and will be subject to consideration by the relevant RAP, and may contain conditions), a purchaser at a public auction will not be required to obtain a Cultural Heritage Permit.

3.10 Transitional provisions for Archaeological surveys

For a proponent to rely on the transitional provision in Regulation 77 to avoid the requirement to prepare a CHMP two things must be satisfied: the proponent must be proposing to undertake the same activity; and all of the site information collected in an archaeological survey for that activity must have been provided to the Secretary prior to 28 May 2007.

Site information under the previous legislation includes two copies of any final report. Realistically, to link the 'activity' to the 'archaeological survey', a report must have been lodged with the Secretary, as no other site information contains details of the activity. However, this is not explicitly stated.

For clarity, it will be a requirement in all cases that a report (as part of the site information) was lodged with the Secretary prior to 28 May 2007 to rely on the transitional provisions in Regulation 77.

Chapter 4

Other mechanisms to assist in implementing the legislation

The review identified a range of other mechanisms to assist in implementing the legislation, namely:

- *sensitivity mapping*
- *upgrade of the Aboriginal Cultural Heritage Registry and Information system*
- *review of the Planning and Environment Act 1987*
- *a review of the Guidelines and Approved Form for CHMPs*
- *the development of guidelines for lower order assessments*
- *the development of information material to assist in interpretive definitions.*

4.1 Revising the Areas of Cultural Heritage Sensitivity – pilot project

Part 2, Division 3 of the Regulations describes state-wide ‘areas of cultural heritage sensitivity’. This information was developed by AAV based on a state-wide perspective and does not generally take account of past history of land use or regional variability. This shortcoming was acknowledged at the time by ensuring that the Regulations had the ability to include more detailed and localised analysis of areas of cultural heritage sensitivity, in the form of more detailed maps of areas of cultural heritage sensitivity.

These maps can be added to Schedule 1 of the Regulations and will take precedence over the more generalised sensitive areas already listed in the Regulations. This will provide more locally relevant development ‘triggers’ to aid proponents and responsible authorities in effective decision making. Aboriginal Affairs Victoria regards the development of more localised sensitivity mapping and other information projects as a vital component of Aboriginal heritage protection in the context of the new legislation, along with more localised mapping of areas of cultural heritage sensitivity through consultation and discussion with local government and Registered Aboriginal Parties.

AAV has a pilot project underway to revise and improve the areas of cultural heritage sensitivity. This pilot project is concentrating on the growth areas of Melbourne. On completion of the pilot project, the aim is to continue analysing and improving the areas of cultural heritage sensitivity across the state. As this project progresses it will address the concerns raised in submissions on the Aboriginal Heritage Regulations 2007 about the ‘Areas of Cultural Heritage Sensitivity’, as these concerns revolved around the need to improve the relevance of the area covered, and the need to improve the representation of the Areas of Cultural Heritage Sensitivity on mapping sources.

4.2 Aboriginal Cultural Heritage Registry and Information System

The Secretary of the Department of Planning and Community Development is required by the *Aboriginal Heritage Act 2006* to establish and maintain the Victorian Aboriginal Heritage Register. Currently the Register is an archaic mixture of paper and digital records, accessible only at 1 Spring St Melbourne. This can be a time consuming exercise and is an unnecessary regulatory burden, given the technological solutions now available.

To satisfy the requirements of the Act, the Register must now be made available more widely to municipal councils, government and private land managers, and to land owners. The Register must also be accessed by cultural heritage advisors who assist in the preparation of CHMPs. Further, much of the effective operation of the Act depends on accurate information being available from the Register. This information assists developers in establishing how they best manage Aboriginal cultural heritage matters for their activity, and ensures that unnecessary cultural heritage assessments are avoided.

In light of these issues, the Victorian Government has committed to the development of a new Aboriginal Cultural Heritage Registry and Information System (ACHRIS). This new system is aimed at providing:

- an integrated Cultural Heritage Register that is safe and secure and provides all stakeholders with controlled access to appropriate information through internet technology
- interactive, online access to the registry for trusted partners (e.g. Heritage Advisors) and functional partners (RAPs) who will participate in business processes with online access and transactions
- spatial linkage of geographical features for analysis, predicative modelling, graphical display and searching
- full integration of records associated with a registered Aboriginal place (including images, photographs, field notes, etc), cross-referenced and available online to authorised users
- educational/guidance material provided to external parties engaging with AAV and/or the RAPs
- accountability (auditing trail) that is managed through the ability to log all transactions and determine rights of access based on geographic area and category of user.

Other capabilities also being explored include:

- mobile services (palm pilot, laptop, GPS and mobile phone devices) to optimise business performance.
- linkage to e-planning to provide local government with relevant heritage information
- a spatial framework that Heritage Victoria can link into their HERMES Database.

The development of ACHRIS, which will occur over a four-year period, will assist in addressing concerns raised about delays in the registration of Aboriginal places and the provision of Victorian Aboriginal Heritage Register numbers, and improve the accessibility of the Victorian Aboriginal Heritage Registry through the provision of on-line access. Heritage consultants and the development industry particularly raised this as an area where improvements could reduce red-tape and improve CHMP timelines.

4.3 Review of the Planning and Environment Act 1987

As part of the Premier's 'Annual Statement of Government Intentions' announced on 5 February 2008, the Premier committed to reforming the *Planning and Environment Act 1987*, which is now more than 20 years old. The Minister for Planning has appointed an Expert Panel to provide ideas and advice for the review of the Act.

The review of the Act will consider the workability of the current planning system including how to 'simplify the current laws, eliminate duplication, remove redundant provisions, modernise the language and strengthen certainty and timeliness in planning process' (Annual Statement of Government Intentions, February 2008); and prepare advice on the ways in which the Act can be improved to enable it to most effectively meet Victoria's planning challenges into the future.

The review of the Act provides the opportunity to improve the functionality of the Aboriginal Heritage Regulations with planning legislation, improve accountability in addressing Aboriginal heritage concerns through the planning process, and introduce reporting requirements in relation to Aboriginal heritage management and the planning system.

4.4 Review of the Guide and Approved Form for CHMPs

Prior to commencement of the Act, AAV sought feedback on the Guidelines and the Approved Form. However, at the time little comment was received. Close monitoring of the heritage industry and the CHMP process has allowed AAV to gauge the applicability of the Guide and the Approved Form, and consideration has been given to amending the Guide and Approved Form on a number of occasions. However, to date (aside from minor administrative amendments) industry response has indicated that a longer period of operation would be beneficial in reviewing the Guide and Approved Form.

The Guide and Approved Form for CHMPs have now been in operation for over a year. AAV believes it would now be a good time to undertake a review of the Guide and Approved Form for CHMPs, as the standards required for a CHMP were the subject of much discussion in submissions to the review.

AAV intends to review the Guide and Approved Form for CHMPs in the first half of 2009, after amendments to the Regulations are settled. It is intended that this review will be undertaken in consultation with cultural heritage advisors, heritage industry bodies, Registered Aboriginal Parties, the Aboriginal Heritage Council, and other relevant stakeholders. The review will concentrate on the following objectives:

- inculcating proper archaeological practice in archaeological assessments for CHMPs

- further clarifying the upfront nature of the CHMP process and early involvement of RAPs, and the subsequent role of recommendations (in particular, emphasising why the monitoring of construction works may not be an appropriate heritage management tool)
- improving the clarity and logical progression of the CHMP process.

4.5 Development of guidelines for lower order assessments

The Regulations and associated documentation provide clear guidelines for CHMPs. However, there is an emerging range of cultural heritage management processes being adopted in an unregulated environment below the level of a CHMP requirement. These types of heritage assessments do not currently have any guidelines to assist in their preparation.

AAV will develop guidelines in the coming year for Aboriginal cultural heritage assessments that do not require a CHMP. It is intended that these guidelines will be developed in consultation with cultural heritage advisors, heritage industry bodies, Registered Aboriginal Parties, the Aboriginal Heritage Council and other relevant stakeholders (e.g. developers, universities). The guidelines will address the following issues:

- the role of RAPs in this level of heritage assessment
- the standards that should be adhered to by heritage practitioners, including the lodgement of reports and heritage register information
- the status of these assessments, including the types of recommendations or outcomes a proponent should expect from the heritage assessment.

4.6 Information material to assist in interpreting definitions

Definitions used in the Regulations are generally consistent with definitions used in other legislation. However, there are some unique definitions such as ‘significant ground disturbance’. These definitions have adequately fulfilled their function. However, as the decision-making processes rely on understanding these definitions, this has on occasion caused some consternation in decision-making.

To assist in the operation of the Regulations, AAV will develop information material to assist in understanding the definition of significant ground disturbance. This information material will be aimed at assisting proponents and decision-making authorities (such as municipal councils) in deciding whether land has been subject to significant ground disturbance.

Chapter 5

Revised cost estimates

This chapter outlines revised cost estimates for the Regulations. In particular, the overall change in the administrative burden is now estimated to be an increase of \$374 707 (rather than \$5.7 million as was originally estimated).

The RIS process highlighted that the cost of implementing the Regulations could only be accurately assessed by examining a period of operation. In particular, it is timely to reconsider two key costs associated with the Regulations:

- the additional cost of preparing cultural heritage management plans
- the change in the number of cultural heritage management plans required.

These are discussed in turn below. Since both of these costs drove the anticipated change in the administrative burden as a result of the Regulations, the revised estimate of the change in that burden is also included here, with a more substantive 'Standard Cost Model' report to be found in the appendices.

5.1 Cost of preparing cultural heritage management plans

According to the RIS, based on the standards proposed in the Regulations, the cost of preparing cultural heritage management plans was expected to increase. In particular, there would be costs involved in changes to the assessment, and in developing dispute resolution procedures.

In total, it was expected that the cost of management plans would increase by \$5889 on average per plan. Further consultations with heritage consultants for the purpose of this review indicate that the cost of management plans has increased by \$9635 on average per plan, principally due to the extra cost associated with the heritage assessment/recommendations. The cost of developing dispute resolution procedures is much less than was originally anticipated.

5.2 The number of cultural heritage management plans required

Although the cost per plan has increased, the Regulations have also led to an overall reduction in the number of plans prepared (compared with the previous number of assessments done).

Aboriginal Affairs Victoria received approximately 380 Aboriginal cultural heritage assessments in 2006. The RIS provided a range of estimates on the number of additional cultural heritage management plans that were expected to be prepared. Although there was uncertainty associated with all of the estimates provided, according to Aboriginal Affairs Victoria (based on analysis of planning permits and consultation with heritage advisors), between 121 and 220 additional plans were expected to be prepared each year.

Rather than increasing the number of plans, the data suggests that the Regulations will instead lead to a reduction in the number of plans prepared, from 380 in 2006 to around 271 on average over the course of the Regulations. This means that around 109 unnecessary assessments will be avoided on average each year as a result of the Regulations.

5.3 Revised estimate of the change in the administrative burden

The RIS estimated that the net result of the change in the administrative burden would be an additional \$5.7 million in relation to the preparation of cultural heritage management plans per year. The projected change in the administrative burden was driven by estimated additional costs of preparing plans, and the cost of additional plans that it was estimated would need to be prepared as a result of the proposed Regulations.

After further consultations with heritage consultants, and based on actual data about the number of plans, the overall change in the administrative burden is estimated to be an increase of \$374 707 (rather than \$5.7 million), comprising:

- an increase in the cost of preparing plans of \$2 609 157
- offset by a reduction in the number of plans required of \$2 234 450.

*Appendix A***Public submissions**

Acciona Energy Oceania	Iain Lawrie
Australand	Ron Espie
Australian Association of Consulting Archaeologists	Oona Nicholson
Australian Pipeline Industry Association	Cheryl Cartwright
Barwon Water	Joe Adamski
Biosis Research	Gary Vines
City of Bendigo	Ross Douglas
City of Greater Geelong	Kate Sullivan
City of Wodonga	Ray Henderson
Civil Contractors Federation	Bob Seiffert
Delfin Lend Lease	Tod O'Dwyer
Department of Primary Industries	Kathryn Friday
Department of Sustainability and Environment	Michael Guarna
Dr Colin Pardoe	Colin Pardoe
Dr Vincent Clark & Associates	Vincent Clark
East Gippsland Shire	Kate Nelson
Gippsland Water	David Mawer
Glenelg Hopkins CMA	Lillian Parker
Goulburn Broken CMA	W. K. O'Kane
Goulburn Valley Water	Peter Quinn
Gunditj Mirring RAP	Damien Bell
Heather Builth Heritage Consulting	Heather Builth
Housing Industry Association	Robert Harding
Institution of Surveyors	Roger Green
K & J Baker Cartage	Barry Hutchinson
Lower Murray Water	Monica Munro
Manningham Shire	Fiona Ryan
Master Builders Association	Brian Welch
Melbourne Water	Rob Skinner
Minerals Council of Victoria	Chris Fraser
Moira Shire	Gary Arnold
Mornington Peninsula Shire	Alex Atkins
Municipal Association of Victoria	Kirsty Morieson
Optus	Shanti Berggren
Parks Victoria	Patrick Fricker
River Junction Research	Jeannette Hope
SMEC Urban Consulting Group	Julie Lancashire
South East Water	Shaun Cox

Telstra	Philippa Morrissey
Towong Shire Council	Simon Hollis
VicForests	David Pollard
VicRoads	Christopher Reeve
Victorian Aboriginal Heritage Council	Eleanor Bourke
Victorian Planning & Environment Law Association	Dominic Scally
Wannon Water	Peter Wilson
Wathaurong Aboriginal Corporation	Brien Powell
West Gippsland CMA	Geoff Hocking
Wind Farm Developments	Laura Basset
Wind Power	Vaughan Hulme

*Appendix B***Notices of intent by municipality**

Municipality	Activity
Alpine Shire Council	Mine 2 x Utility installation (not telco) Walking track
Ararat Rural City Council	Quarry
Ballarat City Council	2 x Dwellings (3+) Electricity facility (incl wind) 3 x Subdivision Utility installation (not telco) Voluntary Plan
Banyule City Council	2 x Voluntary Plan
Bass Coast Shire Council	Industrial development Retail premises Road 9 x Subdivision Voluntary Plan
Baw Baw Shire Council	Dwellings (3+) Extractive industry Subdivision 2 x Voluntary Plan
Benalla Rural City Council	Pipeline Subdivision
Boroondara City Council	Utility installation (not telco)
Brimbank City Council	Railway Subdivision 2 x Utility installation (not telco)
Buloke Shire Council	Voluntary Plan
Campaspe Shire Council	2 x Road 3 x Utility installation (not telco) 2 x Voluntary Plan
Cardinia Shire Council	Dwellings (3+) 2 x Industrial development 3x Pipeline Retail premises 8 x Subdivision Utility installation (not telco)
Casey City Council	2 x Dwellings (3+) Place of assembly Retail premises 3 x Road 17 x Subdivision Utility installation (not telco) 4 x Voluntary Plan
Central Goldfields Shire Council	Utility installation (not telco)
Colac Otway Shire Council	Sports and recreation facility 5 x Subdivision

	Voluntary Plan
Corangamite Shire Council	Utility installation (not telco)
Darebin City Council	Bicycle track
Darebin City Council	Utility installation (not telco)
East Gippsland Shire Council	EES Extractive industry Mining Exploration Road 7 x Subdivision 2 x Timber production over 40 hectares 2 x Utility installation (not telco)
Frankston City Council	Hospital Pipeline Place of assembly Road 2 x Sports and recreation facility 5 x Subdivision Utility installation (not telco) Walking track
Gannawarra Shire Council	Utility installation (not telco) Voluntary Plan
Glenelg Shire Council	Quarry Road 2 x Sand extraction Sports and recreation facility 2 x Subdivision Utility installation (not telco) Voluntary Plan
Golden Plains Shire Council	Dwellings (3+) Extractive industry Subdivision
Greater Bendigo City Council	2 x Pipeline 7 x Subdivision
Greater Dandenong City Council	Pipeline Road 5 x Subdivision Utility installation (not telco) 3 x Warehouse development
Greater Geelong City Council	Aquaculture 4 x Dwellings (3+) Motor racing track Pipeline Quarry Retail premises Road 2 x Sports and recreation facility 11 x Subdivision 4 x Utility installation (not telco) 3 x Voluntary Plan
Greater Shepparton City Council	Subdivision Utility installation (not telco)
Hepburn Shire Council	Retail premises Road

	Sports and recreation facility 4 x Subdivision Utility installation (not telco) Voluntary Plan
Hobsons Bay City Council	Pipeline Railway Subdivision
Horsham Rural City Council	Extractive industry Pipeline 5 x Sand extraction 2 x Utility installation (not telco) Voluntary Plan
Hume City Council	Dwellings (3+) 2 x Pipeline Railway Road Subdivision 2 x Utility installation (not telco) 3 x Voluntary Plan
Indigo Shire Council	Dam under section 67(1A) Quarry
Kingston City Council	Place of assembly Voluntary Plan
Knox City Council	Utility installation (not telco)
Latrobe City Council	Industrial development Road Subdivision
Loddon Shire Council	Research centre
Macedon Ranges Shire Council	Education centre 3 x Pipeline Road Sports and recreation facility 3 x Subdivision 2 x Voluntary Plan
Manningham City Council	Subdivision 2 x Utility installation (not telco) Voluntary Plan
Mansfield Shire Council	Mining Exploration Subdivision Utility installation (not telco)
Maribyrnong City Council	Dwellings (3+)
Maroondah City Council	Road Subdivision
Melton Shire Council	Pipeline 3 x Road 4 x Subdivision 2 x Utility installation (not telco) Voluntary Plan
Mildura Rural City Council	2 x Pipeline Subdivision Utility installation (not telco)
Mitchell Shire Council	Dwellings (3+) Extraction of volcanic stone

	Mining Exploration Pipeline Railway 2 x Subdivision Voluntary Plan
Moira Shire Council	3 x Subdivision Voluntary Plan
Moonee Valley City Council	2 x Pipeline
Moorabool Shire Council	Electricity facility (incl wind) Utility installation (not telco)
Moreland City Council	Utility installation (not telco) Walking track
Mornington Peninsula Shire Council	Camping and Caravan Park 3 x Dwellings (3+) EES 2 x Industrial development 2 x Pipeline Place of assembly Sports and recreation facility 4 x Subdivision 3 x Utility installation (not telco) Voluntary Plan 3 x Warehouse development
Mount Alexander Shire Council	Pipeline Road Sports and recreation facility
Moyne Shire Council	4 x Electricity facility (incl wind)
Murrindindi Shire Council	Pipeline Subdivision Walking track
Nillumbik Shire Council	Bicycle track Subdivision Utility installation (not telco)
Northern Grampians Shire Council	Pipeline
Pyrenees Shire Council	Pipeline Sand extraction Timber production over 40 hectares
South Gippsland Shire Council	2 x Road
Southern Grampians Shire Council	2 x Sand extraction Utility installation (not telco) Walking track
Strathbogie Shire Council	Subdivision
Surf Coast Shire Council	Car park Dwellings (3+) 4 x Subdivision
Swan Hill Rural City Council	Pipeline Road Utility installation (not telco)
Towong Shire Council	Mining Exploration Voluntary Plan
Wangaratta Rural City Council	Education centre 2 x Subdivision
Wellington Shire Council	Bicycle track Camping and Caravan Park

	Pipeline 2 x Road 2 x Subdivision
West Wimmera Shire Council	2 x Sand extraction
Whitehorse City Council	Walking track
Whittlesea City Council	2 x Dwellings (3+) 4 x Pipeline 16 x Subdivision Utility installation (not telco)
Wodonga City Council	Dwellings (3+) Railway 4 x Subdivision
Wyndham City Council	Dam under section 67(1A) 2 x Pipeline 3 x Road 2 x Subdivision 3 x Utility installation (not telco) Walking track
Yarra City Council	Sports and recreation facility Voluntary Plan
Yarra Ranges Shire Council	Extractive industry Pipeline Road Utility installation (not telco)

*Appendix C***Number of CHMPs by municipality**

Table C.1

ESTIMATED AND ACTUAL NUMBER OF CULTURAL HERITAGE MANAGEMENT PLANS

Municipality	Type	Planning applications 2005–06	Estimated % requiring CHMPs	Estimated number of CHMPs	Actual approved CHMPs	Actual voluntary CHMPs
Alpine	Alpine	254	0.9	2	2	
Alpine Resorts	Alpine	59	0.9	1	1	
Ararat	Regional city	93	1.4	1		
Ballarat	Regional city	860	1.4	12	4	1
Banyule	Melbourne urban	1027			1	1
Bass Coast	Coastal	968	1	10	6	1
Baw Baw	Regional and rural	590	3.4	20	2	
Bayside	Melbourne urban	1057				
Benalla	Regional and rural	182	3.4	6		
Boroondara	Melbourne urban	1378			1	
Brimbank	Melbourne urban	779			1	
Buloke	Regional and rural	71	3.4	2		
Campaspe	Riverine	662	2.2	15	3	1
Cardinia	Melbourne fringe	867	1.6	14	5	
Casey	Melbourne fringe	913	1.6	15	11	1
Central Goldfields	Regional city	147	1.4	2	1	
Colac–Otway	Coastal	419	1	4	1	
Corangamite	Coastal	177	1	2		
Darebin	Melbourne urban	961				
East Gippsland	Coastal	838	1	8	4	
Frankston	Melbourne urban	660			4	
French Island	Coastal	5	1			
Gannawarra	Riverine	122	2.2	3	1	1
Glen Eira	Melbourne urban	907				
Glenelg	Coastal	277	1	3	3	
Golden Plains	Regional and rural	344	3.4	12	1	
Greater Bendigo	Regional city	1167	1.4	16	6	
Greater Dandenong	Melbourne urban	925			1	
Greater Geelong	Coastal	1562	1	16	13	1
Greater Shepparton	Regional city	446	1.4	6	2	
Hepburn	Regional and rural	389	3.4	13	5	1
Hindmarsh	Regional and rural	62	3.4	2		
Hobsons Bay	Melbourne urban	845			1	
Horsham	Regional and rural	237	3.4	8		
Hume	Melbourne fringe	857	1.6	14	8	2
Indigo	Riverine	279	2.2	6	1	
Kingston	Melbourne urban	908			2	1
Knox	Melbourne urban	890			1	

Municipality	Type	Planning applications 2005–06	Estimated % requiring CHMPs	Estimated number of CHMPs	Actual approved CHMPs	Actual voluntary CHMPs
Latrobe	Regional city	443	1.4	6		
Loddon	Regional and rural	106	3.4	4	1	
Macedon Ranges	Regional and rural	595	3.4	20	4	
Manningham	Melbourne urban	926			2	1
Mansfield	Melbourne urban	326			2	
Maribyrnong	Melbourne urban	693				
Maroondah	Melbourne urban	1241				
Melbourne	Melbourne urban	1286			1	
Melton	Melbourne fringe	374	1.6	6	1	
Mildura	Riverine	622	2.2	14	2	
Mitchell	Regional and rural	362	3.4	12	6	
Moira	Riverine	446	2.2	10		
Monash	Melbourne urban	1088				
Moonee Valley	Melbourne urban	829			1	
Moorabool	Regional and rural	405	3.4	14	1	
Moreland	Melbourne urban	1051			2	
Mornington Peninsula	Melbourne fringe	2823	1.6	45	7	
Mount Alexander	Regional and rural	388	3.4	13	3	
Moyne	Coastal	427	1	4		
Murrindindi	Regional and rural	303	3.4	10	1	
Nillumbik	Melbourne fringe	705	1.6	11	1	
Northern Grampians	Regional and rural	184	3.4	6		
Port of Melbourne	Melbourne urban	6				
Port Phillip	Melbourne urban	1461				
Pyrenees	Regional and rural	116	3.4	4	1	
Queenscliffe	Coastal	133	1	1		
South Gippsland	Coastal	520	1	5	1	
Southern Grampians	Regional and rural	178	3.4	6	3	
Stonnington	Melbourne urban	1238				
Strathbogie	Regional and rural	233	3.4	8		
Surf Coast	Coastal	793	1	8	2	
Swan Hill	Riverine	191	2.2	4	2	
Towong	Riverine	157	2.2	3		
Wangaratta	Regional city	257	1.4	4	1	
Warrnambool	Regional city	301	1.4	4		
Wellington	Coastal	546	1	5	2	
West Wimmera	Regional and rural	37	3.4	1	2	
Whitehorse	Melbourne urban	747				
Whittlesea	Melbourne fringe	553	1.6	9	11	1
Wodonga	Regional city	220	1.4	3		
Wyndham	Melbourne fringe	814	1.6	13	2	
Yarra	Melbourne urban	1379				
Yarra Ranges	Melbourne fringe	1929	1.6	31	2	
Yarriambiack	Regional and rural	51	3.4	2		
Total		50 667		501	156	14

Source: Department of Sustainability and Environment 2007, Planning Permit Activity in Victoria 2005–06, www.dse.vic.gov.au, p. 11. Aboriginal Affairs Victoria 2006.

Appendix D

Standard Cost Model Report

D.1 Introduction

The name of the regulatory instrument is the Aboriginal Heritage Regulations 2007. The Regulations are a statutory rule under the *Subordinate Legislation Act 1994*.

The ultimate objectives of the Regulations are to:

- minimise uncertainty about when and how to prepare a cultural heritage management plan
- ensure that fair payment is made for the evaluation of a cultural heritage management plan and that Government receives appropriate payment (i.e. full cost recovery) for assessing applications for permits and advice on the Register.

Parts 2, 3 and 4 of the proposed Regulations were measured using the Standard Cost Model (SCM).

D.2 Background

Under the *Reducing the Regulatory Burden* initiative, the Victorian Government made a commitment to cut the existing administrative burden of regulation by 15 per cent over three years, and 25 per cent over five years.

Progress towards achieving targeted reductions in administrative burdens will be measured using the SCM. The SCM was developed by the Dutch Government to provide a consistent method for estimating the administrative costs imposed on business by government.

The SCM is designed to produce indicative estimates of burdens, and to develop a strong understanding of the drivers of these burdens. However, the SCM is not designed to provide statistically robust data. Nor does the SCM estimate of the change in the administrative burden directly align with the other costs and benefits expressed in the Regulatory Impact Statement (for example, it does not estimate costs over ten years and then discount those costs).

D.3 Overview of the burden

The net result of the change in the administrative burden is \$374 707 in relation to the preparation of cultural heritage management plans per year, see table below.

Table D.1

NET CHANGE IN THE ADMINISTRATIVE BURDEN

Information obligation	Change to the burden (net impact)
Cultural heritage management plans	\$374,707
Total	\$374,707

The change in the administrative burden is a result of additional costs of preparing plans, and the cost savings associated with the reduction in the number of plans as a result of the Regulations, see Table D.2.

Table D.2

CHANGE IN THE ADMINISTRATIVE BURDEN

Information obligation	Data requirement	Price (\$)	Frequency	Population	Cost per annum (\$)
Extra cost of plans	Cover, title page, exec summ, contents	170	2.26	120	46,036
	Introduction, activity description, extent of area	225	2.26	120	60,930
	Documentation, consultation	344	2.26	120	93,155
	Assessment, recommendation	8068	2.26	120	2,184,814
	Other considerations (dispute resolution)	263	2.26	120	71,220
	References, maps, gazetteer	340	2.26	120	92,072
	Appendices	225	2.26	120	60,930
	Sub total				
Reduction in the number of plans prepared		20,462	0.91	120	(2,234,450)
Total					374,707

* brackets denote negative figure/saving. Totals may not sum due to rounding.

D.4 Summary of SCM measurement exercise

Cost parameter assumptions

The wage rates used were provided upon request by the cultural heritage advisors that were interviewed. As these were the hourly rate paid to the advisors to undertake the activity, these rates are assumed to include overheads. No other significant costs are included.

The population information was drawn from Aboriginal Affairs Victoria's list of cultural heritage advisors (of which there are 120).

A compliance rate of 100 per cent was used, as there were no specific circumstances to suggest an alternate rate.

The frequency was based on the number of CHMPs received by Aboriginal Affairs Victoria in 2007-08, adjusted to reflect the expected number of plans longer term. It is estimated that the average number of plans prepared each year over the first 10 years will be 270.8.

Empirical data collection methodology

The data collection strategy consisted of initial interviews with five cultural heritage advisors currently preparing cultural heritage assessments in Victoria, followed up with further interviews with four consultants, one year after the Regulations commenced. Interviewees were selected by Aboriginal Affairs Victoria.

Empirical data standardisation process

Results of the empirical data collection were generally averaged to provide a single estimate for a normally efficient business. In some cases, outliers were excluded and an average taken of the remainder.

Appendix E

**Draft Aboriginal Heritage Amendment
Regulations**

Aboriginal Heritage Amendment Regulations

Exposure Draft

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Victoria

Aboriginal Heritage Amendment Regulations

Exposure Draft

1 Objective

The objective of these Regulations is to amend the Aboriginal Heritage Regulations 2007—

- (a) to exempt the buying of an Aboriginal object at a public auction from specified provisions of the **Aboriginal Heritage Act 2006**;
- (b) to amend the specification of high impact activities;
- (c) to amend the survey requirements for a standard assessment;
- (d) to amend fees payable for an application under section 36 of the Act;
- (e) to amend transitional provisions.

2 Authorising provision

These Regulations are made under sections 47 and 194 of the **Aboriginal Heritage Act 2006**.

3 Commencement

These Regulations come into operation on [*insert date*].

4 New Part 1A

After Part 1 of the Aboriginal Heritage Regulations 2007 **insert**—

"PART 1A—EXEMPT ACTIVITIES OR OPERATIONS

4A Buying an Aboriginal object at a public auction

- (1) The buying of an Aboriginal object at a public auction is exempt from sections 34(1)(c) and 36(1)(d) of the **Aboriginal Heritage Act 2006**.
- (2) In this regulation, a **public auction** means an auction that has been publicly advertised."

5 High impact activities—buildings and works for specified uses

- (1) After regulation 43(1)(b)(xvi) of the Aboriginal Heritage Regulations 2007 **insert**—

"(xvia) an office;".

- (2) After regulation 43(1)(b)(xx) of the Aboriginal Heritage Regulations 2007 **insert**—

"(xxa) a retirement village;".

- (3) For regulation 43(1)(b)(xxiii) of the Aboriginal Heritage Regulations 2007 **substitute**—

"(xxiii) a utility installation, other than a telecommunications facility, if—

- (i) the construction of the building or the construction or carrying out of the works affects an area exceeding 25 square metres; or
-

(ii) the works are a linear project with a length of more than 100 metres."

(4) After regulation 43(3) of the Aboriginal Heritage Regulations 2007 **insert**—

"(4) In this regulation, *linear project* has the same meaning as in regulation 68."

6 High impact activities—specified items of infrastructure

(1) For regulation 44(1)(b) of the Aboriginal Heritage Regulations 2007 **substitute**—

"(b) a bicycle track with a length exceeding 100 metres;"

(2) For regulation 44(1)(d) of the Aboriginal Heritage Regulations 2007 **substitute**—

"(d) rail infrastructure, other than—

(i) a railway track with a length of less than 100 metres;

(ii) a railway track siding with a length of less than 100 metres;

(iii) a cutting with a length of less than 100 metres;

(iv) a tunnel with a length of less than 100 metres;

(v) a bridge with a span of less than 100 metres;

(vi) a platform with a length of less than 100 metres; or

(vii) a service road with a length of less than 100 metres."

- (3) For regulation 44(1)(e) of the Aboriginal Heritage Regulations 2007 **substitute**—

"(e) a road with a length exceeding 100 metres;"

- (4) For regulation 44(1)(f) of the Aboriginal Heritage Regulations 2007 **substitute**—

"(f) a walking track with a length exceeding 100 metres;"

7 Extraction or removal of stone

After regulation 48 of the Aboriginal Heritage Regulations 2007 **insert**—

"48A Extraction or removal of stone

- (1) The extraction or removal of stone (other than sand or sandstone) that does not require an earth resource authorisation is a high impact activity if—
- (a) the primary purpose of the extraction or removal is—
 - (i) the sale or commercial use of the stone; or
 - (ii) the use of the stone in construction, building, road or manufacturing works; and
 - (b) the land from which the stone is extracted or removed is more than 2000 square metres; and
 - (c) the extraction or removal would result in significant ground disturbance.
- (2) In this regulation, *stone* has the same meaning as in the **Extractive Industries Development Act 1995**."

8 High impact activity—stone on the Victorian Volcanic Plain

(1) After regulation 51(1) of the Aboriginal Heritage Regulations 2007, **insert**—

"(1A) The crushing of loose stone on the surface of land used for agriculture on the Victorian Volcanic Plain is a high impact activity if the crushing is—

- (a) by machinery; and
- (b) for the primary purpose of land improvement, including pasture enhancement."

(2) In regulation 51(2) of the Aboriginal Heritage Regulations 2007, for "Subregulation (1) does" **substitute** "Subregulations (1) and (1A) do".

9 Standard assessment

In regulation 59(3)(b) of the Aboriginal Heritage Regulations 2007, after "mature" **insert** "indigenous".

10 Fees under regulation 69

After regulation 69(2) of the Aboriginal Heritage Regulations 2007 **insert**—

"(3) Despite subregulations (1) and (2), the following fees are prescribed for an application for a cultural heritage permit of the following class—

- (a) Class 1, an application under section 36(1)(c) of the Act for a permit to carry out heritage protection works, a fee of nil fee units;

- (b) Class 2, an application under section 36(1)(b) of the Act, by a student enrolled in an undergraduate course at a university, a fee of nil fee units;
 - (c) Class 3, an application under section 36(1)(a), (b), (c) or (d) of the Act that is the same or substantially similar to an application that was withdrawn no more than 6 months before the application is made, a fee of nil fee units.
- (4) In this regulation, *heritage protection works* means works that are primarily intended to protect, conserve or enhance an Aboriginal place."

11 Transitional—statutory authorisations

- (1) At the end of regulation 75 of the Aboriginal Heritage Regulations 2007 **insert—**
- "(2) If, on the commencement of the **Aboriginal Heritage Amendment Regulations 2009**, a statutory authorisation is in force for—
- (a) an office;
 - (b) a retirement village; or
 - (c) a walking track with a length exceeding 100 metres—
- a cultural heritage management plan is not required under regulation 6 for the office, retirement village or walking track."
- (2) At the end of regulation 76 of the Aboriginal Heritage Regulations 2007 **insert—**
- "(2) A cultural heritage management plan is not required under regulation 6 for—
- (a) an office;

- (b) a retirement village; or
- (c) a walking track with a length exceeding 100 metres—

if, before the commencement of the **Aboriginal Heritage Amendment Regulations 2009**, a decision maker received an application for a statutory authorisation for the office, retirement village or walking track."

12 Regulation 77 substituted

For regulation 77 of the Aboriginal Heritage Regulations 2007 **substitute—**

"77 **Archaeological surveys**

A cultural heritage management plan is not required under regulation 6 for an activity, if before the commencement day, an archaeological survey had been carried out for the activity under the **Archaeological and Aboriginal Relics Preservation Act 1972** and—

- (a) a completed record for each individual site—
 - (i) in or to the effect of Form E, F, G or H in the Schedule (whichever is relevant) of the **Archaeological and Aboriginal Relics Preservation Regulations 1992**;
or
 - (ii) in the form of Schedule 3 of the **Archaeological and Aboriginal Relics Preservation Regulations 2003**; and

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(b) two copies of a final report of the survey—

had been provided to the Secretary in accordance with section 22(5)(b) of the **Archaeological and Aboriginal Relics Preservation Act 1972**."
