

# Victorian Aboriginal Heritage Council

## Changes to the Aboriginal Heritage Act 2006

Edition 5, August 2016

*After many years of advocacy by Elders past and present and other Aboriginal leaders, we now have a new frame of reference in Victoria. The provisions of the Aboriginal Heritage Amendment Act 2016 that came into effect on 1 August 2016 deliver much clearer recognition of Traditional Owners' unique rights and responsibilities in the management and protection of our heritage.*

*This is an important and welcomed step in a long struggle.*

*We have produced this Special Edition of the Victorian Aboriginal Heritage Council's newsletter to coincide with the commencement of the new legislation. It provides information about how the Council will go about its business in the months ahead.*

*It is also an invitation to join with us in designing better ways of appreciating, celebrating and protecting our heritage, for the benefit of all Victorians. There is a lot ahead of us and we are looking forward to making the most of what we believe will be many opportunities to work together in the future.*



**Mick Harding**  
Chairperson

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### **A new role in protecting Ancestors' resting places and returning Ancestors to Country**

From 1 August, the Council is the central coordinating body responsible for Ancestral Remains in Victoria. This new responsibility follows on from research we conducted and the work completed by the Ancestral Remains Joint Steering Group, established by Aboriginal Victoria (AV) and the Council in 2013. Over time, our new role will allow us to strengthen the protection of Aboriginal burial places and deliver better support for Traditional Owners returning Ancestors to Country.

We recognise that decisions regarding Ancestral Remains may need a rapid response so advisory committees have been established to make sure decisions are made quickly. Working with AV, Museum Victoria (MV) and the Victorian Institute of Forensic Medicine, we have put arrangements in place to deal with reports of possible Ancestral Remains. We are also working with AV, MV and Parks Victoria to ensure a smooth transition for Traditional Owners involved in returning Ancestors to Country and protecting Ancestors' resting places. We will continue to work closely with Registered Aboriginal Parties, AV, MV, public land managers and other stakeholders to better co-ordinate our efforts.

The changes to the *Aboriginal Heritage Act 2006* have also introduced new reporting requirements for universities and public entities. These bodies will have two years to comply with the requirements. We will be working closely with them over that time to make sure the requirements are well understood and implemented effectively.

To help us implement the new legislation, our Secretariat now includes an Ancestral Remains Unit. The Unit will comprise three full time staff whose tasks will include:

- Responding to reports of possible Ancestral Remains
- Working with Traditional Owners and others to return Ancestors to Country
- Working with Traditional Owners and others to protect burial places
- Working with universities and public entities to advise them about their reporting requirements.

If you need to make a report or would like more information about Council's new role, please contact Nathan Woolford, Manager of the Ancestral Remains Unit, on 03 9208 3247 or 0437 528 994 or at [nathan.woolford@dpc.vic.gov.au](mailto:nathan.woolford@dpc.vic.gov.au)

## Secret or sacred objects in Victoria

From 1 August 2016, there are new obligations in relation to Aboriginal objects that are secret or sacred.

The new legislation makes it very clear that secret or sacred objects belong to the Traditional Owners of the area from which the objects have originated. A person who has custody of an Aboriginal object that is a secret or sacred object but who is not the owner of that object must, as soon as practicable, take all reasonable steps to transfer the object into the custody of the Council.

Each object must be assessed on its own merits to first decide that it is secret or sacred and, secondly, to determine the right way to care for it. It is Council's view that Traditional Owners are best positioned, as experts on Aboriginal tradition and culture, to decide whether an individual object is of cultural heritage significance, or is secret or sacred in accordance with Aboriginal tradition, and how best to care for it. We have started working with key stakeholders to develop some general guidance about secret or sacred objects. While this is being finalised, we have developed some principles to help people understand how to meet the requirements of the new legislation.

1. **Some objects are unlikely to be secret or sacred.** Although every object will need to be considered on its own merits, objects which are unlikely to be secret or sacred objects within the meaning of Victorian law might include objects from elsewhere in Australia and objects created for sale.
2. **The first step is to make a preliminary report to Council.** Any person or entity who believes they may have objects which require transfer to Council under the Act should first provide a preliminary report to Council. Such a report should include as much detail as possible about the nature and identity of the objects, their origin, discussions with Traditional Owners, including their views on what should happen to the objects.
3. **Your report will be followed up by the Council's Secretariat.** Upon receipt of a preliminary report, a staff member from the Council's Secretariat will contact the person or entity making the report to discuss the next steps.

As a Council, our desire is to ensure that these extremely important objects are treated with the utmost respect and care. We are looking forward to working with Traditional Owners and the broader Victorian community to keep these objects safe and preserve them for future generations.

If you are ready to make a report or have any questions about secret or sacred objects, please contact Janine Major, Transition Project Manager on 03 9208 3260 or at [janine.major@dpc.vic.gov.au](mailto:janine.major@dpc.vic.gov.au)

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## The first Aboriginal Cultural Heritage Fund in Victoria

The first Aboriginal Cultural Heritage Fund (Fund) ever created in Victoria was established on 1 August 2016.

Council will be responsible for managing this Fund. The *Aboriginal Heritage Act 2006* provides there must be paid into the Fund:

- Any fees paid to the Council or to the Secretary of the Department of Premier and Cabinet (Secretary) under the Act;
- Any money borrowed by the Council;
- Any money received by the Council.

Any interest earned on money in the Fund must also be credited to the Fund.

The Act sets out what the Secretary may pay out of the Fund and what the Council may pay out of the Fund.

We expect that initially, the Fund will be limited because it relies on fees generated through the evaluation of Cultural Heritage Management Plans and accessing the Victorian Aboriginal Heritage Register. We hope that over time, we will be able to maximise opportunities to build up the Fund and to use it for initiatives to protect Aboriginal cultural heritage and to promote understanding and awareness of this unique heritage, managed by Traditional Owners for all Victorians.

If you would like more information about the Fund, please contact Janine Major, Transition Project Manager on 03 9208 3260 or at [janine.major@dpc.vic.gov.au](mailto:janine.major@dpc.vic.gov.au)

## **A new structure for the Victorian Aboriginal Heritage Council**

Since the Council's establishment, we have made all decisions as a collective, reflecting one of our values that we stand together in making decisions. Having said that, we recognise there have been times where delay could have been avoided if the Council had the power to delegate. We are pleased that the new legislation includes the power for Council to create advisory committees and delegate its functions to these committees. We are now considering how we can use this new mechanism to deliver more efficiently on our responsibilities without compromising our commitment to our values.

So far, we have put in place committees to ensure we can immediately respond to reports of Ancestral Remains. Our priorities are keeping Ancestors safe in their resting places and, where they have been disturbed in the past, returning Ancestors to Country. We are also considering the establishment of advisory committees to assist in the management of the Aboriginal Cultural Heritage Fund. Over time, more committees will be created and we will be talking with stakeholders about the best way to design them.

If you would like more information about Council's advisory committees, please contact Janine Major, Transition Project Manager on 03 9208 3260 or at [janine.major@dpc.vic.gov.au](mailto:janine.major@dpc.vic.gov.au)

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## **Making an application to be a Registered Aboriginal Party**

Our principles give priority to Traditional Owners when we make decisions about Registered Aboriginal Party (RAP) applications. We welcome the changes to the *Aboriginal Heritage Act 2006* which clarify this priority and strengthen the links with the *Native Title Act 1993* and the *Traditional Owner Settlement Act 2010*.

A new form has been published for corporations wishing to apply to be appointed as a RAP. The Council now has 270 days to make a decision on RAP applications. If Council requires an applicant to provide additional information to assist in making the decision, the 270 day timeframe is put on hold until the Council gets the information requested. Another important change is that RAP applications can only be made by bodies incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

All RAP applications made after 1 August 2016 must address all the requirements set out in the prescribed form. It is the applicant's responsibility to ensure that all the required information is included in the application.

Council will now be able to include conditions on the registration of a RAP. This can be done at any stage.

We are working through the changes that need to be made to our policies and procedures following the changes to legislation. Later in the year, we will provide more information to organisations considering making RAP applications.

If you would like more information about the new RAP application process, please contact Elly Patira on 03 9208 3254 or at [elly.patira@dpc.vic.gov.au](mailto:elly.patira@dpc.vic.gov.au)

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## **Responsibilities to report and to monitor**

New provisions of the *Aboriginal Heritage Amendment Act 2016* which came into effect on 1 August 2016 require Council to report to the Minister for Aboriginal Affairs annually. This annual report will include reports received by the Council from Registered Aboriginal Parties (RAPs). Council is also responsible for delivering a *State of Victoria's Aboriginal Cultural Heritage* report to the Minister every five years.

In the coming months, we will be contacting RAPs and other stakeholders about the content of these reports. We believe both reports can help us achieve our vision of a Victorian community that understands and respects Aboriginal cultural heritage and the cultural responsibilities of Traditional Owners.

The Act also gives the Council responsibility for overseeing and supervising the operations of RAPs. We plan to do this in ways that avoid duplicating what RAPs are already required to do and that support RAPs to get stronger. We will be designing our approach to this work in collaboration with RAPs and with organisations already involved in monitoring RAPs.

If you would like more information about these areas of Council's work, please contact Janine Major, Transition Project Manager on 03 9208 3260 or at [janine.major@dpc.vic.gov.au](mailto:janine.major@dpc.vic.gov.au)

**Find out more about the Council**