

Guidelines for Registered Aboriginal Party applicants

Aboriginal Heritage Act 2006

June 2020



**VICTORIAN ABORIGINAL
HERITAGE COUNCIL**

About the Aboriginal Heritage Act 2006

The Act recognises Aboriginal people “as the primary guardians, keepers and knowledge holders of Aboriginal Cultural Heritage”.

Registered Aboriginal Parties (RAPs) have important roles and functions as the decision makers for their Cultural Heritage over their appointed area in Victoria. RAPs are registered by the Victorian Aboriginal Heritage Council.

About the Guidelines

These guidelines provide details about the Application Form for registration as a RAP and information to be included with an application.

- Applications must be made in the prescribed form and include the prescribed information, as set out in the Aboriginal Heritage Regulations 2018 (the Regulations). An Application Form has been prepared and can be found on the Council’s website www.aboriginalheritagecouncil.vic.gov.au
- The Application Form format follows the RAP application requirements specified in the Act and the Regulations, as well as the factors that the Council is statutorily required to consider when determining an application and the Council’s “General Principles for RAP Decision-making” (details in Section 9).
- In addition to the required information, applicants may provide any additional information they believe will assist the Council in determining a RAP application. If an applicant requires its original documents to be returned, it should indicate this in its application.
- All information will be treated sensitively and confidentially.

Aboriginal organisations needing assistance with the preparation of their RAP applications can contact the Office of the Victorian Aboriginal Heritage Council and the Aboriginal Victoria (AV) *Strong Roots for our Futures* and *Right People for Country* programs may also be of assistance.

Financial assistance is available to help Aboriginal organisations wanting to lodge RAP applications. For more information on this service, contact the *Strong Roots for our Futures* program.

Office of the Victorian Aboriginal Heritage Council

- 3 Treasury Place, East Melbourne VIC 3002 T. (03) 7004 7198 E. vahc@dpc.vic.gov.au

Becoming a Registered Aboriginal Party in Victoria

- www.aboriginalheritagecouncil.vic.gov.au/become-registered-traditional-owner-victoria

Strong Roots for our Futures

- www.aboriginalvictoria.vic.gov.au/strong-roots-our-futures-program

Right People for Country

- www.aboriginalvictoria.vic.gov.au/right-people-Country-program#accessing-support



SECTION 1 Applicant Information

Attachment A – Certification of Incorporation

Only bodies incorporated under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act) may apply for registration as a RAP.

The application must be signed:

- a) by a director and a witness, where a company seal is used; or
- b) by two directors or a director and corporation secretary in accordance with section 99.5 of the CATSI Act where no company seal is used.

A copy of the applicant's certificate of incorporation and its rule book or constitution should be attached. A full and current list of members should also be attached.

Attachment B - Map and description of the application area

The Act requires all applicants to provide a description of the area being claimed (application area). The description of the application area must include a map or a written description of the boundaries of that area.

AV is available to assist in the preparation of a map to support an application. If you would like to discuss this, please contact *Strong Roots for our Futures* program.

SECTION 2 Native Title Holder and Traditional Owner Group Entity

- Attachment C1 Copy of Native Title Determination
and
- Attachment C2 Copy of Native Title Agreement
or
- Attachment C3 Copy of documents confirming that the applicant has been recognised as a Traditional Owner Group Entity under the Traditional Owner Settlement Act 2010 (Vic)

Native Title Holder

For the purposes of the Act, 'registered native title holder' means a registered native title body corporate or an entity subject to a determination of native title under the Native Title Act 1993 and registered on the National Native Title Register as holding native title rights and interests.

If a registered native title holder applies for registration as a RAP for an area in respect of which there is also a native title agreement, no other applicant may be registered as a RAP for the same area, except another registered native title holder for that area.

Registered native title holders seeking registration as a RAP for an area over which they have been determined to hold native title rights and interests and in respect of which there is a native title agreement, need only complete Sections 1, 2 and 9.1 of the Prescribed Form and provide Attachment A, Attachment B, Attachment C1, Attachment C2 and Attachment E and, if applicable, Attachment J1 and Attachment K.



While each of these attachments is required under the Regulations in order for a RAP application to be valid, once the Council receives a valid RAP application for an area over which there is a native title agreement and for which the applicant holds native title, the Council is statutorily required to register that applicant as a RAP for the area as described in the native title agreement.

Traditional Owner Group Entity

For the purposes of the Act, 'traditional owner group entity' means a group recognised as such under the Traditional Owner Settlement Act 2010 (the TOS Act).

If an applicant is a traditional owner group entity that has entered into a Recognition and Settlement Agreement (RSA) under the TOS Act in relation to an area and is seeking registration only for the area over which its RSA applies, the applicant need only complete Sections 1, 2 and 9.1 of the Prescribed Form and provide Attachment A, Attachment B, Attachment C3, Attachment E and, if applicable, Attachment J1 and Attachment K.

While each of these attachments is required under the Regulations in order for a RAP application to be valid, once the Council receives a valid application from a traditional owner group entity with an RSA, it is statutorily required to register that applicant as a RAP for its RSA area.

Where a traditional owner group entity has entered into an RSA in relation to an area, and has applied or is registered as a RAP for that area, no other applicant can be registered as a RAP for that same area, except a registered native title holder for that area.

SECTION 3 Native Title Party

Attachment D – Copy of Native Title Registrations, Agreements or Determination

Native title parties are defined in section 6 of the Act and include:

- Registered native title claimants or holders for an area;
- A party who was a registered native title claimant for an area whose claims have failed and where there is no other registered native title claimant for the area, and there is not and never has been, a native title holder for the area;
- A party who was a registered native title claimant or a registered native holder for an area who has surrendered native title under a native title agreement;
- A party who was a registered native title claimant or a registered native holder for an area whose native title has been extinguished or compulsorily acquired.

Native title party status relates to the whole area within the outer boundary of the area for which an application for determination of native title is made.

Native title parties seeking registration as a RAP should include a copy of relevant native title application registrations, agreements or determinations (Attachment D).



SECTION 4 Body Representing Traditional Owners

Attachment E - Statement outlining relationship or links of the applicant to the application area

The Act recognises that not all Aboriginal groups who represent the Traditional Owners of an area have lodged applications for native title or entered into a RSA.

Definition of Traditional Owner

For the purposes of the Act (Section 7), a person is a Traditional Owner of an area if:

- The person is an Aboriginal person with particular knowledge about traditions, observances, customs or beliefs associated with the area; and
- The person:
 - has responsibility under Aboriginal tradition for significant Aboriginal places located in, or significant Aboriginal objects originating from, the area; or
 - is a member of a family or clan group that is recognised as having such responsibility.

An applicant claiming to represent the Traditional Owners of the application area must provide a statement outlining the nature of the relationship or links of the applicant to the application area and provide supporting evidence.

Types of Information

The type of information (documents or other sources) that should be included to assist the Council in assessing applications include:

- A description of the Traditional Owner group that the application is intended to represent;
- Names of Apical Ancestors from whom the members of the group are descended, including evidence that the named Ancestors originate from this Country;
- Details about how each of the applicant corporation members is connected to the named Apical Ancestors and/or Traditional Owner group;
- Evidence that demonstrates that the corporation has consulted widely with descendants of named Apical Ancestors and the outcomes of these consultations;
- Evidence that the applicant has resolved group composition and boundary disputes with neighbouring Traditional Owner groups prior to lodging the application;
- Evidence of member's ongoing relationship with Country, for example through living on, visiting, or caring for Country.

Types of Evidence

Evidence supporting the applicant's relationship or links to the application area may include:

- Family oral histories or testimony of Elders about traditional Country or links to Country;
- Anthropological reports and researched articles;



- Historical sources (e.g. extracts from books, journals etc.) that identify the traditional Country of the applicant group's Apical Ancestors;
- Statements from Aboriginal people or organisations that recognise the applicant as representing the Traditional Owners of the application area ; and/or
- Other relevant secondary and primary research materials that support the applicant's representation of the Traditional Owners of the area.

Inclusivity

Under the Act, the Council is also permitted to take into account any other matter that the Council considers to be relevant. One such matter that the Council takes into account is whether an applicant is inclusive. In the Council's view, an inclusive applicant is representative of all Traditional Owners of the area being claimed. Where there are numerous Traditional Owner groups in a particular area, the AV Right People for Country program is one way Traditional Owners can seek assistance with agreement-making. The National Native Title Tribunal may also be able to assist applicants who are also involved in the native title process.

The Council encourages applicants to include in their Attachment E statement details about, and evidence of:

- the applicant's efforts to ensure that it is inclusive and encouraging of all Traditional Owners for the application area becoming members of the applicant corporation;
- the outcomes achieved through negotiation and agreement making processes to resolve issues that (amongst other things) inhibit them from achieving formal recognition of their traditional connections; and
- the applicant's efforts to establish a fair, inclusive and effective system of Cultural Heritage management on their Country.

Information that may also support an application in this regard includes a membership list and supporting letters or documentation from Traditional Owners of the application area.

Note

An applicant must complete either Section 4 or Section 5. An applicant that completes Section 4 may choose to complete Section 5 but is not required to do so.

SECTION 5 Historical or Contemporary Links

Attachment F – Statement outlining Historical or Contemporary Links

An applicant who is claiming historical or contemporary interest in Aboriginal Cultural Heritage in the application area must attach a statement outlining the nature of, and evidence supporting, that interest as well as their expertise in managing and protecting that Cultural Heritage (see Section 6 below). Applicants can provide any other information that demonstrates their historical or contemporary links to an area that it believes will support its application.



If the applicant is not a traditional owner group entity for the application area, and there exists a traditional owner group entity for that area, the applicant must obtain and attach the written consent of the traditional owner group entity confirming that the application may be approved by the Council.

The Council encourages applicants to discuss their applications with Traditional Owner groups in the application area. Any supporting letters or documentation from discussions with Traditional Owner groups or other Aboriginal people or organisations who recognise the historical or contemporary links of the applicant should be provided.

NOTE

Applicants must complete either Section 4 or Section 5. Applicants that complete Section 4 may choose to complete Section 5 but are not required to do so.

SECTION 6 Expertise in Cultural Heritage Management and Organisational Sustainability

Attachment G1 – Statement outlining Expertise in Cultural Heritage Management

As RAPs play an important role in managing Victoria's Aboriginal Cultural Heritage, applicants should demonstrate they have the capacity to carry out these functions. All applicants must attach a statement outlining the nature of, and evidence supporting, their demonstrated expertise in Cultural Heritage management.

This statement should be supported by a copy of the applicant's policies and procedures relating to Cultural Heritage protection and management, a description of Cultural Heritage management work undertaken by directors and/or members of the applicant, and supporting documentation from other Aboriginal people or organisations or other stakeholders including state government agencies, local government, developers, industry representatives, heritage consultants or land managers.

Attachment G2 – Evidence of Organisational Sustainability

Another matter that the Council takes into account when determining a RAP application is whether the RAP is organisationally sustainable and capable of carrying out its obligations as a RAP. The Council therefore encourages applicants to provide information that demonstrates its organisational sustainability and RAP capacity. This may include:

- details of any governance training undertaken by applicant members;
- describing the corporation's governance structures;
- describing and/or providing copies of the applicant's policies and procedures relating to:
 - corporate governance and compliance with incorporation requirements; and
 - operational and decision-making aspects of Cultural Heritage management; and



- details of the skills and experience of those involved in the applicant's functions.

The Council encourages applicants to develop (and provide the Council with a copy of) an operational plan to identify processes and procedures to help a RAP function as a strong and effective corporation. A template for developing an operational plan may be sought from AV.

If it is proposed that the applicant will use the services of another organisation, for example, to provide administration, bookkeeping or pay roll support, it is necessary to provide information about that organisation's incorporation and registration details.

SECTION 7 Grants of Land

Attachment H – Title Deeds

The Council must also consider whether the applicant for registration has been granted land in fee simple by the State or Commonwealth Government under a specific power in a State or Commonwealth Act. If the applicant has been granted any such land, the title details of this land must be attached to the application.

SECTION 8 Land and Resource Management

Attachment I – Copies of Land and Resource Management Agreements

The Council must also consider whether the applicant for registration has entered into an agreement with the State in relation to land and natural resource management in the application area. Applicants are requested to provide information on any agreements they have entered into with the Victorian Government, or any other party, in relation to land and natural resource management in respect of the application area. Examples may include Indigenous Land Use Agreements, co-management agreements, and recognition as managers of Indigenous Protected Areas. If the applicant is party to any land and resource management agreement, a copy of each such agreement should be attached as evidence.

SECTION 9 Consultation and Other Information

Section 9.4 - Considering the Interests of Aboriginal people with an interest in Cultural Heritage

All applicants are required to include a statement at Section 9.4 describing how they intend to consider the interests of any Aboriginal people for whom the area/s under application has Cultural Heritage significance, but who are not the Traditional Owners of the area. This may include a description of how the applicant has considered the interests of Aboriginal people who, whilst not Traditional Owners:

- Have an interest in the protection and management of Aboriginal Cultural Heritage within their local communities, which includes the application area;



- Had previous responsibility for, or experience in, caring for heritage within the area, and who possess knowledge of and interests in Aboriginal Cultural Heritage within the area as a result of that responsibility or experience; or
- Have Cultural Heritage connections to the application area as a neighbouring Traditional Owner group.

Attachment J1 - Agreement-making with other Traditional Owner groups

The Regulations require that all applicants attach evidence of any consultation or agreement with other Traditional Owner Group Entities regarding the boundary of the area under application.

The Council encourages organisations to resolve boundary disputes with neighbouring Traditional Owner groups prior to lodging a RAP application. Evidence of agreements with neighbours may include letters of support, signed agreements and minutes from meetings. The AV Right People for Country project is available to Traditional Owner groups needing support to reach agreements with neighbours (contact details are provided on page 1).

Attachment J2 - Traditional Owner Consent

If the applicant is not a Traditional Owner Group Entity (even if it is a body representing Traditional Owners), and a Traditional Owner Group Entity exists for the application area, the applicant is required to obtain and attach the written consent of the Traditional Owner Group Entity. This written consent must state that the applicant may apply, and the Council may consider, the applicant's application to be registered as a RAP for the area. If the applicant does not have the written consent of any relevant Traditional Owner Group Entity, its application will not be valid.

Attachment J3 – Terms of any Native Title Agreement

Applicants should also attach the terms of any native title agreement the applicant wishes to make available to the Council and that the applicant considers of relevance to its RAP application.

Section 10 Repeat Applications

Attachment K - Repeat RAP Application

If applicable, your application should provide details of any previous RAP applications submitted by your organisation, including:

- The date of previous RAP application/s;
- A statement confirming whether or not the area under the current application is exactly the same as the area claimed under the previous RAP application/s;
- If the area under the current application is different from that claimed under the previous application, a detailed description of how the areas are different should be provided;
- Detail of any substantially new or additional information not included in the previous RAP application; and



- Detail of how the application addresses the reasons the Council declined the previous RAP application as set out in the relevant Reasons for Decision document.

General Information

Additional Information

Under the Act, the Council is empowered to request any additional information the Council reasonably thinks necessary to assist its decision. If the Council determines that additional information is required, the Council will request that information in writing.

In determining an application, the Council is also empowered to obtain assistance from any person that the Council considers has relevant knowledge and expertise.

270 Day RAP Application Assessment Period

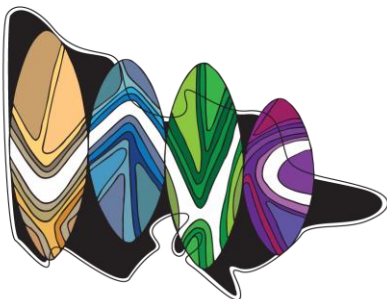
Applicants should note that the Council is required to determine a RAP application within 270 days of receiving that application. However, when the Council requests additional information from an applicant which the Council thinks is reasonably necessary to assist its decision, the “clock” on the 270 day RAP assessment period stops and does not restart until all of the information requested has been provided to the Council in a form and substance satisfactory to the Council.

Council's General Principles for RAP Decision Making

The Council has developed “General Principles for RAP Decision-making” to guide its consideration of RAP applications.

- Council will give priority consideration to applications made by groups who represent Traditional Owners.
- Where appropriate, the Council will move quickly to register the core Country of applicants representing Traditional Owners who have sufficient capacity to become a RAP.
- Council will also give priority consideration to uncontested applications by other groups that meet the Act’s requirements and are supported by the Traditional Owners of the Country affected by the application.
- Council may invite certain applicants to participate in regional meetings and mediations to resolve competing applications and overlapping boundaries.
- Council wants to ensure groups recognised under Cultural Heritage laws as best as possible reflect those under native title arrangements.
- Council encourages smaller groups to create sustainable RAP structures by working together to create a single RAP or to develop co-operative arrangements with other Aboriginal organisations.





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