

Scope and Procedure for lodging a Complaint against a Registered Aboriginal Party

1 Background

A function of the Council under subsection 132(ch) of the *Aboriginal Heritage Act 2006* (the Act) is to “manage, oversee and supervise the operations of registered Aboriginal parties”. To assist in carrying out this function the Act gives Council the power to impose conditions on a RAP’s registration and, potentially, to suspend or revoke its registration.

Council members are appointed based upon (in part) their experience or knowledge of Victorian Aboriginal Cultural Heritage matters. Thus, in undertaking this supervisory function, Council will often rely upon their own knowledge and experience.

However, in the discharge of this function, Council believes it also important that those people that engage with RAPs have an opportunity to bring to Council’s attention aspects of this engagement that may constitute a complaint about the manner in which the RAP is discharges its functions under the Act. An effective, transparent Complaints Procedure of this kind can assist RAPs in undertaking their functions, as it provides a credible forum for misunderstandings to be resolved, provides a structure for dispute resolution and enhances the credibility of the Victorian Aboriginal Cultural Heritage regime. It also ensures that the community can have confidence in the manner in which RAPs discharge their statutory functions.

2 Scope of the Complaints Procedure

This Complaints Procedure deals only with matters under the *Aboriginal Heritage Act 2006* (Act). RAPs and their directors, members and employees are of course subject to the normal criminal laws regarding fraud, assault, theft, sexual harassment and workplace health and safety. Complaints about matters like this should be made to the Victoria Police or appropriate authorities such as WorkSafe.

RAPs are also corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2009* (Cth.) (CATSI Act). The CATSI Act creates some obligations on how corporations registered under it are run. The Office of the Registrar of Indigenous Corporations (ORIC) makes sure CATSI corporations meet these obligations. One of the obligations is that CATSI corporations have a grievance process for their members in their Rule Book. Many issues that arise between members of a CATSI Corporation are best dealt with, initially at least, through the Rule Book grievance process.

The Council complaint procedure will only deal with the activities a RAP does **as a RAP**. Mainly these go to things like the way a RAP deals with cultural heritage management plans, cultural heritage permits, Aboriginal cultural heritage agreements and registered Aboriginal intangible heritage but it can also extend to the other functions of a RAP that are set out in section 148 of the Act.

Council cannot consider complaints about RAPs that are not related to these matters. Complaints about other matters should be made to ORIC or to another appropriate authority.

3 Confidentiality and Particulars

In order to ensure that the process fair to both the complainant and the RAP, the RAP must be informed who is making the complaint and what the complaint is. To achieve this, it is necessary that the complaint be in writing, so that the specifics of what is being complained about are clear to both Council and the RAP. Anonymous or unwritten complaints will not be addressed through the Complaints Procedure.

4 Process - Overview

There are three main stages in this complaint handling process. Each stage has different steps within it. The three stages are:

1. Preliminary assessment;
2. Investigation and recommendations; and
3. Consideration of sanctions.

The following describes these three steps in more detail.

i. Preliminary Assessment

- a. A complaint in writing, addressed to the Chairperson of the Council is received at the Council office. The complaint should set out:

1. Who is making the complaint;
2. Where the Council can contact that person (address, phone or email);
3. Which RAP the complaint is against;
4. What the complaint is about; and
5. What the person making the complaint would like to see happen.

(A "complaint form" is attached to this policy)

The complaint should be accompanied with any documentation the person making the complaint thinks are relevant.

- b. When the complaint is received at Council's office a member of the Council secretariat staff will contact the person making the complaint to ensure that the complaint is correctly understood. The Council secretariat staff member will also contact the RAP that the complaint is made against to provide them with the contents of the complaint in its entirety and allow them to present their position on the complaint. Both the contents of the complaint and RAP's responses to the complaint should be provided in writing.
- c. The Council secretariat staff member will prepare a "preliminary assessment" for the Council Chairperson (or their delegate) to consider. The preliminary assessment will:
 - Describe in general terms what the complaint is about and who it involves;
 - Consider whether the complaint is of the kind that Council can deal with;
 - If the complaint is of the kind Council can deal with the report will recommend to the Chairperson that the complaint should move to the "investigation and recommendation" stage.
- d. The Council Chairperson will then decide whether the complaint should proceed to the investigation and recommendation stage. Whatever the Chairperson decides, the making of the complaint and an outline of its substance is reported to the next meeting of the Council.

ii. Investigation and Recommendation

- a. If the Chairperson decides the complaint should be investigated the Chairperson (or secretariat staff at the Chairperson's direction) will conduct the investigation into the complaint. This will involve speaking to both the person making the complaint and the RAP to understand both sides of the complaint. It may also involve asking for documentation that relate to the complaint or speaking to third parties who may have witnessed or been involved with the complaint in some manner. A summary of information that any third party provides will be given to the person making the complaint and the RAP for their comment.
- b. The person conducting the investigation will produce a report of the investigation that sets out what each side has said about the complaint and any other relevant information the investigation has identified. The report will also include a recommendation as to how to further handle the complaint. The recommendation will either be to:
 - Take no further action on the complaint;
 - Attempt to resolve the complaint through informal dispute resolution;
 - or
 - Refer the complaint to Council to consider taking further action.

- c. The report from the investigation will be given by the Chairperson to relevant parties (the person making the complaint and the RAP). It will also be presented to the next meeting of the Council.
- d. If the recommendation in the report is that Council take no further action the person making the complaint will be given the opportunity to submit a written response to the meeting of Council that considers the report.
- e. If the recommendation in the report is that Council consider taking further action, the RAP will be given the opportunity to submit a written response to the meeting of Council that considers the report.
- f. If there is a recommendation in the report to attempt to resolve the complaint through informal dispute resolution Council may decide to defer considering the report until after the informal dispute resolution meetings are finished.
- g. If the report recommends attempting to resolve the complaint through informal dispute resolution the Council will ask a representative of the RAP and the person making the complaint to take part and arrange the informal dispute resolution. Arrangements will involve:
 - Identification and appointment of an agreed upon independent mediator or facilitator;
 - Determining availabilities of complainant and relevant RAP to lock in dates within reasonable (though expeditious) timeframes;
 - Determination of an appropriate location or forum by which mediation/facilitation can be undertaken;
 - i) The cost of engaging an independent mediator/facilitator and obtaining an appropriate location will be born by the Council. Any additional costs involved in undertaking independent mediation will be born by the parties involved.
 - ii) Informal dispute resolution processes will be conducted confidentially. Parties will be asked to sign confidentiality agreements.
- h. A report on the outcome of the informal dispute resolution will be presented to the Council meeting after the informal dispute resolution meetings are finished. Each party will be given the opportunity to submit a written response to the report to the meeting of Council that considers the report

iii. Consideration of Sanctions

- a. When the Council has a copy of the report of the investigation into the complaint and the report any informal dispute resolution meeting and any submissions in response to these reports the Council will consider its response to the complaint.

- b. The Council may decide to:
- Take no further action on the complaint;
 - Continue to monitor the RAP regarding the matters raised in the complaint but otherwise take no action;
 - Suggest the RAP take certain actions regarding the matters raised in the complaint and continue to monitor that the RAP is taking those actions but take no further action under the Act;
 - Issue a notice to the RAP under s 154A(2) of the Act that it is considering imposing a condition on the registration of the RAP;
 - Issue a notice under s 157(1)(a) that it is considering suspending or revoking the registration of the RAP.
- c. If Council issues a notice to a RAP that it is considering imposing a condition or suspending or revoking registration of a RAP Council will follow the process set out in the Act and the Council Policy on the Imposition of Conditions, Suspension of Revocation of Registration of a RAP.
- d. The person making the complaint and the RAP will be notified of Council's decision.
- e. At the end of each complaint process, the Council will evaluate its complaint handling process and make any changes required. (The process will in any case be evaluated each year by Council).

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