

**Victorian Government Response to the Parliamentary Inquiry  
into the Establishment and Effectiveness of Registered  
Aboriginal Parties**

**14 May 2013**

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## Parliamentary Inquiry

The Environment and Natural Resources Committee Inquiry into the establishment and effectiveness of Registered Aboriginal Parties was initiated in September 2011. Registered Aboriginal Parties are appointed by the Victorian Aboriginal Heritage Council pursuant to the *Aboriginal Heritage Act 2006*.

The Committee's Terms of Reference were to consider:

- (a) Victorian Aboriginal Heritage Council policies in relation to the appointment of Registered Aboriginal Parties including the factors that should be taken into account by the Council in making a decision such as:
  - i. the degree to which Traditional Ownership is contested in the area the subject of an application
  - ii. the impact that decisions may have on the community
  - iii. the capacity of the applicant to fulfil legislative responsibilities if appointed
  - iv. the process used to determine and identify the successful registered Aboriginal party
- (b) the support available to the Council in making decisions about the appointment of Registered Aboriginal Parties including:
  - i. membership and structure of the Council
  - ii. Council's capacity to inquire into matters relevant to applications, including supporting applicants to provide information to fully assess applications
- (c) the effectiveness of the established Registered Aboriginal Parties.

The Committee received 70 submissions and conducted six public hearings across Victoria. The Committee handed down its report on 14 November 2012. The report contains 38 recommendations.

The Victorian Government thanks the Committee for its work.

## Review of the *Aboriginal Heritage Act 2006*

The Victorian Government concurrently conducted a review of the *Aboriginal Heritage Act 2006*. The review of the *Aboriginal Heritage Act 2006* is a legislated requirement under section 193 of the *Aboriginal Heritage Act 2006*, and was required to be conducted before the fifth anniversary of its commencement (28 May 2012).

The review involved widespread consultation and 140 written submissions were received. A range of materials were developed as part of the review, including:

- A Discussion Paper;
- Summary of Submissions and Consultations (first round);
- Issues and Options paper;
- A PricewaterhouseCoopers Report on the social and economic impacts of the Act; and
- A Summary Report responding to the Issues and Options Paper (see [www.dpcd.vic.gov.au/indigenous](http://www.dpcd.vic.gov.au/indigenous)).

# Victorian Government response to the Parliamentary Inquiry recommendations

## *Overview*

The Victorian Government welcomes the report of the Inquiry. It builds on the comprehensive review of the *Aboriginal Heritage Act 2006* completed in 2012.

## *Guiding Principles*

The Victorian Government is committed to the protection of Aboriginal cultural heritage and has identified four guiding principles for responding to both the Parliamentary Inquiry and the review of the *Aboriginal Heritage Act 2006*:

### **1. The primacy of Traditional Owners in cultural heritage protection and management through effective, accountable and transparent decision making**

The centrality of Traditional Owners in decision making about their cultural heritage is recognised throughout the Victorian Government, from the principles of the *Traditional Owner Settlement Act 2010*, to policies relating to native title and land management activities. A major objective of the *Aboriginal Heritage Act 2006* is to accord appropriate status to Traditional Owners in relation to decision making about their cultural heritage. This objective is also consistent with the Victorian *Charter of Human Rights and Responsibilities Act 2006* and the United Nations Declaration on the Rights of Indigenous Peoples. The Committee recognised and affirmed the status of Traditional Owners throughout its report.

Aboriginal cultural heritage is valued by all Victorians. In recognition that Traditional Owners make decisions about their cultural heritage for the benefit of all Victorians, Traditional Owners should be supported so their decisions continue to be effective, accountable and transparent and the community can have confidence in the protection of Aboriginal cultural heritage.

All of the Victorian Government's responses accord with the rightful status of Traditional Owners as effective, accountable and transparent decision makers about their cultural heritage.

### **2. Sustainable Registered Aboriginal Parties**

Sustainable Registered Aboriginal Parties are critical for the operation of Victoria's Aboriginal cultural heritage management system. They need to be accessible, efficient, skilled, professional organisations, able to respond quickly to the needs of their stakeholders. The Committee recognised, and the Victorian Government agrees, that sustainable and adequately resourced Registered Aboriginal Parties are essential for the smooth and efficient operation of Victoria's Aboriginal cultural heritage management system, and for certainty and consistency for all land users across the State.

### **3. An efficient, effective best practice Aboriginal cultural heritage management system**

The Victorian Government responses to the Inquiry advance the principle of a best practice Aboriginal cultural heritage management system. The Victorian system is widely recognised as the best in Australia. The Victorian system establishes Traditional Owner decision making, consistent cultural heritage management processes, certainty for industry and comprehensive and mandatory cultural heritage management standards and benchmarks. The Victorian Government's response to the Inquiry

demonstrates its commitment to maintaining and improving upon the cultural heritage management system.

#### **4. Certainty for all land users**

The final guiding principle demonstrates the Victorian Government's recognition that certainty – of decision makers, of cultural heritage management requirements, of costs, and of processes – is critical for all land users who interact with Victoria's cultural heritage management system. The Act already provides a high degree of certainty for all of these aspects. The Victorian Aboriginal Heritage Council and Registered Aboriginal Parties are established as the key decision makers. Cultural heritage management plan requirements are spelt out in the Act and the Regulations. Costs for evaluating cultural heritage management plans and other processes are regulated. The cultural heritage management plan system is clearly stepped out, with decision points along the way with statutory timelines for most decisions. But certainty for all land users can be enhanced. The Victorian Government response to the Inquiry reflects its desire to improve upon the certainty that the Act and its supporting policies already provide.

### ***Response***

Of the 38 recommendations, the Victorian Government supports 30 and supports in principle six of the recommendations. Two of the recommendations are not supported.

### ***Next steps***

The Victorian Government proposes, over the remainder of 2013, to work on specific legislative and policy amendments. A draft Bill is proposed to be introduced in early 2014. Administrative reforms in addition to those already announced and implemented will be progressively rolled out in 2013 and 2014.

## Response

### Table of responses

Recommendation	Victorian Government response
<p>3.1: <i>The Aboriginal Heritage Act 2006 be amended to allow for only incorporated bodies representing Traditional Owners to be appointed as Registered Aboriginal Parties.</i></p>	<p><b>Support</b></p> <p>The Victorian Government supports introducing amendments to the <i>Aboriginal Heritage Act 2006</i> to provide for the priority of Traditional Owners in the Registered Aboriginal Party appointment process.</p> <p>The Victorian Government acknowledges key finding 3.1 and 3.2 in support of this recommendation:</p> <p>3.1 The evidence received by the Committee, including from groups dissatisfied with the Registered Aboriginal Party appointment process, is that only Traditional Owners should be the decision makers in relation to their cultural heritage.</p> <p>3.2 While the <i>Aboriginal Heritage Act 2006</i> aligns the protection of heritage with the recognition of Traditional Owners under the native title process; it does not mandate that only organisations representing Traditional Owners be appointed as Registered Aboriginal Parties.</p> <p>In particular, at page 44, the Report identifies:</p> <p style="padding-left: 40px;">“...the Act’s objectives and definitions emphasise the unique status of traditional owners in relation to their own heritage. Importantly, this emphasis on traditional owners harmonises with the native title process, produces consistency for government, land users and Aboriginal people, and is consistent with the evidence heard by the Committee from stakeholders, that only organisations representing traditional owner groups should have the ability to be appointed as RAPs.”</p> <p>It is proposed to retain some flexibility to enable organisations representing people with historical and contemporary interests in Aboriginal heritage to have their interests appropriately recognised. For example, it may be appropriate for a condition of appointment of a Registered Aboriginal Party to include a requirement to consult with people with historical or contemporary interests (see also 3.2 and 6.14)</p>
<p>3.2: <i>Aboriginal Affairs Victoria and the Victorian Aboriginal Heritage Council develop policy guidelines to support Registered Aboriginal Parties to consult, where appropriate and relevant, Aboriginal people with historical or contemporary interests in heritage.</i></p>	<p><b>Support</b></p> <p>The Victorian Government supports flexibility for Registered Aboriginal Parties to determine their own policies and protocols with the support of guidelines developed by the Council and the Office of Aboriginal Affairs Victoria.</p> <p>The Victorian Government notes and acknowledges the Committee’s finding that Aboriginal people who are not Traditional Owners often have both an interest and experience in caring for Aboriginal heritage within their community.</p>

Recommendation	Victorian Government response
	<p>The Victorian Government supports an enhanced Registered Aboriginal Party application process. Legislative reforms proposed will introduce a requirement for Registered Aboriginal Party applications to address how post-contact Aboriginal cultural heritage interests in the Registered Aboriginal Party area will be dealt with, where applicable.</p> <p>It is also proposed to give the Council powers to attach conditions to Registered Aboriginal Party appointments and the tools to enforce these conditions (see 6.14 below).</p>
<p>4.1: <i>The Minister appoints individuals to the Victorian Aboriginal Heritage Council who are recognised Victorian Traditional Owners, and who possess knowledge and experience of Aboriginal heritage. The Council will continue to comprise up to 11 individuals.</i></p>	<p><b>Support</b></p> <p>The Victorian Government supports the continuation of the Council as a skills-based, expert body comprised of Traditional Owners (see also 4.2 and 4.3).</p>
<p>4.2: <i>The Aboriginal Heritage Act 2006 be amended to require the Minister to take into consideration the diversity of Victoria's Traditional Owner groups when appointing members to the Victorian Aboriginal Heritage Council.</i></p>	<p><b>Support in principle</b></p> <p>In recognition of the different Traditional Owner groups throughout Victoria, the Minister for Aboriginal Affairs already considers diversity of membership when making appointments to the Council.</p> <p>Guidelines will be prepared to reflect and reinforce this practice. Legislative amendment is not considered necessary for this recommendation to be implemented (see also 4.3).</p>
<p>4.3: <i>Council membership:</i></p> <p><i>The Aboriginal Heritage Act 2006 be amended to require that individuals nominating for the Victorian Aboriginal Heritage Council:</i></p> <ul style="list-style-type: none"> <li>• <i>nominate the Traditional Owner group with which they primarily identify; and</i></li> <li>• <i>provide evidence, to the satisfaction of the Minister, that their self-nomination for membership of the Victorian Aboriginal Heritage Council is broadly supported by the relevant Traditional Owner group.</i></li> </ul>	<p><b>Support in principle</b></p> <p>The Victorian Government notes that the Victorian Traditional Owners Land Justice Group operates as an advocate for many Traditional Owners across Victoria. The Council operates as a skills-based, expert body specialising in providing cultural heritage advice.</p> <p>The Minister currently requires applicants to nominate the Traditional Owner group with which they primarily identify and to demonstrate they have support from this group. This practice recognises the diversity of Traditional Owner groups across Victoria.</p> <p>The legislative amendment suggested would be difficult to manage in the case where initial group support of a Council member was later withdrawn and could stymie the efficiency of the Council.</p> <p>Guidelines will be prepared to reflect this practice, but legislative amendment is not supported.</p>

<b>Recommendation</b>	<b>Victorian Government response</b>
<p>4.4: <i>The Aboriginal Heritage Act 2006 be amended to provide for the creation of an independent advisory committee of no more than six individuals, appointed by the Minister, with demonstrated expertise in archaeology, cultural heritage, anthropology, history and/or relevant industries. The advisory committee would be called upon at the Minister's discretion to assist the Council and would have no voting role on Council decisions. The Council can also seek from the Minister a convening of the independent advisory committee.</i></p>	<p><b>Support</b></p> <p>The Victorian Government supports the creation of an advisory committee to assist and strengthen the capacity of the Council.</p> <p>There are a range of circumstances in which the Council may benefit from the receipt of specialist advice. The Committee's recommendation for a Ministerially appointed advisory committee envisages the advisory committee may be convened at the Minister's discretion or at the Minister's discretion on request from the Council.</p> <p>The Victorian Government further proposes enabling the Council to establish its own advisory structures, in the same way the Victorian Heritage Council is able to appoint its own expert advisory committees as needed. These committees could comprise external expertise to supplement skills of Council, which will vary over time, and meet when needed.</p>
<p>4.5: <i>The Aboriginal Heritage Act 2006 be amended to provide for the creation of a panel of no more than three alternate Council members who can be called upon, if required, by the Council to participate in Registered Aboriginal Party decision-making in situations where the Council is not able to convene a quorum. Members of this panel are to be appointed using the same criteria and processes as for ordinary members of the Council.</i></p>	<p><b>Support</b></p> <p>The Victorian Government supports amendments to enable the Council to establish a panel of alternates, to ensure Council can meet its quorum requirements and support succession planning.</p> <p>This proposal is consistent with Victorian Heritage Council alternate member arrangements. Further consultation with the Council will be undertaken to identify how this proposal may assist its operations. For example, it will be beneficial for an alternate member to be present for an entire single Registered Aboriginal Party application process to maintain continuity through the appointment process.</p>
<p>4.6: <i>The Aboriginal Heritage Act 2006 be amended to allow the Chair of the Victorian Aboriginal Heritage Council to serve a term of two years, and to be eligible for re-election for a further two years, for a maximum of two terms.</i></p>	<p><b>Support</b></p> <p>The Victorian Government supports measures to strengthen the governance of the Council, including by allowing the Chair of the Council to serve a term of two years and be eligible for re-election for a further term.</p>



Recommendation	Victorian Government response
<p>5.1: Section 150 (1) of the Aboriginal Heritage Act 2006 be amended:</p> <ul style="list-style-type: none"> <li>• <i>to require that applications for Registered Aboriginal Party status be made on the Department of Planning and Community Development's approved form</i></li> <li>• <i>to mandate that applications must include all the supporting documentation specified by the approved form in order to be considered valid; and</i></li> <li>• <i>to state that staff of the Victorian Aboriginal Heritage Council may determine whether a Registered Aboriginal Party application is valid.</i></li> </ul>	<p><b>Support</b></p> <p>The Victorian Government supports measures to improve the information provided in Registered Aboriginal Party applications to better reflect the matters that the Victorian Aboriginal Heritage Council takes into account. This will contribute to an enhanced Registered Aboriginal Party appointment process.</p> <p>It also supports changes to enable Council to delegate appropriate matters to its staff (or its chair) including the ability to determine if a Registered Aboriginal Party application has been submitted with the required information. It is proposed that an application will not be accepted if it is incomplete. Council will also be required to furnish applicants with reasons why the application was deemed not valid or incomplete and information about how to resubmit. These reforms will support the efficient operation of the Council.</p>
<p>5.2: Aboriginal Affairs Victoria and the Victorian Aboriginal Heritage Council develop policy guidelines to streamline the appointment process for Registered Aboriginal Parties to include:</p> <ul style="list-style-type: none"> <li>• <i>the opportunity for face-to-face meetings between secretariat staff of the Victorian Aboriginal Heritage Council and prospective Registered Aboriginal Party applicants prior to the submission of an application; and</i></li> <li>• <i>the production of plain English written materials to assist Registered Aboriginal Party applicants to gather the evidence necessary to support their application.</i></li> </ul>	<p><b>Support</b></p> <p>The Victorian Government supports the Office of Aboriginal Affairs Victoria partnering with the Council to develop related guidance materials and to revise materials published to support Registered Aboriginal Party applicants in light of the Inquiry's recommendations.</p> <p>The Victorian Government understands the Council's Secretariat currently offers to meet with Registered Aboriginal Party applicants and supports an extension of this approach.</p> <p>The Victorian Government also acknowledges the contribution of an appropriate Aboriginal-led mediation and agreement-making process in assisting Registered Aboriginal Party applicants.</p>

Recommendation	Victorian Government response
<p>5.3: <i>The Victorian Aboriginal Heritage Council re-shape the process used to determine Registered Aboriginal Party applications to include the provision for face-to-face meetings between the Victorian Aboriginal Heritage Council and Registered Aboriginal Party applicants. The determination process should include:</i></p> <ul style="list-style-type: none"> <li>• <i>the opportunity for Registered Aboriginal Party applicants to attend meetings with Victorian Aboriginal Heritage Council members while an application is under deliberation, especially for the purpose of conveying oral evidence about Traditional Ownership; and</i></li> <li>• <i>provisions for meetings between unsuccessful Registered Aboriginal Party applicants and Victorian Aboriginal Heritage Council members to ensure that applicants receive clear feedback on why their application was declined.</i></li> </ul>	<p><b>Support</b></p> <p>The Victorian Government supports transparency in Council decision making and acknowledges that in some circumstances it may be helpful for Registered Aboriginal Party applicants to meet with the Council or its Chair.</p> <p>However, there may also be circumstances where a meeting would not be efficient or enhance the Council's decision making process. Accordingly, it is not expected that the Council will conduct face-to-face meetings as a part of considering every Registered Aboriginal Party application it receives. But as a matter of principle, face to face meetings should be available if it will assist the application process.</p> <p>The Victorian Government will amend the <i>Aboriginal Heritage Act 2006</i> to allow for discretionary meetings to occur on the request of the applicant, and will work with the Council to produce guidelines to support the exercise of this power.</p> <p>It is noted that the Council has adopted a practice of the Chair making telephone contact with a Registered Aboriginal Party applicant to advise of the outcome of a Council decision and provide feedback where an application is declined. Written reasons for each Registered Aboriginal Party decision are published by the Council.</p>
<p>5.4: <i>Aboriginal Affairs Victoria and the Native Title Unit, Department of Justice, develop plain English information publications to clarify the relationship between the Registered Aboriginal Party appointment process – and the level of evidence required to demonstrate Traditional Ownership within the context of the Aboriginal Heritage Act 2006 – and the distinct requirements of the native title determination process.</i></p>	<p><b>Support</b></p> <p>The Victorian Government supports the Office of Aboriginal Affairs Victoria and the Native Title Unit of the Department of Justice partnering with the Council to jointly publish community focussed materials on the relationship of the processes for Registered Aboriginal Party appointment, negotiation of agreements under the <i>Traditional Owner Settlement Act 2010</i> and the native title determination process.</p> <p>Threshold Guidelines for agreements under the <i>Traditional Owner Settlement Act 2010</i> explain the relationships and intersections with the Registered Aboriginal Party and native title processes.</p>

Recommendation	Victorian Government response
<p>5.5: <i>The Victorian Government and Aboriginal Affairs Victoria review the resources allocated to the Victorian Aboriginal Heritage Council, with a view to:</i></p> <ul style="list-style-type: none"> <li>• <i>increasing the capacity of the Victorian Aboriginal Heritage Council to provide support to Registered Aboriginal Party applicants to gather the evidence and documentation needed to accompany an appropriate application;</i></li> <li>• <i>extending the Victorian Aboriginal Heritage Council's capacity to commission research to assist its decision-making; and</i></li> <li>• <i>enhancing the ability of the Victorian Aboriginal Heritage Council to provide face-to-face support and to facilitate meetings with applicants during the Registered Aboriginal Party determination process.</i></li> </ul>	<p><b>Support</b></p> <p>The Victorian Government notes that Registered Aboriginal Party applicants are eligible for \$5000 in financial assistance to aid the preparation of a Registered Aboriginal Party application.</p> <p>The Victorian Government recognises that some Registered Aboriginal Party applicants could benefit from practical support in gathering evidence to prepare their applications. Publication of improved guidance materials coupled with advice from the Council's Secretariat should go some way to assisting with this (see 5.2 and 5.4 above).</p> <p>The Victorian Government notes there are limits to the role of the Council in supporting the preparation of a Registered Aboriginal Party application given it is the decision maker.</p> <p>The Government notes that the Council currently commissions research and has led the development of shared and collaborative research between the Council, Native Title Services Victoria and the Department of Justice will assist to achieve outcomes under native title, cultural heritage and the <i>Traditional Owner Settlement Act 2010</i>.</p> <p>The Victorian Government's support for this recommendation should be read with the responses to recommendation 6.16.</p>
<p>5.6: <i>The Aboriginal Heritage Act 2006 be amended to remove section 151(1), which requires the Victorian Aboriginal Heritage Council to determine applications for Registered Aboriginal Party status within 120 days of receiving an application. In its place, Aboriginal Affairs Victoria and the Victorian Aboriginal Heritage Council are to develop policy guidelines to ensure that Registered Aboriginal Party applications are assessed within a maximum of one year with an extension of six months if required.</i></p>	<p><b>Support in principle</b></p> <p>The Victorian Government supports a more reasonable timeframe for Council to determine Registered Aboriginal Party applications. However, a shorter decision time period with a "stop the clock" mechanism is preferred, rather than being able to extend the time.</p> <p>The Victorian Government acknowledges the complexity of issues considered by the Council in determining Registered Aboriginal Party applications. These determinations routinely take much longer than the statutory timeframe allowed under the Aboriginal Heritage Act.</p> <p>The Victorian Government supports increasing the statutory timeframe for determining Registered Aboriginal Party applications from 120 days to 9 months and introducing a 'stop-the-clock' mechanism in limited circumstances, such as where mediation is occurring. This would provide greater flexibility for the Council to deal with difficult and complicated applications (see also 5.8 and 5.9).</p>

Recommendation	Victorian Government response
<p>5.7: <i>That the Aboriginal Heritage Act 2006 be amended to provide for the Victorian Aboriginal Heritage Council to be empowered to compel both appointed Registered Aboriginal Parties and organisations applying to become Registered Aboriginal Parties to attend independent mediation.</i></p>	<p><b>Support</b></p> <p>The Government supports amending the <i>Aboriginal Heritage Act 2006</i> to equip the Council with broader powers to facilitate mediation and dispute resolution.</p> <p>These powers could be exercised at the Council's discretion to facilitate resolution of differences that are impacting on a Registered Aboriginal Party application or the operation of a Registered Aboriginal Party.</p> <p>Providing the Council with these discretionary powers is intended to complement, not override the voluntary approach to Aboriginal-led agreement making and mediation. These powers would need to be exercised carefully and the Victorian Government is confident the Council is in the best position to determine if the exercise of this power would improve the chances for an agreement.</p> <p>Evaluation of the Right People for Country Project's methodology demonstrates that a holistic approach to combining capacity building in key areas such as negotiating skills and group decision-making, along with mediation is effective at supporting change.</p>
<p>5.8: <i>The Victorian Government provide funding:</i></p> <ul style="list-style-type: none"> <li>• <i>to continue the Right People for Country project beyond 2012, subject to the outcomes of the pilot phase; and</i></li> <li>• <i>to the Victorian Aboriginal Heritage Council to facilitate independent mediation within the context of the appointment of Registered Aboriginal Parties.</i></li> </ul>	<p><b>Support</b></p> <p>The Victorian Government supports an approach to Aboriginal-led, voluntary agreement making.</p> <p>The Victorian Government recognises that working through issues of traditional identity and Country are particularly sensitive given Victoria's history and that it is desirable to see Registered Aboriginal Party appointments made right across Victoria to create certainty for industry and land managers.</p> <p>The effectiveness of voluntary agreement making is demonstrated in the methodology of the Right People for Country project which has been developed by a partnership of Traditional Owners, the Council and State government.</p>
<p>5.9: <i>The Aboriginal Heritage Act 2006 be amended:</i></p> <ul style="list-style-type: none"> <li>• <i>to provide for the Minister for Aboriginal Affairs to determine whether an unsuccessful Registered Aboriginal Party applicant has sufficient grounds to appeal the decision of the Victorian Aboriginal Heritage Council to decline their application;</i></li> <li>• <i>to require the Victorian Aboriginal</i></li> </ul>	<p><b>Not supported</b></p> <p>As stated in the Chair's foreword to the Inquiry report, an independent mediation process is central to the success of all of the proposals. The Right People for Country project is delivering mediated outcomes across Victoria which lead directly to better Registered Aboriginal Party applications and authoritative Council decisions. The Victorian Government considers an appropriate agreement-making and mediation process as vital to avoiding the sort of disputes that may prompt the desire for a later review of a Council Registered Aboriginal Party appointment decision.</p> <p>The Victorian Government recognises there have been disputes relating to the appointment and operation of Registered Aboriginal Parties. In particular the Inquiry heard evidence about the Yorta Yorta RAP and the concerns around the refusal of the Bangerang RAP application. In that context, the Victorian Government acknowledges the need for a review process for decisions to appoint Registered Aboriginal Parties to be available to resolve</p>

Recommendation	Victorian Government response
<p><i>Heritage Council, at the direction of the Minister for Aboriginal Affairs, to reconsider an unsuccessful Registered Aboriginal Party application; and</i></p> <ul style="list-style-type: none"> <li><i>to allow the Minister provision, in exceptional circumstances, to require a review of previous Registered Aboriginal Party appointments, when satisfied such a course of action is warranted.</i></li> </ul> <p><i>Further, that Aboriginal Affairs Victoria and the Victorian Aboriginal Heritage Council develop policy guidelines to support the development of the appeals process for unsuccessful Registered Aboriginal Party applicants.</i></p>	<p>disputes where exceptional circumstances are demonstrated.</p> <p>The Victorian Government supports amendments to the <i>Aboriginal Heritage Act 2006</i> to enable the Council to review its own decisions in defined and expanded circumstances – such as to reflect contemporary agreements made between Traditional Owner groups, for example pursuant to the outcomes of a voluntary mediation process.</p> <p>The Victorian Government notes the proposals of the review of the Act to provide Council with the powers and responsibilities to review and vary Registered Aboriginal Party appointment decisions and revoke or suspend Registered Aboriginal Parties if they fail to meet varied conditions.</p>
<p><i>6.1 Aboriginal Affairs Victoria resource Registered Aboriginal Parties, on a project basis, to undertake works to preserve heritage sites that are identified as priority sites by the Registered Aboriginal Parties. Consultation for all works should take place with the respective landholder/land manager.</i></p>	<p><b>Support</b></p> <p>The Victorian Government supports a pro-active focus on managing and protecting key priority Aboriginal places. The Office of Aboriginal Affairs Victoria will work with the Council and Registered Aboriginal Parties to develop a strategic program to preserve heritage places of particular heritage significance or vulnerability.</p> <p>Contributions from the Commonwealth Government's Indigenous Heritage Protection Programs will be sought.</p> <p>Consultation will also occur with land managers and a communication strategy developed to assist in gaining broad community support for such a program.</p> <p>The majority of Registered Aboriginal Parties now have teams specialising in natural resource management and/or cultural heritage works. Project work to preserve heritage sites would provide a source of income to Registered Aboriginal Parties, whilst delivering improved heritage outcomes for all Victorians (see also 6.2, 6.6 – 6.7 and 6.11).</p>
<p><i>6.2: The Victorian Government resource Aboriginal Affairs Victoria to develop a state-wide program of country mapping to improve the available knowledge about areas of cultural heritage sensitivity. Country mapping should be undertaken in conjunction with local government, Registered Aboriginal Parties and</i></p>	<p><b>Support</b></p> <p>A number of Traditional Owner organisations with Registered Aboriginal Party responsibilities have already implemented or are currently developing projects that involve country, cultural and/or natural resource values mapping.</p> <p>The Office of Aboriginal Affairs Victoria will partner with the Council, Registered Aboriginal Parties, land managers, local government and industry to scope the development of a coordinated state-wide program of country mapping involving strategic, upfront assessment of Aboriginal cultural heritage.</p>

Recommendation	Victorian Government response
<i>land owners/managers.</i>	Importantly, this mapping will streamline the system and reduce costs for all parties. It will generate a more comprehensive picture of cultural heritage values across the State and enable strategic land use decisions to be made with better information relating to heritage of importance to Aboriginal people. It will also strengthen Registered Aboriginal Party capacity and voice about cultural values, provide greater certainty for developers and land managers and reduce the cost and complexity of the development approvals process (see also 6.1 and 6.6 -6.7 and 6.11).
<i>6.3 Aboriginal Affairs Victoria, in conjunction with the Victorian Aboriginal Heritage Council, develop policy guidelines to monitor the adherence of sponsors to approved Cultural Heritage Management Plans, with the involvement of Registered Aboriginal Parties.</i>	<p><b>Support</b></p> <p>Steps to strengthen compliance with Cultural Heritage Management Plans are supported and are currently being implemented.</p> <p>A <i>Model Engagement Protocol</i> to guide relationships between Registered Aboriginal Parties and developers throughout the Cultural Heritage Management Plan process is being prepared. The expectation of this practice will also be reflected in the set of <i>Model Recommendations &amp; Contingencies</i> being developed to inform the development of Cultural Heritage Management Plans. . The Office of Aboriginal Affairs Victoria will develop an appropriate compliance regime in consultation with the Victorian Aboriginal Heritage Council, Registered Aboriginal Parties and other stakeholders.</p> <p>The Office of Aboriginal Affairs Victoria has recently introduced a compliance monitoring framework for Cultural Heritage Management Plans. This is providing a targeted approach to improve compliance.</p> <p>Strengthened enforcement mechanisms will be coupled with better information and educational resources (see also 6.4 and 6.7).</p>
<p><i>6.4: Aboriginal Affairs Victoria, in consultation with the Victorian Aboriginal Heritage Council, review the fee guidelines for the participation of Registered Aboriginal Parties in the development of Cultural Heritage Management Plans, and establish a fee structure that balances the needs of both sponsors and Registered Aboriginal Parties.</i></p> <p><i>Following this review the hourly rates charged by Registered Aboriginal Parties to participate in the development of a Cultural Heritage Management Plan will be capped according to the new fee structure published on the Department of Planning and Community</i></p>	<p><b>Support in principle</b></p> <p>The Victorian Government supports measures to strengthen transparency, certainty and accountability around Registered Aboriginal Party fees.</p> <p>It is noted that Registered Aboriginal Parties need to be able to operate as sustainable businesses, and as such should be able to charge reasonable fees for their services.</p> <p>The Registered Aboriginal Party <i>Fees and Conduct Guidelines</i> will be reviewed. They will be updated, broadened and indexed to provide relevant guidance to all parties. In recognition that stakeholders had particular concerns about fees charged in areas where Registered Aboriginal Parties have not yet been appointed, the Registered Aboriginal Party <i>Fees and Conduct Guidelines</i> will be expanded to address areas without Registered Aboriginal Parties.</p> <p>It is noted that a <i>Model Engagement Protocol</i> (under development) is expected to reflect the expectation that fees be negotiated up-front.</p> <p>It is also proposed to improve transparency by amending the <i>Aboriginal Heritage Act 2006</i> to require Registered Aboriginal Parties to report on their fees to the Council, and for Council to report on these fees as part of its published annual report.</p>

Recommendation	Victorian Government response
<i>Development's website.</i>	The effective monopoly of Registered Aboriginal Parties within their defined boundaries suggests a regulatory mechanism may be required. Further work is required to explore appropriate avenues for regulating Registered Aboriginal Party fees.
<i>6.5: The Victorian Aboriginal Heritage Council monitors the consultation fees charged by Registered Aboriginal Parties, as part of an expanded role for the Council in relation to overseeing the activities of appointed Registered Aboriginal Parties.</i>	<p><b>Support</b></p> <p>The Victorian Government supports measures to strengthen transparency, certainty and accountability around Registered Aboriginal Party fees (see also 6.4 above and 6.14 below).</p>
<i>6.6: The Victorian Government and Aboriginal Affairs Victoria review the level of assistance provided to Registered Aboriginal Parties, to reflect the principle that Registered Aboriginal Parties undertake the management and protection of Aboriginal heritage on behalf of all Victorians.</i>	<p><b>Support</b></p> <p>The Victorian Government supports measures to strengthen the capacity and sustainability of Registered Aboriginal Parties.</p> <p>It recognises that a Registered Aboriginal Party business is frequently one part of the broader operations of a Traditional Owner organisation. The Government is committed to working with Traditional Owner organisations to support economic development and realise aspirations of economic sustainability.</p> <p>The Victorian Government will investigate the most appropriate administrative and procedural mechanisms to enable OAAV to assist and support Registered Aboriginal Parties to fulfil their role at the level of efficiency, transparency and accountability expected of a non-government entity charged with the responsibility of statutory authority decision-making (see also 6.1 – 6.2, 6.7 and 6.11).</p>
<i>6.7: Aboriginal Affairs Victoria identifies a structure that provides ongoing support to Registered Aboriginal Parties to ensure that every Registered Aboriginal Party is able to sustain a minimal level of staffing and infrastructure to support their operations.</i>	<p><b>Support</b></p> <p>The Victorian Government is committed to ensuring stability and certainty of Registered Aboriginal Parties.</p> <p>It is noted that operational support requirements will vary according to the ability of individual Registered Aboriginal Parties to generate their own income and that Registered Aboriginal Parties with lesser capacity may be supported in the fulfilment of their responsibilities by a dedicated support unit or similar approach for sharing capacity across the system.</p> <p>It is anticipated that Registered Aboriginal Parties will undertake a broader range of functions that will attract fees. The <i>Model Engagement Protocol</i> (under development) is expected to support a higher level of engagement by Registered Aboriginal Parties in the Cultural Heritage Management Plan process – including through compliance checking (see 6.3 above).</p> <p>(see also 6.1 – 6.2, 6.6 and 6.11).</p>

<b>Recommendation</b>	<b>Victorian Government response</b>
<p>6.8: <i>Aboriginal Affairs Victoria reviews the resources currently available to its heritage branch, with a view to identifying those resources that may be redirected to support the operations of Registered Aboriginal Parties.</i></p>	<p><b>Support</b></p> <p>There is significant and continued investment targeted at strengthening the heritage management expertise and capacity of Registered Aboriginal Parties, with the goal of facilitating the reduction in Registered Aboriginal Party reliance on OAAV expertise and assistance over time. This includes specific governance training tailored for Traditional Owner organisations and ongoing professional development activities.</p> <p>The appointment of new Registered Aboriginal Parties presents an opportunity to redirect the resources and priorities of the Heritage Branch of the Office of Aboriginal Affairs Victoria over time. In particular, OAAV will explore opportunities to strengthen Registered Aboriginal Party capacity, and support strategic heritage management activities such as supporting new Registered Aboriginal Parties as they are appointed, continuing to provide expert cultural heritage management and legislative advice to new and existing Registered Aboriginal Parties, partnering with Registered Aboriginal Parties in the proposed strategic country mapping project (see 6.2 above) and facilitating the necessary strategic and project planning involved in protecting significant heritage places (see 6.1 above) and evaluating these projects (see also 6.6 and 6.7).</p>
<p>6.9: <i>Aboriginal Affairs Victoria continues to make business planning advice available to Registered Aboriginal Parties, with a view to supporting all Registered Aboriginal Parties to maximise income generation opportunities outside the process of assessing Cultural Heritage Management Plans.</i></p>	<p><b>Support</b></p> <p>Registered Aboriginal Parties can play a critical role in generating regional employment and economic development.</p> <p>In line with the Government's commitment to increasing Aboriginal economic participation, there will be a continued emphasis on business and strategic planning to encourage Traditional Owner organisations with Registered Aboriginal Party responsibilities to explore other income generating opportunities, including those associated with caring for country.</p> <p>(see also 6.6, 6.7, 6.8 and 6.14 and note linkages to the <i>Victorian Aboriginal Affairs Framework 2013-2018</i>).</p>
<p>6.10: <i>Aboriginal Affairs Victoria develops a licensing and accreditation system for cultural heritage advisors, including the development of policy guidelines for the conduct of cultural heritage advisors. This licensing system, to be established by Aboriginal Affairs Victoria, should include an annual registration fee that is to be used by Registered Aboriginal Parties in the resourcing of Aboriginal cultural heritage activities, such as country mapping.</i></p>	<p><b>Support in principle</b></p> <p>The Victorian Government supports an appropriate industry accreditation system aimed at improving quality and consistency of the services provided by cultural heritage advisors, but does not support a mandatory licensing system.</p>



Recommendation	Victorian Government response
<p>6.11: <i>Aboriginal Affairs Victoria develops an Aboriginal heritage protection levy to be paid by all Cultural Heritage Management Plan sponsors, to be used to fund heritage protection activities and Registered Aboriginal Parties, particularly those located in areas of low development. The levy would operate on a sliding scale based on the total cost of producing a Cultural Heritage Management Plan.</i></p>	<p><b>Not supported</b></p> <p>The Victorian Government does not support the introduction of a new levy.</p> <p>However, the Victorian Government supports the development of a sustainable funding structure to support Registered Aboriginal Parties to manage and protect Aboriginal cultural heritage.</p> <p>A sustainable funding structure would benefit developers and industry by improving Registered Aboriginal Party responsiveness and reducing delays in the cultural heritage management plan system.</p> <p>The Victorian Government will fully examine a sustainable funding structure for Registered Aboriginal Parties as part of detailed economic modelling work associated with proposed reforms to the <i>Aboriginal Heritage Act 2006</i>. The Government will engage with industry, Aboriginal organisations and local government to explore the most efficient and equitable means of delivering a sustainable financial base for Registered Aboriginal Parties while creating a net economic benefit for industry and not imposing additional costs on industry.</p> <p>This funding structure will contribute towards the requirements of resourcing the cultural heritage management system as per 6.7 (see also 6.1 – 6.2, and 6.7).</p>
<p>6.12: <i>The Minister review the current guidelines for cultural heritage advisors to address section 189(b) of the Aboriginal Heritage Act 2006 , which provides for the recognition of 'extensive experience or knowledge in relation to the management of Aboriginal cultural heritage'.</i></p>	<p><b>Support</b></p> <p>The Minister will revise the Guidelines for the recognition of cultural heritage advisers in consultation with the Council and industry. The revised guidelines will reflect the skills, experience and attributes needed to operate as a cultural heritage advisor.</p> <p>As part of the proposed changes to the <i>Aboriginal Heritage Act 2006</i>, section 189 will be amended to provide a single set of guidelines dealing with recognition of cultural heritage advisors (see also 6.11 and 6.13).</p>
<p>6.13: <i>Aboriginal Affairs Victoria and the Victorian Aboriginal Heritage Council work with Registered Aboriginal Parties to identify further opportunities for participation in the cultural heritage advisor industry. This should include the development of a policy framework to support Registered Aboriginal Parties to produce Cultural Heritage Management Plans in-house.</i></p>	<p><b>Support in principle</b></p> <p>The Victorian Government supports increasing Registered Aboriginal Party participation in the cultural heritage management system. However, the Victorian Government does not support Registered Aboriginal Parties both preparing and evaluating cultural heritage management plans in their own area due to actual or perceived conflicts of interest.</p> <p>Efforts will be focused on strengthening the capacity of Registered Aboriginal Parties to have greater engagement throughout the Cultural Heritage Management Plan process. This will be reflected in the <i>Model Engagement Protocol</i> (under development). Proposals including greater enforcement roles (see 6.3 above) will provide greater involvement in the system for Registered Aboriginal Parties.</p>

Recommendation	Victorian Government response
	<p>Consideration is also being given to legislative reforms to enable Registered Aboriginal Parties to be more engaged in heritage management through issuing permits and negotiating public land management agreements.</p> <p>The Government will promote initiatives to accelerate the growth of Aboriginal people working in the cultural heritage industry (see also 6.12).</p> <p>There is a continued investment in the Certificate IV course in Cultural Heritage Management which is providing strong pathways to employment and further education of Aboriginal people in cultural heritage management. Cadetships and accreditation will improve these pathways.</p> <p>There are a growing number of Aboriginal people working as cultural heritage advisors. To accelerate this, avenues will be explored with major cultural heritage advisor companies and tertiary institutions to introduce cadetships for Aboriginal people who have graduated from this Certificate IV course.</p> <p>There are also a growing a number of Aboriginal-owned cultural heritage businesses operating or being established in Victoria. The Victorian Government is willing to explore opportunities to help broker incubation of emerging businesses, in partnership with the Commonwealth, where appropriate.</p> <p>The Victorian Government understands that there is limited interest among Registered Aboriginal Parties to engage in the preparation of cultural heritage management plans due to the size of the industry and the desire of Registered Aboriginal Parties to generate a sustainable income source. However, Registered Aboriginal Parties have a critical role as a statutory decision maker, and it is not normal practice for a decision maker to also prepare a report for its own evaluation. That being said, where potential conflict of interest issues have been adequately and transparently addressed, there should be no impediment to a Registered Aboriginal Party or a business arm of a Registered Aboriginal Party offering cultural heritage management plan preparation services in open competition with other providers.</p>
<p><i>6.14: The Aboriginal Heritage Act 2006 be amended to empower the Victorian Aboriginal Heritage Council to have oversight of Registered Aboriginal Parties in relation to the performance of their statutory duties on an annual basis. In addition, the Act will also be amended to provide for the Victorian Aboriginal Heritage Council to attach conditions to both the initial appointment and ongoing registration of Registered Aboriginal Parties.</i></p>	<p><b>Support</b></p> <p>The Victorian Government agrees that the Council is well placed to oversight the performance of Registered Aboriginal Parties, including through new accountability measures.</p> <p>This would include monitoring Registered Aboriginal Party operations, fees and performance of their statutory roles using a strengths-based approach.</p> <p>Proposed reforms to the Aboriginal Heritage Act would enable the Council to review and attach conditions to the initial appointment and ongoing registration of Registered Aboriginal Parties and to enforce these conditions (see also 6.3, 6.4, 6.5, and 6.13).</p>

Recommendation	Victorian Government response
<p>6.15: <i>Aboriginal Affairs Victoria and the Victorian Aboriginal Heritage Council develop policy guidelines to support the Council to monitor the performance and activities of Registered Aboriginal Parties.</i></p> <p><i>The guidelines should provide direction on how to assess:</i></p> <ul style="list-style-type: none"> <li>• <i>whether a Registered Aboriginal Party has adequately fulfilled its legislative responsibilities;</i></li> <li>• <i>the conduct of a Registered Aboriginal Party in relation to the preparation and assessment of Cultural Heritage Management Plans, including the appropriateness of any fees charged;</i></li> <li>• <i>the inclusiveness of the membership rules and governance structure of a Registered Aboriginal Party; and whether any conditions imposed by the Victorian Aboriginal Heritage Council are being met.</i></li> </ul>	<p><b>Support</b></p> <p>The Victorian Government agrees the Council should play a stronger role in supporting the effective performance of Registered Aboriginal Parties and have an ongoing monitoring role to ensure the requirements of the Aboriginal Heritage Act are being met. It will introduce amendments to the Act to achieve this including the requirement that the Council provide an Annual Report to the Minister.</p> <p>The Office of Aboriginal Affairs Victoria will partner with the Council to develop a framework for monitoring Registered Aboriginal Party performance. Proposed reforms to the Act will require Registered Aboriginal Parties to report to the Council, and for the Council to publish in its annual report Registered Aboriginal Party fees, the operation of the Act and the State of Victoria's Aboriginal cultural heritage.</p> <p>The proposed additions to the Council's annual report will enhance the report's insight and transparency in relation to the operation of Victoria's cultural heritage management system (see also 6.4, 6.6 and 6.13).</p>
<p>6.16: <i>The Victorian Government and Aboriginal Affairs Victoria review the resources provided to the Victorian Aboriginal Heritage Council, with a view to ensuring that the Council can undertake all additional responsibilities.</i></p>	<p><b>Support</b></p> <p>The Victorian Government supports strengthening the capacity of the Council to take on a broader range of functions (see also 6.8 and 6.11).</p>
<p>7.1: <i>Aboriginal Affairs Victoria, on behalf of the Secretary of the Department of Planning and Community Development, continue to manage Aboriginal heritage in those areas of the state without a Registered Aboriginal Party, ensuring that the concerns of Traditional Owners located in these areas in relation to the</i></p>	<p><b>Support</b></p> <p>The Victorian Government supports the continuation of current practice (see also 7.2).</p>

Recommendation	Victorian Government response
<p><i>ongoing protection of known heritage sites are considered and where appropriate, acted on.</i></p>	
<p><i>7.2: The Secretary of the Department of Planning and Community Development continue to be the authority responsible for the approval of Cultural Heritage Management Plans in areas without a Registered Aboriginal Party, and to consider the views of Traditional Owners in those areas. In addition, Aboriginal Affairs Victoria will ensure that the sponsors of Cultural Heritage Management Plans consult with relevant Traditional Owners in areas without appointed Registered Aboriginal Parties.</i></p>	<p><b>Support</b></p> <p>The Victorian Government supports ensuring that appropriate consultation is undertaken with Traditional Owners in areas where a Registered Aboriginal Party has not yet been appointed.</p> <p>Stakeholders have identified challenges in identifying who to consult about cultural heritage matters in areas without a Registered Aboriginal Party. The Office of Aboriginal Affairs Victoria will partner with the Council to publish guidelines on engagement in areas without Registered Aboriginal Parties and the Registered Aboriginal Party <i>Fee and Conduct Guidelines</i> will be extended to apply in areas without a Registered Aboriginal Party.</p> <p>An appropriate agreement-making and mediation function and proposed reforms aimed at extending Council's mediation and dispute resolution capacities (see 5.7 and 5.8) should assist the Council to progress the appointment of further Registered Aboriginal Parties across Victoria.</p>
<p><i>7.3 Aboriginal Affairs Victoria and the Victorian Aboriginal Heritage Council examine options for the future role of the Council.</i></p>	<p><b>Support</b></p> <p>The future role of the Council will be expanded by the responses to this Inquiry.</p> <p>See also 5.3, 5.5, 5.7, 5.8, 6.8, 6.11 and 6.16.</p>
<p><i>7.4: Aboriginal Affairs Victoria and the Victorian Aboriginal Heritage Council develop policy guidelines to assist sponsors of Cultural Heritage Management Plans to consult with Traditional Owners in areas without an appointed Registered Aboriginal Party.</i></p>	<p><b>Support</b></p> <p>The Office of Aboriginal Affairs Victoria will partner with the Council to publish guidelines on engagement in areas without Registered Aboriginal Parties.</p> <p>To assist sponsors with their consultation processes in areas without a Registered Aboriginal Party, proposed amendments to the Aboriginal Heritage Act will require OAAV to notify the sponsor, on lodgement of a Notice of Intent to Prepare a Cultural Heritage Management Plan, which Traditional Owner group OAAV intends to consult with in evaluating that plan.</p> <p>Proponents will also be made aware that Traditional Owner organisations in non-Registered Aboriginal Party areas are likely to charge fees for this service. Updated Registered Aboriginal Party <i>Fees and Conduct Guidelines</i> will be prepared to apply to non-Registered Aboriginal Party areas of the State to improve the transparency of this measure (see 6.4, above).</p>

Recommendation	Victorian Government response
<p>7.5 The Victorian Aboriginal Heritage Council develop policy guidelines to assist Traditional Owner groups to build partnerships with neighbouring groups, with a view to forming a single organisation able to apply for appointment as a Registered Aboriginal Party.</p>	<p><b>Support</b></p> <p>The Victorian Government supports the development of policy guidelines, and notes the importance of ensuring that Traditional Owner organisations seeking Registered Aboriginal Party responsibilities are of sufficient size to maximise their viability and capacity. In some instances, this may involve neighbouring groups forming a combined organisation.</p> <p>This approach is consistent with Council's decision making principle '<i>to encourage smaller groups to create sustainable Registered Aboriginal Party structures by working together to create a single Registered Aboriginal Party or to develop co-operative arrangements with other Aboriginal organisations</i>'. As stated in the response to 6.6, above, this approach is consistent with the expectation that Traditional Owner entities that are prescribed bodies corporate, and who also may have settlement agreements with the State under the <i>Traditional Owner Settlement Act 2010</i>, will also be the Registered Aboriginal Parties for their areas.</p> <p>The Office of Aboriginal Affairs Victoria will partner with the Council and the Native Title Unit in the Department of Justice to develop guidelines to assist Traditional Owners who wish to form partnerships to create inclusive organisations of a sustainable size and capacity to carry out Registered Aboriginal Party responsibilities and/or enter agreements under the <i>Traditional Owner Settlement Act 2010</i>.</p> <p>The Victorian Government recognises the effectiveness of an Aboriginal-led agreement making and mediation process to facilitate agreements between Registered Aboriginal Party applicants across Victoria (see also 6.6).</p>