

# *Socioeconomic impacts of the Aboriginal Heritage Act 2006*

*Socioeconomic impact  
assessment of the  
Aboriginal Heritage Act  
2006*

*Department of Planning  
and Community  
Development*

*April 2012*

**pwc**

*What would  
you like to grow?*



---

## Disclaimer

This report has been prepared by PricewaterhouseCoopers Australia (PwC) at the request of the Department of Planning and Community Development (DPCD) in our capacity as advisors in accordance with the Terms of Reference.

This document is not intended to be utilised or relied upon by any other persons other than DPCD, nor to be used for any purpose other than that articulated above. Accordingly, PwC accepts no responsibility in any way whatsoever for the use of this report by any other persons or for any other purpose.

The information, statements, statistics and commentary (together the “Information”) contained in this report have been prepared by PwC from publicly available material, stakeholder consultation, and from material provided by DPCD. PwC has not sought any independent confirmation of the reliability, accuracy or completeness of this information. It should not be construed that PwC has carried out any form of audit of the information that has been relied upon.

Accordingly, whilst the statements made in this report are given in good faith, PwC accepts no responsibility for any errors in the information provided by DPCD or other parties nor the effect of any such error on our analysis, suggestions or report.



# Contents

Disclaimer	1
Executive summary	3
1 Introduction	8
2 Legislative context	11
3 Impacts on Aboriginal people	14
4 Impacts on industry	28
5 Impacts on cultural heritage advisors	35
6 Impacts on government	43
7 Impacts on Victoria	50
Appendix A Activity under the Act	67
Appendix B Stakeholder consultations	75
Appendix C Local government survey results	76
Appendix D References	82

## Abbreviations and acronyms

Shortened form	Description
<b>AAV</b>	Aboriginal Affairs Victoria
<b>Act</b>	<i>Aboriginal Heritage Act 2006</i>
<b>ACHRIS</b>	Aboriginal Cultural Heritage Register and Information System
<b>Bunurong</b>	Boon Wurrung
<b>CHMP</b>	Cultural Heritage Management Plan
<b>Council</b>	Victorian Aboriginal Heritage Council
<b>DPCD</b>	Department of Planning and Community Development
<b>DSE</b>	Department of Sustainability and Environment
<b>FY</b>	Financial year
<b>NSW</b>	New South Wales
<b>RAP</b>	Registered Aboriginal Party
<b>Register</b>	Victorian Aboriginal Heritage Register
<b>Wurundjeri</b>	Wurundjeri Tribe Land and Compensation Cultural Heritage Council

## Executive summary

PwC has been commissioned by Aboriginal Affairs Victoria (AAV) to conduct an assessment of the socioeconomic impacts of the *Aboriginal Heritage Act 2006* (the Act), as part of AAV's broader review of the 'efficacy and efficiency' of the Act.

PwC's approach in conducting this assessment included an analysis of AAV data on activities and outcomes under the Act, as well as consultations with key stakeholders such as the Victorian Aboriginal Heritage Council (Council), Registered Aboriginal Parties (RAPs), industry and government representatives, and cultural heritage advisors. PwC also conducted an online survey of local government.

The analysis and conclusions of this assessment was in some cases limited by voluntary stakeholder participation and access to data.

Overall, the Act generally represents an improvement relative to the previous system in that it better protects and manages Aboriginal cultural heritage whilst increasing certainty in the planning process. The Act has helped to foster improved relationships between key stakeholders and awareness of Aboriginal cultural heritage, and has opened up a range of broader opportunities for Aboriginal groups.

The key findings of this assessment are summarised below.

### ***Aboriginal cultural heritage is generally better protected and managed...***

Overall, Aboriginal cultural heritage is generally better protected and managed compared to the previous regime. Cultural heritage management plans (CHMPs) are one of the most important, proactive tools for managing and protecting heritage under the Act. The triggers requiring the preparation of a CHMP mean that the system is now much more targeted at developments involving high impact activities in areas where Aboriginal cultural heritage is most likely to be present. As a result, CHMPs are more likely to discover Aboriginal cultural heritage on assessment.

While there are a range of benefits from having a targeted system, some RAPs feel that all Country is sensitive and that development proponents should always be obliged to consider the impact of their development on Aboriginal cultural heritage and to consult with Traditional Owners. Some RAPs also feel that the Act emphasises tangible heritage at the expense of intangible heritage and diminishes the importance of significance according to Aboriginal tradition in favour of scientific or archaeological significance.

The CHMP process focuses on the protection of Aboriginal cultural heritage by enshrining the hierarchy of 'avoid, minimise, salvage' rather than one of 'managed destruction' which was previously the case. By ensuring engagement with RAPs (or RAP applicants and Traditional Owners in non-RAP areas) at key points, the CHMP process also helps sponsors, cultural heritage advisors and RAPs to negotiate better, more informed decisions about the management of Aboriginal cultural heritage.

Most recently, the Act has also been identified by other Australian governments as being closely aligned to best practice standards for the effective protection of Aboriginal cultural heritage.

Aboriginal cultural heritage is better protected where the requirements of the Act are followed. It is, however, difficult to assess the overall level of compliance with the Act. While AAV undertakes a number of investigations each year, it is difficult for AAV to effectively monitor compliance due to the geographic distance between many sites and inspectors which may mean that it is not possible for a lot of proactive compliance checks.

***... the formal recognition of Aboriginal people has created wider benefits for Aboriginal groups in Victoria***

A significant impact of the Act is the formal recognition of Aboriginal people through the Council and RAPs.

The Council is Australia's first all-Aboriginal statutory body invested with legal and decision making powers over Aboriginal cultural heritage. Council members are Victorian Traditional Owners appointed by the Minister for Aboriginal Affairs. The Council's main roles are to appoint RAPs as cultural heritage decision makers for areas in Victoria, advise the Minister for Aboriginal Affairs about the exercise of her powers under the Act and the protection of Aboriginal cultural heritage and promote Victoria's Aboriginal cultural heritage.

Victoria is viewed by at least one report as the 'high water mark' in terms of the level of Aboriginal control, management and decision making. The Act affords Victorian Traditional Owners (as RAPs) a significant degree of control over decisions that impact on cultural heritage. Further, the Chair of the Council described the recognition of the Council and RAPs as strengthening connection to Country through the Act which has important positive links to improving wellbeing and spirituality.

Formal recognition of Aboriginal people through the establishment of RAPs has also created employment opportunities in Aboriginal communities. Additionally, it has opened up other economic opportunities in regional Victoria.

Other benefits from the Act include a platform to develop better relationships between RAPs, government and sponsors and opportunities to build the capacity of Aboriginal Victorians. As the introduction of the Act has increased the demand for skilled professionals in the Aboriginal cultural heritage industry, capacity building opportunities, such as the Certificate IV in Cultural Heritage Management, have been established to facilitate the development of recognised skills and access to opportunities for Aboriginal Victorians in this industry.

***The Act has provided greater certainty for industry...***

The Act provides integration of Aboriginal cultural heritage matters with Victorian planning requirements and provides a clear and structured approach including CHMPs. By ensuring that CHMPs are carried out prior to development activity taking place, there is greater certainty for industry regarding Aboriginal cultural heritage management.

Overall, the Act has improved certainty for industry in respect of their legislative obligations as well as clarity in when a CHMP is required and the timing of decisions. While it is difficult to estimate whether the overall time for a development to be approved has changed under the Act, data provided by AAV shows that the majority of CHMPs take three to six months from notification to approval.

Industry have acknowledged the benefits of the declaration of RAPs, providing greater clarity as to who to consult and how. Where RAPs are in place, this has streamlined processes and costs for industry in respect of CHMP consultation. However, stakeholders suggested that where there is no RAP for an area, the costs tended to be higher where a conservative approach was taken in consulting multiple Aboriginal groups.

***...and there is improved quality and consistency of CHMPs***

The requirement for standards of qualifications or experience for cultural heritage advisors appears to be improving the quality and consistency of CHMPs. The prescriptive nature of the Act regarding the preparation of CHMPs has been identified as an improvement but one that potentially limits innovation in practice and may potentially add to costs.

Under the Act, a cultural heritage advisor must be engaged to prepare a CHMP. This has led to greater market opportunities for cultural heritage advisors. As at November 2011, there are approximately 163 cultural heritage advisors in Victoria. This is a significant increase from 60 cultural heritage advisors operating in Victoria prior to the introduction of the Act.



***...however a more targeted system has resulted in higher costs for industry***

A more targeted system of heritage assessments has meant that CHMPs in particular are more likely to find Aboriginal cultural heritage, and therefore be subject to more complex assessments. A blind survey of cultural heritage advisors found that CHMPs are more costly than originally anticipated. This is likely due in part to the significant number of complex CHMP prepared (82 per cent).

***Government has also incurred costs in administering and complying with the Act...***

State and local governments have incurred costs associated with implementing and complying with their obligations under the Act. This includes a range of activities to support the new legislative regime, such as AAV's costs to administer the Act and establishing and maintaining the Council.

The most significant costs incurred by the Victorian Government relate to complying with CHMP requirements as sponsors. This includes the costs of preparing CHMPs incurred by Parks Victoria, DSE and VicRoads and others in their role as land manager/owners.

Local government has faced costs in its three roles under the Act: statutory decision maker, land owner and manager, and infrastructure provider. The most common activities undertaken by local government in relation to satisfying their requirements under the Act include: providing advice to sponsors, engaging with cultural heritage advisors to prepare CHMPs, and training local government staff on new processes and procedures.

While governments have incurred costs in administering and complying with the Act, there have been associated benefits in clearer processes and greater certainty by regulating the way Aboriginal cultural heritage is managed.

***... while RAPs can generate revenue in performing their functions, this may not be enough to cover costs for all RAPs***

RAPs incur costs associated with the Act, namely in evaluating CHMPs. While they are able to generate revenue under the Act, there are also significant costs associated with operating a RAP. While the Victorian Government provides a range of assistance there are some concerns about RAP financial sustainability. There is limited information available to this assessment with which to gauge the overall financial position of RAPs.

The Act also seeks to facilitate a lead role for RAPs in the management and protection of Aboriginal cultural heritage. This includes providing an opportunity for RAPs to be involved with Aboriginal cultural heritage matters beyond the framework of the Act although the extent to which RAPs can fully take up such opportunities may depend on resourcing.

***The Act has strengthened the relationship between government and Aboriginal communities...***

The Act provides a platform for relationships between State and local government and Aboriginal communities to develop. In particular, when there is a RAP for an area, the Act has facilitated better engagement between local government and Aboriginal groups through easier identification of the relevant Aboriginal group.

The formal recognition of RAPs under the Act has also strengthened the relationship between State Government and Aboriginal groups, as this has enabled State government to easily identify the relevant Aboriginal group for consultation on broader policy matters. As a result, the relationship between the State Government and RAPs has extended beyond the requirements under the Act.

***...and improved awareness and understanding of Aboriginal cultural heritage.***

Public awareness and understanding of Aboriginal cultural heritage has improved for those engaged directly with the Act. Better management and protection of Aboriginal cultural heritage can also support the sustainability of the market for Aboriginal tourism in Victoria. Sophisticated online tools, such as the Aboriginal Cultural Heritage Register and Information System (ACHRIS), provide

a mechanism for the formal recording of the nature and extent of Aboriginal cultural heritage in Victoria. Better capturing of Aboriginal cultural heritage within Victoria helps to build knowledge within the industry which leads to better outcomes for Aboriginal cultural heritage. This contributes to the long term management and protection of Aboriginal cultural heritage in Victoria.

**Table 1: Key findings of assessment**

<p><b>Impacts on Aboriginal people</b></p> <ul style="list-style-type: none"> <li>• Formal recognition of Aboriginal people (and their Connection to Country) through the establishment of Council and RAPs is a significant impact of the Act.</li> <li>• The appointment of RAPs for an area has provided a 'one-stop-shop' approach for Aboriginal cultural heritage issues which has helped communities, industry and Aboriginal groups build and sustain long term relationships. The appointment of RAPs by the Council has however caused some conflict between groups seeking RAP appointment.</li> <li>• The establishment of RAPs has facilitated the creation of a wider range of opportunities for Aboriginal people engaged in Aboriginal cultural heritage including employment opportunities.</li> <li>• There was limited information available for this assessment to gauge the overall financial position of RAPs. The revenue received by RAPs associated with the CHMP process is often sporadic and in the majority of cases, is unlikely to cover RAPs' operating and establishment expenses. Financial and capacity building assistance from Victorian government has helped support RAPs (however it is suggested that the operation of the legislation may be inhibited by a lack of financial resources).</li> <li>• The introduction of the Act has also increased opportunities for more skilled professionals in the Aboriginal cultural heritage industry, including for people within the Aboriginal community.</li> </ul>
<p><b>Impacts on industry</b></p> <ul style="list-style-type: none"> <li>• The Act has provided greater certainty for industry in respect of their legislative requirements including when a CHMP is required and the timing of decisions.</li> <li>• Industry also acknowledge the benefits associated with the appointment of RAPs which has provided clarity as to who to consult and how. In particular, where a RAP has been appointed, processes and costs for industry in respect to CHMP consultations have been streamlined. It is difficult however, to assess the overall impact that the Act has had on development approval times.</li> <li>• CHMPs are more complex and therefore costly than was initially expected partly reflecting the fact that CHMP requirements are targeted at high impact activities in areas of cultural heritage sensitivity.</li> </ul>
<p><b>Impacts on cultural heritage advisors</b></p> <ul style="list-style-type: none"> <li>• The Act requires a cultural heritage advisor be engaged to assist with the preparation of a CHMP which has increased market opportunities for cultural heritage advisors in Victoria.</li> <li>• Under the Act a CHMP must be prepared at the level of detail and in accordance with minimum standards. This has improved the quality of CHMPs and enabled Aboriginal cultural heritage to be assessed and protected in a more consistent way.</li> <li>• A number of stakeholders view some of Act's requirements as overly prescriptive or inadequate for the purpose of protecting Aboriginal cultural heritage. Stakeholders have also suggested there can be varying advice given by AAV which impacts on the extent of detail required in some CHMPs.</li> </ul>

#### Impacts on government

- The Act has provided increased clarity for government and industry alike, by regulating the way Aboriginal cultural heritage is managed.
- However the Act has imposed a range of costs on State and local governments to administer and comply with its requirements.
- The Act has increased the integration of CHMPs with local planning processes and reduced the costs for State government by RAPS often undertaking CHMP evaluations rather than AAV.
- The Act has also strengthened links between government and Aboriginal communities, through the establishment of RAPs.

#### Impacts on Victoria

- Overall, Aboriginal cultural heritage is now generally better protected and managed compared to the previous regime.
- The Act ensures that CHMPs are prepared before developments take place as a result of close integration with the planning system. The triggers requiring the preparation of a CHMP mean that the system is now much more targeted at developments involving high impact activities in areas where Aboriginal cultural heritage is most likely to be present. As a result, CHMPs are more likely to discover Aboriginal cultural heritage.
- The CHMP process focuses on the protection of Aboriginal cultural heritage by enshrining the hierarchy of 'avoid, minimise, salvage' rather than one of managed destruction which was previously the case. Ensuring engagement with RAPs (or RAP applicants and Traditional Owners in non-RAP areas) at key points in the CHMP process assists sponsors, cultural heritage advisors and RAPs to negotiate better, more informed decisions about the management of Aboriginal cultural heritage.
- It is difficult to assess the overall level of compliance with the Act. While AAV undertakes a number of investigations each year, it is difficult for AAV to effectively monitor compliance with CHMPs and permits (due to the geographic distance between many sites) which may expose identified Aboriginal cultural heritage to risk.
- Public awareness and understanding of Aboriginal cultural heritage has improved, however primarily for those engaged with the Act. Better management and protection of Aboriginal cultural heritage can also support the sustainability of the market for Aboriginal tourism in Victoria.
- Most recently, the Act has also been identified by other Australian governments as being closely aligned to best practice processes for the effective protection of Aboriginal heritage.

# 1 Introduction

The *Aboriginal Heritage Act 2006* (the Act), commenced operation on 28 May 2007. The Act, along with the *Aboriginal Heritage Regulations 2007* (the Regulations), make up the Victorian Government's legislative framework for protecting Aboriginal cultural heritage, see Box 1 below.

## Box 1: What is Aboriginal cultural heritage?

Aboriginal cultural heritage includes 'Aboriginal places', 'Aboriginal objects' and 'Aboriginal human remains'. An Aboriginal object may be either:

- an object in Victoria or the coastal waters of Victoria that relates to the Aboriginal occupation of any part of Australia, whether or not the object existed prior to the occupation of that part of Australia by people of non-Aboriginal descent and is of cultural heritage significance to the Aboriginal people of Victoria, or
- an object, material or thing in Victoria or the coastal waters of Victoria that is removed or excavated from an Aboriginal place, and is of cultural heritage significance to the Aboriginal people of Victoria.

An Aboriginal place is an area that is of cultural heritage significance to the Aboriginal people of Victoria. An area includes – an area of land; an expanse of water; a natural feature, formation or landscape; an archaeological site, feature or deposit; the area immediately surrounding any of these things; land set aside for the purpose of enabling Aboriginal human remains to be re-interred; and a building or structure.

Cultural heritage significance includes archaeological, anthropological, contemporary, historical, scientific, social or spiritual significance, and significance in accordance with Aboriginal tradition.

The purpose of the Act is to protect Aboriginal cultural heritage in Victoria. The Act seeks to establish processes for the timely and efficient assessment of activities that have the potential to harm Aboriginal cultural heritage and provides legislative authority for Aboriginal people to manage their cultural heritage. The Act does so by creating a regulated environment for managing Aboriginal cultural heritage.<sup>1</sup>

Section 193 of the Act requires the Minister for Aboriginal Affairs to review the Act's 'efficacy and efficiency' by 28 May 2012. The review is aimed at refining and improving the Act's operation with the benefit of five years experience. The review commenced in early September with the release of a Discussion Paper. While the review relates primarily to the Act, stakeholders are also invited to raise issues in relation to the Regulations.

PwC has been commissioned by AAV to conduct an assessment of the socioeconomic impacts of the Act, which will form part of the broader review of the Act (see Figure 1). This assessment includes an analysis and quantification (where possible) of the costs and benefits of the legislation in comparison with those under the previous legislation.

**Figure 1: Summary of the review of the *Aboriginal Heritage Act 2006***



<sup>1</sup> Aboriginal Affairs Victoria, *Discussion Paper on the Review of the Aboriginal Heritage Act 2006*, September, 2011.

## 1.1 Socioeconomic assessment

The introduction of the Act created a new legislative framework that has changed the way Aboriginal cultural heritage is managed and protected in Victoria. This has resulted in a range of social and economic impacts on key stakeholder groups: Aboriginal people; industry; cultural heritage advisors; governments (both state and local) and on Victoria as a whole. This assessment considers impacts by stakeholder group.

## 1.2 Previous reports

Since the introduction of the Act there have been two assessments of the legislative framework: a Regulatory Impact Statement of the Regulations in 2007; and a one year review of the Regulations in 2008. While the focus of these was on the Regulations, they also implicitly assessed aspects of the Act as well.

The Regulatory Impact Statement estimated the economic and social impacts associated with when and how to prepare a CHMP, and the fees associated with evaluating CHMPs. However, given the substantial change to the operating environment under the new legislative framework, it was accepted that a period of operation was required before some aspects of the Regulations could be reasonably evaluated. Consequently, the Regulatory Impact Statement included an evaluation strategy, in anticipation of the Regulations being reviewed after twelve months of operation.

The 2008 Review of the Regulations concluded that the Regulations had been effective in protecting Aboriginal cultural heritage and ensured a reasonably consistent CHMP system. It was, however, deemed too early to evaluate the fees being paid to RAPs, as there was insufficient data to draw meaningful conclusions.<sup>2</sup>

## 1.3 Our approach

Our approach to undertaking the socioeconomic assessment included:

- **Review of available information and data** – we reviewed a range of documents and data, both publicly available and provided by AAV. This included information and data on the number and type of instruments (for example, CHMPs) used to manage Aboriginal cultural heritage since the commencement of the Act, as well as the costs incurred and funding provided to support the Act's operation. We also drew on the previous reports described in Section 1.2. An analysis of CHMP activity under the Act is contained in Appendix A. A full list of the information sources is contained in Appendix D.
- **Stakeholder consultation** – we conducted consultations (face-to-face and via telephone) with key stakeholders including some RAPs, the Council, and the Urban Development Institute of Australia. We conducted focus groups with government departments, industry bodies and cultural heritage advisors. In addition, we issued an online survey to local government. A full list of stakeholders consulted is contained in Appendix B.
- **Analysis of costs and benefits** – we analysed and quantified (where possible) the costs and benefits of the Act for different stakeholder groups, including Aboriginal people, industry, cultural heritage advisors, government and the broader Victorian community.

---

<sup>2</sup> The Allen Consulting Group, *Review of the Aboriginal Heritage Regulations 2007*, November 2008, page vi.

## 1.4 Limitations

The analysis and conclusions of this assessment should be considered in light of the following limitations:

- **Stakeholder participation** – stakeholder participation in this review was voluntary, and in some instances engagement was limited. For example, only 20 per cent of local government responded to an online survey. Similarly, not all RAPs were available to be consulted as part of this review.
- **Available data** – in some areas of this assessment, access to data was limited. In particular, it was not possible to source detailed financial information in respect of RAPs and undertake a comprehensive assessment of financial sustainability. Similarly, in relation to identifying the difference between payments associated with a CHMP that flow to a cultural heritage advisor versus RAPs, the only information available was anecdotal (although the estimates provided were corroborated in several consultations).

## 1.5 Structure of this assessment

This assessment is structured as follows:

- Chapter 2 describes the legislative context for the Act, and the Act's objectives and key features
- Chapter 3 discusses the socioeconomic impacts of the Act on Aboriginal people
- Chapter 4 discusses the socioeconomic impacts of the Act on industry
- Chapter 5 discusses the socioeconomic impacts of the Act on cultural heritage advisors
- Chapter 6 discusses the socioeconomic impacts of the Act on State and local government
- Chapter 7 discusses the socioeconomic impacts of the Act on the wider Victorian community
- Appendix A analyses CHMP activity under the Act
- Appendix B lists stakeholders consulted as part of this assessment
- Appendix C summarises the results of the online survey of government
- Appendix D provides a list of information sources used in this assessment.



## 2 Legislative context

### 2.1 Previous legislation

Victoria has almost a 40 year history of laws protecting Aboriginal cultural heritage.

Prior to 2007, Aboriginal cultural heritage in Victoria was managed under the Victorian *Archaeological and Aboriginal Relics Preservation Act 1972* and Part 2A of the Commonwealth *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*.

The 1972 Act was the first in Australia, along with the still-operating 1972 Western Australian *Aboriginal Heritage Act 1972*. It was an early attempt to provide protection of Aboriginal heritage, but it included no roles for Aboriginal people.

The 1972 Act established the Victorian Aboriginal Heritage Register (the Register), which now holds records of over 30,000 places, and introduced penalties for damaging 'relics'. It also established a permit system, controlled by the State. According to AAV, during this period few developments were assessed for heritage impacts, and destruction of Aboriginal heritage was common.

In the early 1980s, the State attempted to pass updated heritage legislation, failed, and asked the Commonwealth to pass legislation on its behalf. Part 2A of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* was enacted in 1984, which pertained exclusively to Victoria and operated concurrently with the *Archaeological and Aboriginal Relics Preservation Act 1972*.

The 1984 Commonwealth Act enabled the Victorian Government to pass limited heritage responsibilities to Aboriginal organisations nominated by the Minister. Most of these were community based organisations (often referred to as co-operatives), established for purposes other than cultural heritage management, such as providing community health and housing services to the local population. These organisations were not necessarily Traditional Owner organisations. Under the Commonwealth legislation, the decisions these organisations made could be an effective veto over development, creating a deadlock in some cases and conflict and high costs in others.

Under this system, there was minimal pro-active assessment of Aboriginal heritage. If a statutory authority identified a potential heritage issue, the matter could be referred to AAV to determine whether a heritage assessment was required. In these cases, heritage was generally dealt with through monitoring of construction works and consents to disturb and destroy sites. Where sites were identified, the developer needed to seek consent to disturb or destroy sites from the local Aboriginal organisation which could often stop works during construction.

Some of the issues associated with this framework included a lack of clear processes for statutory authorities, confusion about who spoke for cultural heritage on behalf of the Aboriginal community, uncertainty for industry about how to manage impacts on heritage and inadequate assessment, management and protection of Aboriginal cultural heritage.

According to AAV, aspirations of Traditional Owners, which culminated in the Mabo decision and the passage of the Commonwealth *Native Title Act 1993*, created a mismatch between the roles of the co-operatives making heritage decisions and the native title rights of Traditional Owners over land. For developers and land managers, this meant dealing with different Aboriginal organisations about related issues over the same areas of land.

### 2.2 The Aboriginal Heritage Act 2006

The *Aboriginal Heritage Act 2006* emphasised the role of Aboriginal people, particularly Traditional Owners in managing and protecting cultural heritage. This has facilitated a convergence of Aboriginal groups involved in native title, cultural heritage and natural resource management.

It also established the CHMP process – a proactive approach to managing cultural heritage at the front end of developments that are likely to have a high impact on sensitive areas.

The *Traditional Owner Settlement Act 2010* is Victoria's approach to native title in this state, and emphasises negotiated agreements between Traditional Owners and the State rather than litigation. It leaves heritage matters to the Act, but reinforces the primacy of Traditional Owners in making decisions over land and cultural heritage. Any group granted native title or with an agreement under the Traditional Owner Settlement Act is entitled to become an exclusive RAP over an area.

The Act sets out several key objectives including:

- to recognise, protect and conserve Aboriginal cultural heritage in Victoria in ways that are based on respect for Aboriginal knowledge and cultural and traditional practices
- to recognise Aboriginal people as the primary guardians, keepers and knowledge holders of Aboriginal cultural heritage
- to accord appropriate status to Aboriginal people with traditional or familial links with Aboriginal cultural heritage in protecting that heritage
- to promote the management of Aboriginal cultural heritage as an integral part of land and natural resource management
- to promote public awareness and understanding of Aboriginal cultural heritage in Victoria
- to establish an Aboriginal cultural heritage register to record Aboriginal cultural heritage
- to establish processes for the timely and efficient assessment of activities that have the potential to harm Aboriginal cultural heritage
- to promote the use of agreements that provide for the management and protection of Aboriginal cultural heritage
- to establish mechanisms that enable the resolution of disputes relating to the protection of Aboriginal cultural heritage
- to provide appropriate sanctions and penalties to prevent harm to Aboriginal cultural heritage.

Box 2 outlines the key features of the Act.



### **Box 2: Key features of the Act**

*Council* – the Act establishes the Council, Australia's first all-Aboriginal statutory body invested with legal and decision making powers over Aboriginal cultural heritage. Council members are Victorian Traditional Owners appointed by the Minister for Aboriginal Affairs. The Council's main roles are to appoint RAPs as cultural heritage decision makers for areas in Victoria, advise the Minister for Aboriginal Affairs about the exercise of powers under the Act and the protection of Aboriginal cultural heritage and assess CHMPs when the Secretary of the Department of Planning and Community Development (DPCD) is the sponsor. The Council also has a broader role in educating Victorians about the importance of Aboriginal cultural heritage and how it can be protected and preserved.

*RAPs* – the Act establishes RAPs as incorporated Aboriginal groups recognised by the Council as the primary guardians, keepers and knowledge holders of Aboriginal cultural heritage. RAPs act as a source of advice and knowledge for the Minister, Secretary and Council on Aboriginal cultural heritage for their registered area, evaluate and approve CHMPs, negotiate cultural heritage agreements, and advise on cultural heritage permit applications, protection declarations and the repatriation of Aboriginal cultural heritage.

*CHMPs* – the Act creates a regulated process for managing cultural heritage. CHMPs must be prepared by a sponsor (for example, a developer) where a high impact activity is proposed in an area of cultural heritage sensitivity as prescribed in the Regulations. A CHMP identifies and assesses the potential Aboriginal cultural heritage impacts of a proposed development and makes recommendations about actions to be taken before, during and after the development to manage and protect Aboriginal cultural heritage. Where a CHMP is required by the Regulations, it must be approved prior to a planning permit being issued.

*Cultural Heritage Permits* – the Act creates a regulated cultural heritage permit process for excavation, research, harm, buying, selling or removing objects from Victoria. Cultural heritage permits to harm cultural heritage are the most common type of permit used, often for smaller-scale works in an area where cultural heritage is known to be present. Permit applications are administered by the Secretary, DPCD.

*Cultural Heritage Agreements* – cultural heritage agreements are negotiated between landowners and the relevant RAP to manage and protect Aboriginal cultural heritage. Examples include rights of access and rehabilitation of objects and places. The agreement cannot allow harm to Aboriginal cultural heritage; rather its function is to formalise ongoing management of that heritage.

*Dispute resolution mechanisms* – the Act grants the Victorian Civil and Administrative Tribunal the power to review the decision made by the RAP to refuse a CHMP if requested to by the sponsor. If the Victorian Civil and Administrative Tribunal decides to approve the CHMP, the Act requires that it be satisfied that the CHMP makes sufficient provision to avoid or minimise harm to Aboriginal cultural heritage. The Council has a dispute resolution role where there is no agreement around the approval of a CHMP between overlapping RAPs.

*Penalties and enforcement* – the Act sets penalties for harming Aboriginal cultural heritage. There are a range of enforcement tools (stop orders, protection orders, audits), some new, some adapted from previous legislation. Inspectors are now exclusively public servants, whereas under the previous legislation inspectors were drawn both from the public service and the Aboriginal community.

*Features continuing from the previous legislation*

*The Register* – the Act creates an ongoing requirement for the Register which records known Aboriginal cultural heritage in Victoria.

Source: <http://www.dpcd.vic.gov.au/indigenous/aboriginal-heritage-council> [Accessed October 2011], <http://www.dpcd.vic.gov.au/indigenous/aboriginal-heritage-council/registered-aboriginal-parties> [Accessed October 2011].

## 3 Impacts on Aboriginal people

Consultation conducted for this assessment (particularly with AAV, RAPs and the Council) identified the following social and economic impacts of the Act as the most significant on Aboriginal people living in Victoria:

- recognising Aboriginal people
- strengthening connection to Country and culture
- the socioeconomic impact on RAPs
- building relationships between RAPs, sponsors and government, and
- building the capacity of Aboriginal people to participate in the management of cultural heritage.

### 3.1 Recognising Aboriginal people

A significant impact of the Act is the formal recognition of Aboriginal people through the establishment of two key groups:

- the Council, which decides who manages Aboriginal cultural heritage for different parts of Victoria and provides high level advice to the Minister for Aboriginal Affairs and government on Aboriginal cultural heritage, and
- RAPs who are engaged in managing and protecting cultural heritage for their registered area.

#### ***Establishment of the Council***

The Council was created under the Act to ensure the preservation and protection of Victoria's Aboriginal cultural heritage, see Box 3 below.

### **Box 3: Role of the Council**

#### Appointment of RAPs

The Council considers applications from Aboriginal groups to become RAPs. Groups lodge an application and the Council makes a comprehensive assessment before appointing the RAP for an area. The Council determines applications by following guidelines in the Act and the principles it adopts, and relies on the Council's own knowledge as a group of Traditional Owners, information from the RAP applicant and neighbouring Aboriginal groups, and research material. As the Council progressively appoints RAPs, it will focus its work on activities that support RAP development and operations.

#### Advice to government

The Council provides advice to the Minister, both voluntarily and on request, on the protection and management of Aboriginal Cultural Heritage in Victoria, such as significance of any Aboriginal human remains, place or object; protection and management of culturally sensitive places and information; promoting the participation of Aboriginal people in cultural heritage; protection and management of Aboriginal cultural heritage; standards of knowledge, experience, conduct and practice required of persons engaged in research into Aboriginal cultural heritage; training and appointment of inspectors who enforce the Act; and other matters referred to the Council by the Minister.

The Minister can request advice and/or recommendations from the Council on the exercise of his or her powers under the Act.

The Council also advises the Secretary, DPCD on establishing standards and fee guidelines for sponsors to pay RAPs for their consultation when preparing CHMPs and assessments, the exercise of his or her powers in relation to cultural heritage permits, CHMPs and cultural heritage agreements.

#### Public awareness

The Council has a role in educating Victorians about the importance of Aboriginal cultural heritage and how it can be preserved, protected and ensure it remains an intrinsic part of Victoria's identity for future generations.

Source: Department of Planning and Community Development, *Victorian Aboriginal Heritage Council Fact Sheet*.

The NSW Aboriginal Land Council 2010 review states that one RAP observed that "Victoria always lacked a state-wide voice for Aboriginal people" and that "having a state-wide council of Traditional Owners is good".<sup>3</sup>

The Council gives priority to Traditional Owners when appointing RAPs (see Box 4 below), which appears to have caused some disquiet and conflict within the Aboriginal community. The previous cultural heritage legislation in Victoria left a legacy of government selected Aboriginal organisations, not necessarily representative of Traditional Owners, working in cultural heritage management (particularly Aboriginal co-operatives). Some of these organisations have been effectively shut out of cultural heritage work as the Council pursues the policy of prioritising the appointment of Traditional Owners as RAPs. While the Aboriginal people interviewed for the NSW Aboriginal Land

---

<sup>3</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August, 2010, page 24.

Council 2010 review supported the RAP process as an appropriate mechanism for recognising who may speak for Country, all were representatives of RAPs or the Council.<sup>4</sup>

#### **Box 4: Council General principles for RAP decision making**

The 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.

The Council will also give priority consideration to uncontested applications by other groups that meet the Act's requirements that are supported by the Traditional Owners of the Country affected by the application.

The Council may invite certain applicants to participate in regional meetings and mediations to resolve competing applications and overlapping boundaries.

The Council wants to ensure that groups recognised under the cultural heritage laws as best as possible reflect those under native title arrangements.

The 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.

Source: Department of Planning and Community Development, General Principles - RAP decision making.

Despite having the power to register more than one RAP for an area, the Council prefers to register a single RAP that is inclusive of the majority of Traditional Owners in an area. The Council has expressed the view that "appointing a single inclusive organisation as a RAP, rather than two non-inclusive organisations, would give best effect to the Council's principle of aligning with native title arrangements". The importance of this practice is that it effectively prevents the kind of 'forum shopping' that was identified as a problem in Queensland and South Australia as sponsors only have to deal with one party – that is, they avoid having to work with different groups that may have at times conflicting views.<sup>5</sup>

Some RAP applications come from rival Traditional Owner groups. Such applications have been rejected by the Council on the basis that neither organisation was inclusive of all Traditional Owners.

Moving forward, the Right People for Country Project in Victoria seeks to develop an agreement-making process led by Aboriginal people that deals with disputes about group membership and extent of Country. The project aims to shift away from governments and courts making decisions for Traditional Owners on questions of group membership and extent of Country by enabling Traditional Owners to make decisions for and among themselves.

According to the Native Title Report 2011, agreements that are developed through the Right People for Country project will provide government and land users with greater certainty about who to deal with for defined areas. They will assist government to settle native title claims and the Council to

---

<sup>4</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August, 2010, page 31.

<sup>5</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August, 2010, page 30.

appoint RAPs. Agreement making will seek to identify a single inclusive Traditional Owner entity for a defined area for land and cultural heritage management purposes.<sup>6</sup>

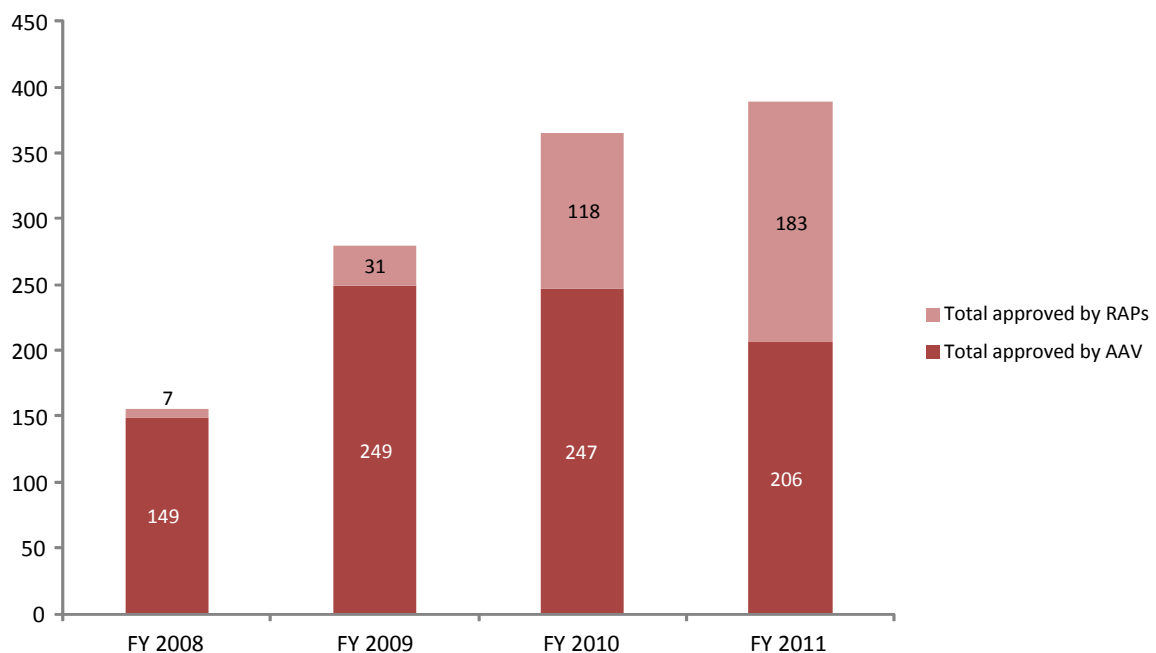
### **Establishment of RAPs**

Stakeholders across industry, the cultural heritage advisor industry and RAPs generally identified the establishment of the Council and declaration of RAPs as the primary guardians, keepers and knowledge holders of Aboriginal cultural heritage as a significant improvement under the Act. One RAP identified that the recognition of RAPs by the broader community, government and industry as the most significant impact of the Act.

The NSW Aboriginal Land Council 2010 review found that Victoria is arguably the ‘high water mark’ relative to the other jurisdictions considered in terms of the level of Aboriginal control, management and decision making. The report found that the Act affords Victorian Traditional Owners (as RAPs) a significant degree of control over decisions that impact on cultural heritage. Importantly, the power to approve or refuse a CHMP or permit is vested in Traditional Owners, not the Minister. One RAP said the “best thing” about the RAP structure was that it “got the Traditional Owners back and gave them a voice, which they didn’t have”.<sup>7</sup>

As can be seen in Figure 2 below, RAPs are approving an increasing number of CHMPs. In the early years of the Act’s operation, as RAPs were still in the process of being established, AAV approved almost all CHMPs. This has changed as more RAPs are established over more areas in Victoria. In 2010-11, for example, RAPs evaluated 183 out of a total of 389 CHMPs, or 47 per cent.<sup>8</sup>

**Figure 2: Number of CHMPs approved by RAP / AAV (FY 2008-FY 2011)**



<sup>6</sup> Australian Human Rights Commission, *Native Title Report 2011*.

<sup>7</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August, 2010, page 31.

<sup>8</sup> Aboriginal Affairs Victoria, *Discussion Paper on the Review of the Aboriginal Heritage Act 2006*, September 2011.

At present approximately 56 per cent of the State is covered by RAPs. If there is no RAP, the power to approve a CHMP or permit sits with the Secretary of DPCD who may consult Traditional Owners and the Council, but is not obliged to accept their views.<sup>9</sup> Almost all stakeholders consulted for this assessment commented that they had hoped that more RAPs would be determined in the first five years of the Act's operation than has occurred to date, given the benefits associated with appointment as a RAP. That said, the NSW Aboriginal Land Council 2010 review quoted one Traditional Owner who felt that a significant advantage of the structure and process of the Act is that it takes less time to formally recognise Traditional Owners compared to the *Native Title Act 1993*.<sup>10</sup> Although not directly comparable, the Council has registered nine RAPs in under five years, compared to three positive native title determinations in Victoria in 18 years under the *Native Title Act 1993*.<sup>11</sup>

Despite acknowledging Victoria as the 'high water mark' in terms of Aboriginal control and decision making, the NSW Aboriginal Land Council 2010 review also noted that:

- while the Council has significant powers (such as total control over the appointment of RAPs), Aboriginal people have no control over the appointment of members to the Council
- one RAP felt that the Act should recognise RAPs as the primary contact point for other aspects of culture including ceremony and language. It observed that some local governments in its region are not interacting with the Traditional Owners, other than for cultural heritage, through the RAP. Traditional Owners said they want "to be actively known in other areas rather than just the people who dig up the rocks".<sup>12</sup>

### 3.2 Strengthening connection to Country and culture

The Chair of the Council described the recognition of connection to Country (by the Victorian Government through the Act and the appointment of RAPs) as creating an important positive impact in respect of wellbeing and spirituality. This link between connection to Country and Aboriginal health and well-being is well-supported in academic literature. For instance, in a recent review of scientific research, VicHealth highlights that '[c]onnectedness to land, or "country", is an important determinant of Aboriginal health and wellbeing'.<sup>13</sup> The literature also suggests 'by addressing health risk factors, caring for country will ultimately lead to cost savings in health, such as through the savings attained by preventing disease and ill health in later life'.<sup>14</sup>

There is considerable evidence of the relationship between strong cultural identity and mental health outcomes. For instance, in their study of youth suicide rates in First Nations communities in Canada, Chandler and Lalonde found that those communities which 'have taken active steps to

---

<sup>9</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August 2010, page 38.

<sup>10</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August 2010, page 23.

<sup>11</sup> <http://www.nntt.gov.au/Native-Title-In-Australia/Victoria/Pages/Victoria.aspx> [Accessed December 2011].

<sup>12</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August 2010, page 32.

<sup>13</sup> VicHealth, *Life is Health is Life: Taking action to close the gap*, May, Melbourne, 2011.

<sup>14</sup> Jessica K Weir, Claire Stacey and Kara Youngetob, *The Benefits Associated with Caring for Country: A literature review*, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, June, 2011.

preserve and rehabilitate their own cultures' have 'dramatically lower' youth suicide rates than other communities.<sup>15</sup>

### 3.3 Impact on RAPs

The introduction of the Act, primarily through the declaration and establishment of RAPs has facilitated the creation of a wider range of opportunities for Aboriginal people engaged in Aboriginal cultural heritage.

The Act necessitates some level of employment associated with the operation of RAPs. One cultural heritage advisor specifically referred to the "systemisation of employment in the Aboriginal community" as a key benefit of the Act. Gunditj Mirring, for example, employs a number of field workers (on a casual basis) to support CHMP evaluations. Taungurung Clans Aboriginal Corporation noted that under the new Act their business is now able to employ staff on a more stable footing.

RAPs are able to charge fees for some activities such as evaluating CHMPs, contributing to assessing cultural heritage permits, consulting with project sponsors and taking part in cultural heritage assessment activity, although (as discussed below) this may not be sufficient to cover minimum operating costs for some RAPs.

RAPs consulted for this assessment noted that their establishment as a RAP has opened up the ability to generate other income streams such as through conducting 'Welcome to Country' and Aboriginal cultural heritage awareness talks. The Council also noted that, once established as a RAP, there may be greater opportunities to explore engagement in Australian Government programs such as Caring for Country which focuses on natural resource management. According to AAV, other possible additional revenue streams that match a RAP's core business include government department advice, government outsourcing, cultural heritage advice and training, tourism, and pursuit of grants.

#### *Assistance from the Victorian Government*

The Victorian Government provides a range of assistance and support to RAPs, from direct financial assistance through to capacity building and RAP forums. This section discusses the various types of support provided, both financial and non-financial.

#### *Grants and business planning*

The Victorian Government provides RAPs with access to the following types of grant based assistance:

- RAP Applicant Financial Assistance – RAP applicants are able to apply to AAV for up to \$5,000 financial support, once per applicant group, for reasonable expenses associated with the development and submission of a RAP application to the Council. The Council first called for applications in 2007. Since this time 33 groups have applied for assistance, 26 of which have been successful. Of these applicants, 24 have submitted RAP applications to the Council.
- RAP Establishment Grants – each newly determined RAP receives a one-off grant of \$20,000 to assist with establishing its operations as a RAP. This can be used for discretionary purposes and provides a "start up" cash flow.

---

<sup>15</sup> Chandler, Michael J. and Christopher Lalonde, *Cultural continuity as a hedge against suicide in Canada's First Nations*, *Transcultural Psychiatry*, vol.35, no.2, 1998, pp.191-219.



- Heritage Site Data Access – a newly determined RAP receives a \$3,000 grant for purchase of computer equipment to enable access to ACHRIS.
- RAP Operating Grants – are provided to cover the shortfall in funding for those organisations unlikely to generate sufficient revenue to cover their ongoing operating expenses, and to assist organisations to build their capacity and operate at a level that would support their transition towards sustainability, as far as possible. The 2009-10 and 2010-11 grant levels were assessed on the basis of existing infrastructure, access to other resources and likelihood of earning enough revenue to be sustainable. The 2011-12 proposed grant allocations have been adjusted due to some RAP organisations having successfully managed a transition to sustainable operation. Other RAPs have demonstrated that they require a higher level of support.
- Community Infrastructure Program funding – provides support for infrastructure needs, including the fit out and leasing of offices, the upgrade of computers and the purchase of office equipment. Four RAPs were successful in obtaining funding from a total allocation of \$150,000. This funding has helped Martang and Taungurung to establish offices in their RAP area. Both organisations have reported an increase in business as a result of having established offices.

Business planners with knowledge of RAPs and their operating environment were engaged by AAV to work with each RAP to develop business plans (apart from Wurundjeri which had existing plans). This planning also explored other opportunities for revenue raising. Business Plans were then developed and completed in a series of workshops with each of the RAPs during 2009-10. These plans are currently being reviewed and updated.

Table 2 below shows support provided to RAPs in the form of grants and business planning. The most significant is the ongoing support for RAP operation.



**Table 2: Total Grants, Business Planning, Organisation Development and RAP Forums<sup>16</sup>**

Amounts (\$)*	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012^	Total
<b>RAP Applicants</b>	\$44,430	\$56,682	\$10,000	\$10,000	-	<b>\$121,112</b>
<b>RAP Establishment</b>	\$60,000	\$80,000	\$40,000	-	-	<b>\$180,000</b>
<b>Heritage site data access</b>	-	\$18,000	\$6,000	-	-	<b>\$24,000</b>
<b>RAP operating support</b>	-	-	\$425,000	\$340,000	\$260,000	<b>\$1,025,000</b>
<b>Infrastructure support</b>	-	-	-	\$110,893	-	<b>\$110,893</b>
<b>Organisational Development</b>	-	-	\$17,708	\$287,819	\$271,500	<b>\$577,027</b>
<b>Business Planning and Review</b>	-	-	\$80,886	\$36,697	\$12,000	<b>\$129,583</b>
<b>RAP Forums</b>	-	\$38,861	\$46,346	\$44,584	\$68,585	<b>\$198,376</b>
<b>Total</b>	<b>\$104,430</b>	<b>\$193,543</b>	<b>\$625,940</b>	<b>\$829,993</b>	<b>\$612,085</b>	<b>\$2,365,991</b>

Source: Data provided by AAV, February 2012.

\*rounded to the nearest dollar ^this column only includes funds paid up to February 2012.

### Capacity Building Assistance

AAV has provided one-on-one and project assistance to individual RAPs where an identified need has developed, such as providing mentoring through crisis management, and assistance to establish corporate operations following a settlement with the state under the *Traditional Owners Settlement Act 2010*.

AAV also provides support to the RAP organisations through:

- access to regionally-based AAV heritage staff who provide advice, training and support
- providing places in accredited training courses in business management (governance)
- supplying mapping and other tools such as on-line access to ACHRIS
- developing pro-forma material and templates to assist the Act processes workflow
- assisting with planning and the development of policy and procedures
- promoting stakeholder relationships, and
- developing and delivering accredited training in Aboriginal cultural heritage management targeted for Aboriginal people working in the cultural heritage industry.

### RAP Forums

According to AAV, the Council identified the need to engage with RAPs regularly to share ideas and identify issues affecting RAPs. In collaboration with AAV, forums are arranged for RAPs that provide information, capacity building and networking opportunities. To date there have been five

<sup>16</sup> Governance training and cultural heritage training is not costed in Table 2 above.

state-wide forums, and all have had a major focus on implementation of the Act and any issues that are of concern to RAPs in regard to carrying out their statutory responsibilities. The resourcing of RAP organisations has been a key issue raised by RAPs at each forum.

RAPs have received presentations on developments in relation to the legislation and the roll out of tools and systems, such as business planning and ACHRIS.

The forums held in 2010 and 2011 have been hosted by RAPs on Country in regional Victoria. The two forums in 2011 have provided the opportunity to consult with RAPs on the review of the Act and have provided RAPs with the opportunity to co-ordinate their submissions to the review and the parliamentary inquiry into the establishment and effectiveness of RAPs.

The forums have also provided an opportunity for government and other agencies to consult with and provide information to RAPs. For example, at the most recent forum in Little Desert, delegates from the National Trust sought advice and feedback regarding development of the Trust's National Reconciliation Action Plan, and the Department of Primary Industries sought advice concerning management of cultural heritage during biosecurity emergencies.

### ***Revenue associated with the CHMP process***

As outlined previously, the legislation prescribes fees payable to RAPs for the evaluation of CHMPs. Prescribed fees were initially calculated to cover average RAP costs in evaluating plans. Anecdotal advice received during consultations with RAPs and the Council suggest that evaluation costs incurred by RAPs are similar to prescribed fees.

Table 3 shows the level of CHMP activity undertaken by each RAP over the last 5 years – Wathaurung Aboriginal Corporation; Wurundjeri; Gunaikurnai Land and Waters Aboriginal Corporation; and Yorta Yorta Nation Aboriginal Corporation have evaluated the most CHMPs over this period.

**Table 3: CHMP evaluation activity by RAP (FY 2008-FY 2011)**

<b>RAPs</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>
Barengi Gadjin Aboriginal Land Council	-	4	5	2
Dja Dja Wurrung Clans Aboriginal Corporation	-	1	3	9
Gunaikurnai Land and Waters Aboriginal Corporation	-	1	11	16
Gunditj Mirring Traditional Owners Aboriginal Corp	6	5	3	4
Martang Pty Ltd	-	3	2	5
Taungurung Clans Aboriginal Corporation	-	-	1	9
Wathaurung Aboriginal Corporation	-	-	21	51
Wurundjeri	-	8	60	65
Yorta Yorta Nation Aboriginal Corporation	1	9	12	22
<b>Total</b>	<b>7</b>	<b>31</b>	<b>118</b>	<b>183</b>

Source: Data provided by AAV, October 2011. Dashes indicate the RAP was not determined at that time.

RAPs tend to focus on evaluations, and may not be fully engaging with (and securing revenue from) other CHMP opportunities, particularly in relation to participation and consultation. RAPs can charge fees to consult with a sponsor on a proposed CHMP and its recommendations and/or to participate in the conduct of a CHMP. RAPs and cultural heritage advisors advised that (where charged) these fees are typically around \$800 per day. RAPs may not be fully engaging with such

opportunities due to issues around things like staff availability. Gunditj Mirring noted that this is an area they intend to explore further in the future.

### ***Costs associated with RAP applications and operations***

RAPs incur costs in discharging their legislative obligations and participating in processes associated with the operation of the Act. These costs are discussed below.

#### ***Applying to become a RAP***

The decision by the Council to declare an Aboriginal group a RAP is significant and accordingly the Council requires detailed information to assist their decision making process.

The Council noted that often the first time an application is presented it does not generally include the level of detail required and they are often required to hold an application over several meetings while they source further information from the applicant. Providing the level of detailed information required, in a timely way, is a cost to Aboriginal groups who are seeking to be a RAP.

Similarly, it was noted by cultural heritage advisors and RAPs that the RAP registration process is complex and time consuming and therefore costly for RAP applicants to comply with the requirements.

#### ***Operating as a RAP***

In discharging their obligations under the Act once established, RAPs incur a range of costs primarily associated with evaluating CHMPs, and consulting and participating in the preparation of CHMPs.

The NSW Aboriginal Land Council 2010 review noted RAPs generally employ one to three staff members (a cultural heritage coordinator and cultural heritage officers). RAPs may also maintain a roster of casual staff for field work.<sup>17</sup>

Consultations for this assessment with RAPs confirmed that broader consultations on CHMPs occur. Gunditj Mirring advised that they distribute information in relation to CHMP evaluation to approximately 200 people within their community. This is clearly a significant benefit of the Act in respect of engaging the wider Aboriginal community in the management and protection of their heritage (see section above in relation to benefits of recognition). However, this is also potentially a resource intensive exercise for RAPs to undertake within limited resources.

While some costs for RAPs are likely to be scalable to CHMP activity, there are running costs that RAPs will need to incur to be in a position to respond to CHMP requests regardless of the number occurring in their area.

### ***Overall position of RAPs***

There is limited information available to this assessment with which to gauge the overall position of RAPs.

The Victoria University report states that stakeholders believe that the operation of the legislation is severely inhibited by a lack of financial and educational resources. Most recognise that RAPs are chronically under-resourced and lack support from suitably trained and experienced personnel.<sup>18</sup>

---

<sup>17</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August, 2010, page 54.

Analysis of a range of the financial reports of Traditional Owners corporations (as set out below) shows that their financial positions in FY 2010 ranged from a net surplus of \$818,504 to a net loss of \$118,479. On average, RAPs recorded a net surplus of just over \$258,000 in FY 2010, and net assets over \$1 million. Several RAPs report using other income, including native title income and income from various agreements with Government departments, to cover overhead costs and staff salaries related to cultural heritage work. The summary of Traditional Owner corporations' financial position presented in Table 4 below does not relate solely to RAP activities and includes other income sources and associated expenses such as Native Title settlements. It is therefore noted that the current financial positions of Traditional Owner corporations may not give an accurate representation of future financial positions. Further, low growth areas are said to provide limited opportunity to derive income from cultural heritage work.<sup>19</sup>

**Table 4: Summary of financial position of Traditional Owners Corporations (FY 2010)<sup>20</sup>**

<b>Traditional Owners Corporations</b>	<b>Revenue</b>	<b>Expense</b>	<b>Net surplus/loss</b>	<b>Net assets</b>
Barengi Gadjin Aboriginal Land Council#	\$544,106	\$662,585	-\$118,479	\$638,030
Dja Dja Wurrung Clans Aboriginal Corporation	\$350,128	\$245,582	\$104,546	\$182,647
Gunaikurnai Land and Waters Aboriginal Corporation#	\$23,749	\$1,075	\$22,674	\$26,314
Gunditj Mirring Traditional Owners Aboriginal Corp# <sup>21</sup>	\$1,466,141	\$647,637	\$818,504	\$4,426,158
Martang Pty Ltd*	-	-	-	-
Taungurung Clans Aboriginal Corporation	\$221,601	\$154,719	\$66,882	\$139,336
Wathaurung Aboriginal Corporation	\$1,085,521	\$676,285	\$409,236	\$424,120
Wurundjeri *	-	-	-	-
Yorta Yorta Nation Aboriginal Corporation^	\$1,670,741	\$1,167,104	\$503,637	\$3,876,294
<b>Average</b>	<b>\$765,998</b>	<b>\$507,855</b>	<b>\$258,143</b>	<b>\$1,387,557</b>

Source: RAP Financial Reports, accessed on [www.oric.gov.au](http://www.oric.gov.au).

\* data for these RAPs not available # also receive native title funds ^ also receive funds from NRM work with DSE.

<sup>18</sup> Victoria University, *Collaborative Approaches to Aboriginal Cultural Heritage Protection – An examination of the operation of the Victorian Aboriginal Heritage Act 2006 and Aboriginal Heritage Regulations 2007*, June, 2010, page 15.

<sup>19</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August, 2010, page 56.

<sup>20</sup> It is acknowledged that other factors (such as land transfers) are included in the figures below, and therefore may not give an accurate representation of future financial positions.

<sup>21</sup> Revenue associated with 'capital grant land and building acquisitions' of \$3,072,890.46 has been removed from Gunditj Mirring's revenue in FY 2010, as per Gunditj Mirring's audited financial statements [available at [www.oric.gov.au](http://www.oric.gov.au)].

In addition to the published data from the ORIC website, the Department of Justice has also provided a breakdown of Gunditj Mirring income. It is outside of the scope of this report to undertake a reconciliation between this data and that from the ORIC website, but that said the Department of Justice data suggests that Gunditj Mirring received 62 per cent of its income from state settlement funds and 38 per cent from independent sources in FY 2010.<sup>22</sup>

### 3.4 Building relationships between RAPs, sponsors and government

Melbourne Water is one case study of the impact of the CHMP process on relationships between different stakeholders, see Box 5 below.

#### **Box 5: Melbourne Water case study**

According to Melbourne Water, the CHMP process has enabled it to build good relationships with RAPs within its service area and thus be connected to a different part of the community. Improved awareness leads to greater mutual capacity.

Melbourne Water's relationship with RAPs, together with its role in the legislation, is positive and simplifies who it has to engage with. There are more conversations and discussions with Aboriginal stakeholder groups and exposure to their values. Having the RAP representatives on site, seeing what Melbourne Water does, makes the engagement more meaningful to everyone.

The CHMP process acknowledges Aboriginal communities as an important stakeholder group and enshrines their rights into a simple process which aligns with Melbourne Water's values as an organisation. It supports Melbourne Water in 'doing the right thing' and enhances reputation. The legislation gives Aboriginal groups direct control over cultural heritage and provides opportunities that may not have happened before.

An example of this is the Dights Falls Project where the Waterways Alliance, on behalf of Melbourne Water, replaced the ageing Dights Falls Weir and built a new fishway on the Yarra River in Abbotsford. The new fishway will allow fish to swim past the weir, benefiting 11 species of native migratory fish and unlocking vast reaches of the Yarra and its tributaries upstream.

Melbourne Water undertook a voluntary CHMP (CHMP number 11088) in close consultation with Wurundjeri. The result of the approved CHMP was the registration of an Aboriginal place which incorporated all the historical associations, previously recorded or newly recorded archaeological sites and intangible connections, being Register 7922-1185 Dights Falls 1. Undertaking the CHMP and engaging closely with Wurundjeri, opened minds to alternatives, innovation and improvements, giving all persons engaged in the project a great understanding and appreciation for the area and the importance of the project.

Source: Melbourne Water

RAP appointments have also provided a clear avenue for other government departments and agencies to seek their input in relation to portfolio-specific matters. It was noted during consultations by the Council and one of the RAPs that they are increasingly called on by government departments to provide advice and consult on a range of government issues. This function is often undertaken on a voluntary and unfunded capacity and may stretch the operational capacity of some RAPs.

---

<sup>22</sup> Independent income sources are largely cultural heritage fees the corporation has been able to access in its role as a Registered Aboriginal Party.

However, consultations with RAPs indicated that for many CHMP related activities, the engagement tends to occur between the RAP and the cultural heritage advisors, not with the sponsors. This is an area that many (RAPs, the Council and some cultural heritage advisors) think can be improved in the interest of building better relationships and achieving better understanding of and outcomes for Aboriginal cultural heritage.

### 3.5 Building the capacity of Aboriginal people to participate in the management of cultural heritage

The introduction of the Act has created demand for more skilled professionals in the Aboriginal cultural heritage industry and could, over time, increase opportunities for Aboriginal engagement in a greater component of the CHMP process (which was an area of concern raised by industry and Aboriginal stakeholders during consultations).

To ensure that Aboriginal Victorians are able to develop recognised skills in the management of Aboriginal cultural heritage, a pilot training program was introduced in 2009 utilising resource and teaching materials developed by staff at AAV. The purpose of the program was to enable Aboriginal people to gain formal qualifications and employment in the cultural heritage industry and potentially begin a pathway to higher education. Participants provided positive feedback on the program, see Box 6 below.

#### **Box 6: Evaluation of Past and Present – Introduction to Aboriginal Cultural Heritage Management**

According to the evaluation report, overall, students were positive about the workshops and the learning outcomes – and generally were of the view that their understanding of Aboriginal cultural heritage management had been enhanced by attending the workshop. For many, the Act was viewed as a significant piece of legislation in terms of impacting on their current roles, and participants suggested that they were less confused about the Act after attending the training.

Most participants agreed or strongly agreed that they had an enhanced understanding of the roles and responsibilities of RAPs, and most felt that the training had significantly helped them make better decisions in relation to cultural heritage.

Participants believed that the training would impact on their organisation through improved awareness and knowledge, and increased the qualifications, professionalism and credibility of the organisation. All suggested that they would recommend the training to others in their organisation.

While participants spoke with uncertainty about particular areas of learning outcomes, there were consistent themes to emerge with regard to the methods of teaching that had helped participants learn. This included examples of real life situations, group discussions, and the opportunity to discuss content with other Aboriginal people.

Almost all students deemed the availability of having a Certificate IV course in Aboriginal Cultural Heritage Management to be very important since it gives access to accredited training and the opportunity to study further. The evaluation noted that the Certificate IV course is receiving positive feedback.

Source: Social Compass 2009, *Past and Present – Introduction to Aboriginal Cultural Heritage Management*.

Further education and training opportunities have subsequently been created through the development of an Australian first qualification – Certificate IV in Aboriginal Cultural Heritage Management. This was developed in partnership between the Victorian Government (through AAV) and La Trobe University. The course seeks to provide Aboriginal Victorians with the skills and capabilities to play a lead role in the management and protection of Aboriginal cultural heritage. Graduates may have access to employment opportunities in the cultural heritage advisor industry.



This would represent a shift from the old legislation, where the main avenue for employment was as a monitor onsite during construction.

To date, 141 individuals have participated in six introductory three-day workshops and 33 individuals have completed the full Certificate IV. Following successful completion of the program, students may be able to gain entry into a Bachelor of Arts at La Trobe University.

AAV has provided information in relation to the employment and education outcomes of graduates of the Certificate IV in Aboriginal Cultural Heritage Management from 2010 and 2011. According to AAV, 42 per cent of these graduates have gained employment within RAP organisations (either as cultural heritage coordinators, CHMP assessors or field officers), 6 per cent have found employment within the government sector, while a further 21 per cent have found employment within the private sector (including as cultural heritage officers, environmental and cultural heritage consultants). Additionally, 18 per cent of these graduates have enrolled in further education (including diploma or degree level courses).

### Findings of Chapter 3

- Formal recognition of Aboriginal people (and their Connection to Country) through the establishment of Council and RAPs is a significant impact of the Act.
- The appointment of RAPs for an area has provided a 'one-stop-shop' approach for Aboriginal cultural heritage issues which has helped communities, industry and Aboriginal groups build and sustain long term relationships. The appointment of RAPs by the Council has however caused some conflict between groups seeking RAP appointment.
- The establishment of RAPs has facilitated the creation of a wider range of opportunities for Aboriginal people engaged in Aboriginal cultural heritage including employment opportunities.
- There was limited information available for this assessment to gauge the overall financial position of RAPs. The revenue received by RAPs associated with the CHMP process is often sporadic and in the majority of cases, is unlikely to cover RAPs' operating and establishment expenses. Financial and capacity building assistance from Victorian government has helped support RAPs (however it is suggested that the operation of the legislation may be inhibited by a lack of financial resources).
- The introduction of the Act has also increased opportunities for more skilled professionals in the Aboriginal cultural heritage industry, including for people within the Aboriginal community.

## 4 Impacts on industry

Under the previous legislative regime, developers could be uncertain as to when a cultural heritage assessment was required, which meant they sometimes undertook unnecessary assessment of development sites. Because of a lack of guidance as to what should be contained in an assessment, the findings and recommendations did not always adequately address how to manage any Aboriginal cultural heritage that was discovered. Further, developers were required to obtain consent from the local Aboriginal community to disturb or destroy Aboriginal cultural heritage. Aboriginal groups charged for providing consent, and the amount involved and the conditions attached to that consent varied considerably. Even if Aboriginal cultural heritage was considered in the planning phase of a development, the requirement to obtain consent resulted in delays to developments if Aboriginal cultural heritage was discovered during the course of the activity.

Consultation for this assessment (particularly with sponsors and peak groups, cultural heritage advisors and AAV) identified a range of social and economic impacts of the 2007 Act as the most significant for industry in Victoria. Specifically in relation to:

- when a CHMP is required
- who to consult
- timing of heritage processes, and
- costs associated with heritage instruments.

These are discussed in turn below.

### 4.1 When a CHMP is required

The Act (and Regulations) set out the triggers for when a CHMP is required, and the standards as to how a CHMP should be prepared and evaluated.

Industry groups consulted for the purposes of this assessment – including property developers and members of the mining and construction industries – identified that they were generally clear about what was required to meet their legislative obligations under the Act and particularly when a CHMP was required.

Local governments, who also act as sponsors under the Act, similarly acknowledged that the Act is generally clear as to when a CHMP is required. Impacts for Local Government are explored in further detail in Chapter 6.

The legislation also eliminates uncertainty around conditions that were attached to consents. The legislation does not provide for conditions to be placed on approvals of plans, other than through the negotiated agreements between RAPs, cultural heritage advisors and the sponsor.

Overall, stakeholders consulted for this report suggested that sponsors have a better understanding of how to manage their obligations under the Act as compared to the previous legislative regime.

### 4.2 Who to consult

Industry groups consulted for the purposes of this review identified that they were generally clear about who to consult with regarding their legislative obligations under the Act. Specifically, industry groups suggested that the establishment of RAPs has provided greater certainty for industry in relation to who to consult during the CHMP process.

Stakeholders advised that where there is a RAP, consultations are streamlined and generally less costly as there is only one party with whom to consult. According to one stakeholder ‘the RAP



process is a good one...previously you had two networks of groups, one set up by AAV however the zones were not Native Title zones, and the Commonwealth group of networks differed again...you were dealing with Traditional Owners, and heritage groups weren't necessarily Traditional Owners, so often there was a conflict between the two'.

In areas where no RAP has been declared, some industry stakeholders suggested that the consultation mechanisms can be almost as complicated as under the previous legislative framework. Due to lack of certainty in these cases about who to consult, often (to avoid conflict) a conservative approach to consultation is taken (for example, consulting with all RAP applicants and Traditional Owners) resulting in additional costs and time delays to the CHMP process for industry.

The new system appears to have particular benefits once development has commenced. Developers can be more confident that approved CHMPs contain the necessary information to appropriately manage cultural heritage issues as they arise, and that the chance of unexpected discoveries is reduced. In effect, the legislation embeds proactive assessment of heritage and RAP evaluation of CHMPs up front according to clear criteria and specified timeframes, with appeal rights in the event that criteria are not followed or timeframes are not met. CHMPs are approved or refused by RAPs, giving developers the certainty that an approved CHMP has the endorsement of the appropriate Aboriginal community. In this respect the Act provides a formalised process for sponsors to 'manage heritage risks' associated with that development. Importantly, the Act manages risk in the early stages of the development rather than during construction.

## 4.3 Timing of heritage processes

Industry stakeholders raised issues around timing as detailed below.

### **CHMP preparation**

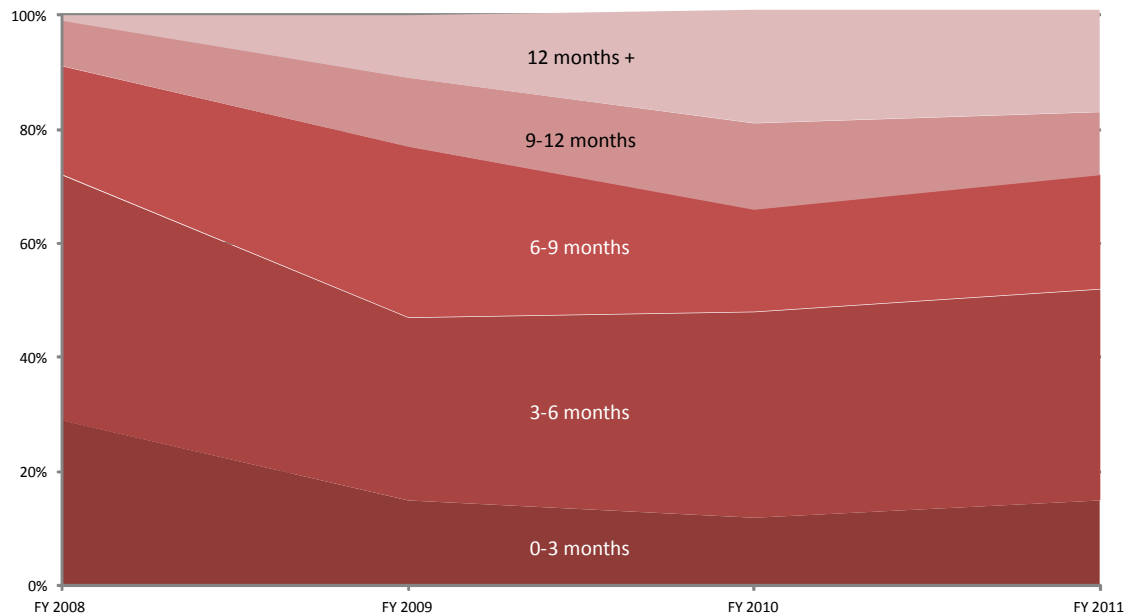
It is difficult to estimate the extent to which the Act has changed the overall time for a development to be approved and completed. Data provided by AAV (see Figure 3) only shows the average time taken for CHMP from commencement (when the Notice of Intent is issued) through to when the CHMP is approved. This data indicates that the majority of CHMPs take three to six months from notification to approval, but some can take longer. This accords with views put forward by industry stakeholders where some examples were provided of CHMPs taking longer than twelve months.

While lengthy timeframes appear to be in the minority, timeframes generally were identified as a significant issue for many industry stakeholders. In part, this is related to 'holding costs' for developers that they incur while waiting for approval. According to the Urban Development Institute of Australia, 'the longer it takes to do the CHMP the more the holding costs' for the developer. While there are no recent figures cited by industry, in 2007 the Urban Development Institute of Australia identified holding costs of \$276,923, based on an average delay of six weeks, due to land tax and interest charges.<sup>23</sup>

---

<sup>23</sup> The Allen Consulting Group, *Aboriginal Heritage Regulations 2007: Regulatory Impact Statement*, April 2007, page 16.

**Figure 3: Time taken to prepare a CHMP – from notice of intent to approval (FY 2007- FY 2011)\***



Source: Data provided by AAV, September 2011

\* FY 2007 figure only includes data from 28 May 2007 to 30 June 2007. The 'End of FY 2008' data point is at 30 June 2008 which is 13 months from the commencement of the Act.

### **CHMP evaluation**

One component of the overall time impact of CHMPs is the time taken for RAPs to evaluate CHMPs. This was raised by industry stakeholders during consultations for this assessment. The time for RAPs to approve CHMPs are a function both of the complexity of the CHMP (as stated in Chapter 3 there are now many more complex CHMPs than originally envisaged) and the resourcing and capacity of the RAP.

While VicRoads advised that RAPs consistently evaluate its CHMPs in line with prescribed timeframes, anecdotal evidence from other industry stakeholders suggested otherwise. AAV does not collect data on the extent to which RAPs are meeting timeframes for evaluating CHMPs, so it is difficult to verify the extent of this issue. While it is possible for industry to elect to have AAV evaluate their CHMP if a RAP has exceeded the prescribed timeframe, AAV advised that to date this option has not been used. One stakeholder indicated that it did not want to take up the option for AAV to assess the CHMP because of the potential impact on the ongoing relationship with that RAP.

While the Council can suspend or revoke the registration of a RAP if the Council believes that the RAP has failed to act 'in good faith' in relation to the evaluation of a CHMP, this option has not been invoked to date.

### **Cultural heritage permits**

The one issue raised in consultations for this assessment related to timeframes for permits, with one stakeholder noting that the timeframes can be lengthy. One stakeholder noted that the assessment period for permit applications can be as high as ten weeks. It was suggested that as there is no legislated time limit for assessing permit applications, permit applications can sometimes be prioritised behind other time-based assessments. According to another government stakeholder,

'the Act has improved aspects of the protection of heritage through CHMPs and permits including conditions that protect sites from harm. However, the Act can also restrict protection such as when urgent restoration works are needed to protect sites, and time delays associated with the permit process can lead to the deterioration of Aboriginal places'.<sup>24</sup>

Data from the Victorian Competition and Efficiency Commission's report on Victoria's regulatory system indicates that AAV took between 40-50 days for processing permit applications in relation to permits to disturb or excavate land to uncover or discover Aboriginal cultural heritage, and permits to carry out scientific research, and that this was in line with advice to business about likely processing times. AAV took longer, however, (60 days) to process permits to harm Aboriginal cultural heritage, and permits to buy or sell an Aboriginal object than the time advised to business (40-50 days).<sup>25</sup>

## 4.4 Costs associated with heritage instruments

The key cost to industry associated with the Act relates to the preparation of CHMPs (that is, the additional cost of preparing CHMPs relative to the cost of assessments under the old system), and to a lesser extent cultural heritage permits.

### **CHMP costs**

The cost associated with CHMPs was identified by the majority of industry stakeholders consulted as a significant impact of the Act. Costs associated with other heritage instruments, such as permits, was not raised, nor identified as a significant impact or concern when questioned.

The total cost of a CHMP represents:

- the cost of an appropriately qualified cultural heritage advisor to undertake the technical assessment and reporting to prepare the CHMP, and
- the cost for a RAP participating in the preparation of the CHMP (if the RAP has advised that it wishes to participate), and the cost to have the CHMP evaluated by the RAP, or the participation of RAP applicants and other Traditional Owners in non-RAP areas.

While it was not possible to identify the specific cost breakdown between these two elements, consultations with industry, cultural heritage advisors and the Council provided indicative estimates. These stakeholders suggested that the percentage of total costs of a CHMP that was received by RAPs was in the order of 20-30 per cent (with the remaining amount received by cultural heritage advisors).

At the time that the Act and Regulations were introduced, it was anticipated that there would be more CHMPs (compared to the number of assessments that were done under the previous legislation), and that CHMPs would be more costly due to changes to the conduct of assessments and in developing dispute resolution procedures.

Based on information from AAV the number of CHMPs has not increased as expected (the number of CHMPs prepared each year is now broadly the same as the number of assessments undertaken immediately before the Act was introduced). CHMPs are, however, more costly and there are significantly more complex CHMPs prepared than was anticipated. For example, under the previous legislative regime, only 30 per cent of plans prepared were complex, while under the new framework 82 per cent of all CHMPs are complex.

---

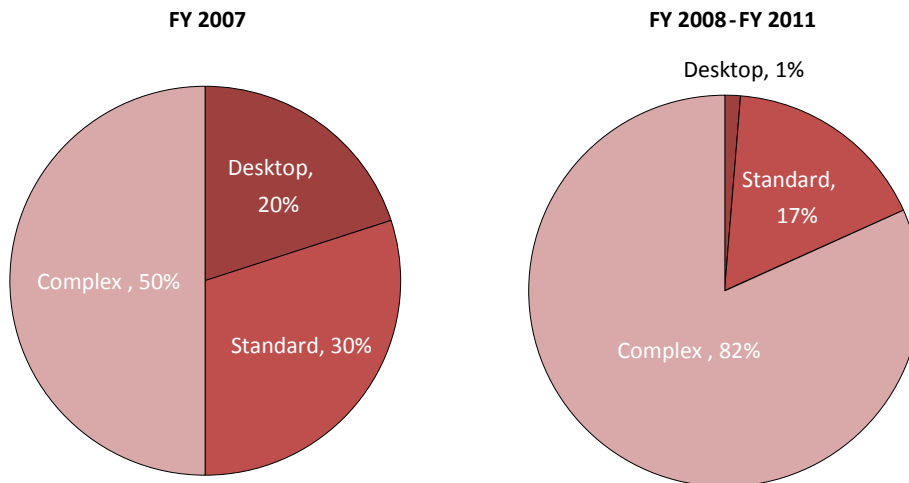
<sup>24</sup> DSE submission to PwC assessment.

<sup>25</sup> Victorian Competition and Efficiency Commission 2011, *The Victorian Regulatory System*, March, p.44.

Information provided from a blind survey of seven cultural heritage advisors<sup>26</sup> suggests that the following is representative of current prices in the market:

- desktop CHMPs typically cost between \$5,000 – \$15,000
- standard CHMPs typically cost between \$10,000 – \$75,000
- complex CHMPs typically cost between \$50,000 – \$200,000.

**Figure 4: Type of assessments (FY 2007) and type of CHMPs (FY 2008-FY 2011)**



Source: Data provided by AAV, September 2011

According to AAV, one reason for the increase in complex CHMPs is that the Act targets areas more likely to contain Aboriginal cultural heritage. The previous legislation did not discriminate in favour of any particular land or activity. Therefore, CHMPs conducted under the Act are more likely to discover Aboriginal cultural heritage, and activities requiring a CHMP are more likely to have an adverse impact on Aboriginal cultural heritage.

Stakeholder consultations undertaken for this assessment suggested that aspects of current CHMP requirements are overly prescriptive which can add to costs. While it was noted that the level of prescription does also provide greater certainty, it can also limit innovative approaches to managing and protecting Aboriginal cultural heritage. This is discussed further in the next chapter.

As a way of containing costs associated with CHMPs, some stakeholders are exploring preparing CHMPs in house (that is, employing a cultural heritage advisor internally). According to AAV, another way to minimise costs is to avoid impacts, thereby lowering assessment costs, although this was not mentioned by stakeholders consulted for this assessment.

Anecdotal advice suggests different views in some cases as to the need for a complex CHMP, with some indicating that AAV may require a complex CHMP even when the case for undertaking a complex assessment may not be obvious to the cultural heritage advisor or sponsor.

<sup>26</sup> Cultural heritage advisors were asked to identify the current average market price for each type of CHMP (as this was a blind survey it was not possible to further tease out cost drivers although previous analysis suggests costs would increase due to changes to the conduct of assessments and in developing dispute resolution procedures).

In addition to the cost of CHMPs, cultural heritage advisors also noted that some CHMP recommendations can require a high percentage of 'salvage', which is an additional cost to sponsors. Cultural heritage advisors noted that salvage costs can range from \$50,000 and \$200,000 depending on the size of the activity. It is not known precisely how many CHMPs incur these additional costs.

### ***CHMP consultation and evaluation costs***

Fees for RAPs evaluating CHMPs are based on the size of the activity and the type of CHMP and are prescribed in the legislation. Stakeholders consulted for this assessment did not raise any issue with the level of these fees.

There is still potential variability, however, in terms of other fees, for example fees for meetings and fieldwork. As sponsors are required to notify the relevant RAPs when they intend to prepare a CHMP, this provides an opportunity for the RAP to be involved in the development of the CHMP and to charge fees for that involvement. Some of the ways RAPs may participate in the development of CHMPs include participating in the conduct of the assessment (for example, attendance at field work) and consulting with the sponsor about the recommendations. While AAV has issued guidelines on these fees, they are voluntary, so there may be variability around the fees that are actually charged.

Stakeholders noted that often the number of hours and people involved in consulting and participating in a CHMP can differ depending on the RAP and the complexity of the activity. Feedback from the Urban Development Institute of Australia suggests there may be scope to expand the matters covered by the Guidelines to account for this – 'the Guidelines are not enough – there are guidelines for hourly rates but not for how many people turn up and therefore ultimate costs'.

While some industry stakeholders questioned the level of fees charged by RAPs, others confirmed the transparency and 'reasonableness' of certain fees although the 'bundling' of fees charged by cultural heritage advisors and RAPs to sponsors may be causing confusion within industry about how RAP fees are charged for certain activities.

While sponsors consulted for this assessment confirmed that the Act had significantly improved certainty around fees in relation to consulting with RAPs, many noted the challenges associated with non-RAP areas (46 per cent of Victoria is not currently covered by a RAP). Some sponsors advised that in areas where there were multiple RAP applicants, or potential RAP applicants, they felt it necessary to adopt a conservative approach to consultation (this approach was confirmed by cultural heritage advisors). As a result consultation between multiple parties could be both costly and create some uncertainty in terms of total costs for sponsors.

RAP applicants and other Traditional Owner groups can still charge fees in relation to consultation, but this exists outside the legislative framework established by the Act and as a result, there are no standards or guidelines. In addition, this consultation is understood to generally occur with more than one party, which increases costs.

### ***Cultural heritage permits***

The cost of cultural heritage permits vary based on the activity the permit relates to, with current fees ranging from \$98 for a permit to 'disturb or excavate land for the purpose of uncovering or discovering Aboriginal cultural heritage' to \$562 for a permit to 'carry out an activity that will harm, or is likely to harm Aboriginal cultural heritage'.<sup>27</sup>

No stakeholders raised concerns in relation to the cost of cultural heritage permits.

---

<sup>27</sup> [http://www.dpcd.vic.gov.au/\\_\\_data/assets/pdf\\_file/0008/68570/Cultural-Heritage-Permit-Application-Jul-2011.pdf](http://www.dpcd.vic.gov.au/__data/assets/pdf_file/0008/68570/Cultural-Heritage-Permit-Application-Jul-2011.pdf) [Accessed November 2011].

#### **Findings of Chapter 4**

- The Act has provided greater certainty for industry in respect of their legislative requirements including when a CHMP is required and the timing of decisions.
- Industry also acknowledge the benefits associated with the appointment of RAPs which has provided clarity as to who to consult and how. In particular, where a RAP has been appointed, processes and costs for industry in respect to CHMP consultations have been streamlined. It is difficult however, to assess the overall impact that the Act has had on development approval times.
- CHMPS are more complex and therefore costly than was initially expected partly reflecting the fact that CHMP requirements are targeted at high impact activities in areas of cultural heritage sensitivity.

## 5 Impacts on cultural heritage advisors

Consultation with cultural heritage advisors and AAV identified the following social and economic impacts of the Act as the most significant for cultural heritage advisors in Victoria:

- stipulating who can be a cultural heritage advisor
- creating standards for preparing CHMPs
- increasing the market for cultural heritage advisors
- developing university courses to support the growth of the cultural heritage advisor industry, and
- better capturing Aboriginal cultural heritage.

### 5.1 Stipulating who can be a cultural heritage advisor

Under the Act, a cultural heritage advisor must be engaged to: assist project sponsors in the preparation of CHMPs, conduct cultural heritage audits in compliance with the directions of an inspector, and supervise activities authorised by a cultural heritage permit.

Section 189 of the Act stipulates that:

1. A person may only be engaged as a cultural heritage advisor under this Act if the person —
  - a) is appropriately qualified in a discipline directly relevant to the management of Aboriginal cultural heritage, such as anthropology, archaeology or history, or
  - b) has extensive experience or knowledge in relation to the management of Aboriginal cultural heritage.

Pursuant to Section 189 (2) of the Act, the Minister has released guidelines specifying appropriate qualifications which are outlined in Box 7.

**Box 7: Appropriate qualifications for the purposes of Section 189 (1)(a) of the Act**

- a degree in archaeology, involving studies in Australian archaeology, to at least Honours level, or
- a degree in anthropology, involving studies in Australian Aboriginal culture, to at least Honours level, or
- a degree in history, involving studies in Australian Aboriginal history, to at least Honours level, or
- a certified qualification, to at least Honours level, in a related area of studies such as earth sciences, geography, environmental science, planning or surveying involving studies in South Eastern Australian contexts, or
- a certified qualification to at least graduate diploma or graduate certificate level in Cultural Heritage Management or Cultural Resource Management involving studies in Australian cultural heritage management, or
- full membership, or eligibility for full membership, of the Australian Association of Consulting Archaeologists Incorporated, or
- ordinary membership or fellowship of the Australian Anthropological Society Inc. or eligibility for ordinary membership or fellowship, or
- recognition as a Professional Historian under the national criteria endorsed by the Australian Council of Professional Historians.

Some stakeholders, including Department of Sustainability and Environment (DSE), noted that the requirements for degree qualifications can sometimes lead to suitably qualified yet inexperienced advisors conducting CHMPs, for example, newly qualified graduates.

## 5.2 Creating standards for preparing CHMPs

Under the previous legislative framework, there was a lack of guidance as to what should be contained in an assessment, which meant that the findings and recommendations of an assessment did not always adequately address how to manage any Aboriginal cultural heritage that was discovered. According to the Urban Development Institute of Australia, the findings and recommendations of assessments were often inconclusive.<sup>28</sup>

In 2007, AAV estimated that approximately 33 per cent of assessments undertaken under the old system were in some way 'inadequate', either in assessing and reporting on the heritage found, advising the client appropriately, providing appropriate heritage management recommendations, or reflecting appropriate consultation with the right Aboriginal community organisations.

The possible implications of inadequate assessments were first, a greater risk of inadvertent damage to Aboriginal cultural heritage, and second, Aboriginal communities may not have been fully consulted, which may in turn have meant they were less likely to ultimately consent to the activity in question or may take longer to provide consent than would otherwise be the case.<sup>29</sup>

### **Better quality CHMPs**

Under the Act, CHMPs are required to be prepared at the level of detail and in accordance with the minimum standards set out in the *Guide to Preparing a Cultural Heritage Management Plan* and

---

<sup>28</sup> The Allen Consulting Group, *Aboriginal Heritage Regulations 2007: Regulatory Impact Statement*, April 2007.

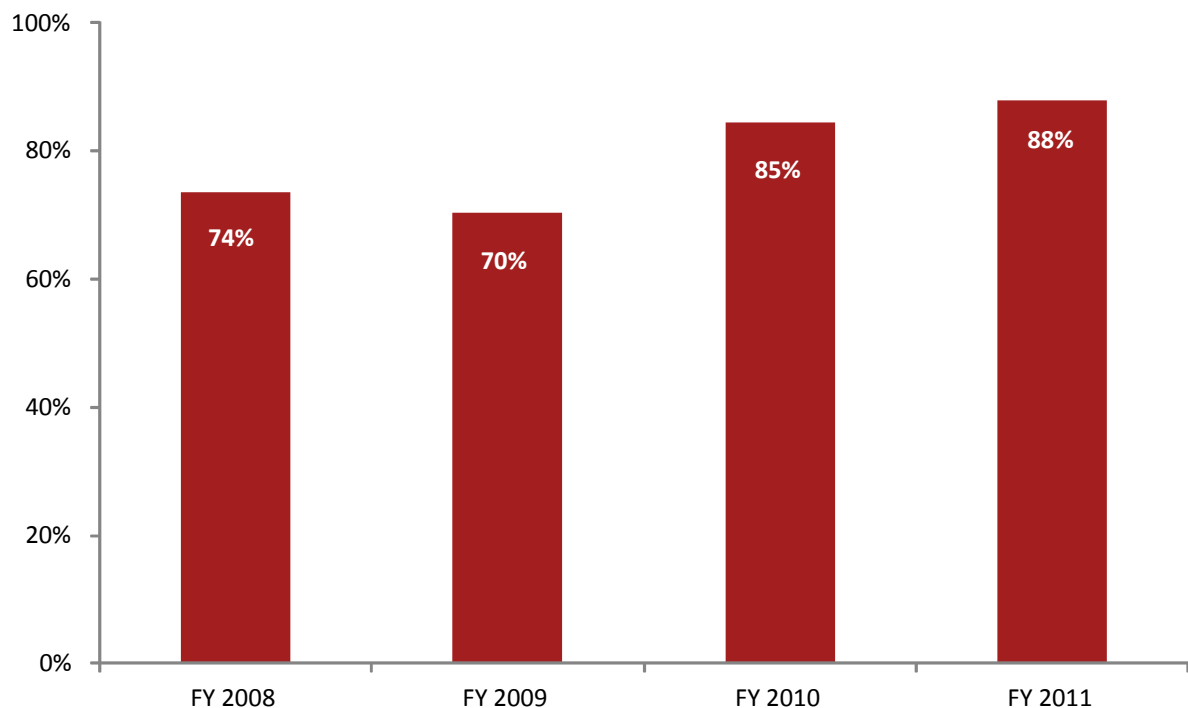
<sup>29</sup> The Allen Consulting Group, *Aboriginal Heritage Regulations 2007: Regulatory Impact Statement*, April 2007.



CHMPs can be rejected by the RAP or Secretary, DPCD for a variety of reasons.<sup>30</sup> This is considered to have improved the quality of CHMPs conducted. This was confirmed during consultations undertaken for this assessment, where a number of stakeholders reported an improvement in the quality of CHMPs. According to one stakeholder ‘with our infrastructure projects, you can tell whether CHMPs are adhering to the guidelines because those that aren’t will be assessed as inadequate – there is a longer upfront process but the ability to knock CHMPs back means that quality control works’.

To test the extent to which CHMPs are approved the first time, this assessment draws on evaluations made by AAV (as data is available in respect of AAV evaluations). As shown in Figure 5, the percentage of CHMPs approved the first time by AAV is generally high and overall has increased in recent years.

**Figure 5: Percentage of CHMPs approved first time by AAV (FY 2008-FY 2011)**



Source: Data provided by AAV, September 2011

Some stakeholders indicated that the quality of CHMPs may have been improved as the market has adjusted to the new legislation. According to one stakeholder, ‘it was previously unregulated so you could get substandard work – now we’ve gone to the other end of the spectrum quality wise, and some consultants have struggled with quality sometimes’. It was reported by some industry stakeholders as well as cultural heritage advisors themselves that in the early years of the Act, some companies were using relatively inexperienced staff (that is staff who had recently completed their qualifications) to meet the demand for CHMPs which may have led to issues around quality. In response, VicRoads and Parks Victoria advised that they decided to establish panels of ‘preferred suppliers’ of cultural heritage advisors in order to better ensure quality CHMPs.

<sup>30</sup> Department of Planning and Community Development, *Guide to preparing a cultural heritage management plan for the purposes of the Aboriginal Heritage Act 2006*, Melbourne, February, 2010.

Local government was also asked about their satisfaction with the quality of CHMPs in the online survey. Of the seven local government authorities who answered the question about CHMP quality, six indicated that they are satisfied with the quality of CHMPs produced under the new system.

While the new legislation has clearly 'raised the bar', some stakeholders thought that certain requirements surrounding the preparation of CHMPs can be unduly prescriptive, for example requirements as to how to do sampling.

DSE advises that only a small portion of the required CHMP is relevant in terms of protecting Aboriginal cultural heritage while completing works. In some cases DSE believes that the background research in CHMPs is poor and vital information or recommendations are insufficient. In these circumstances DSE advises that further costs are incurred at a later stage. Overall DSE is of the opinion that some CHMPs do not contain relevant land management recommendations to inform land managers how to effectively protect heritage sites.

### ***More consistent approach to assessing and protecting heritage***

Stakeholders consulted as part of this review generally acknowledged that the Act has improved consistency in the approach of assessing and protecting Aboriginal cultural heritage compared to the previous legislative framework. As discussed previously in this assessment, the Act enshrines the hierarchy of 'avoid, minimise, salvage'. Stakeholders advised that the Act provides improved clarity in relation to when a CHMP is required, how it is to be prepared, and what it is to contain, and by establishing a system of RAPs enables consultation to occur with affected Aboriginal communities.

According to AAV (quoted in the 2008 Review of the Regulations), there is consistency across CHMPs in providing recommendations for Aboriginal cultural heritage and contingency plans for unexpected finds. AAV advises that recommendations in the approved CHMPs are broadly significance based. For example, where Aboriginal cultural heritage will be harmed during the conduct of the activity and the Aboriginal cultural heritage is assessed as being of low significance, it may be proposed that this harm should be allowed given the necessity of the activity (where there is a RAP, this is negotiated so that the RAP, sponsor and cultural heritage advisor agree to how any harm should occur). However, where Aboriginal cultural heritage is assessed as being of higher significance, harm is avoided, measures to avoid harm are more substantial, and/or more substantial mitigation measures are proposed. This significance based approach to recommendations is considered appropriate, and is consistent with the approach promoted by heritage industry benchmarks such as the Burra Charter.<sup>31</sup>

Cultural heritage advisors consulted for this assessment did note, however, that there can be varying and (in their view) overly prescriptive advice given in respect of approval requirements from AAV where there is no RAP in place (although it is unclear whether this is an issue with the legislation per se or its administration) as well as increasing expectations around the level of detail requirement in an assessment for approval (it was noted that some CHMPs can be 400 page reports). Cultural heritage advisors noted that varying and quite detailed information was being requested before any approval could take place, such as requiring the dimensions of the spade used for one CHMP but not others, or requiring a greater number of site cards to be completed per site than previously was required. Cultural heritage advisors suggested that the impact of this uncertainty is on cost, noting that they are often conservative when preparing a CHMP as a result of some inconsistency in requirements for approval.

DSE advises that for the most part cultural heritage advisors are meeting their required actions under the Act. DSE is of the opinion that the exhaustive requirements within CHMPs and the emphasis on ethnographic and archaeological information is problematic. DSE would prefer to see greater requirement for practical management recommendations at the expense of some current 'academic' content.

---

<sup>31</sup> The Allen Consulting Group, *Review of the Aboriginal Heritage Regulations 2007*, November 2008.

### 5.3 Increasing the market for cultural heritage advisors

The introduction of the Act has seen increased demand for the services of cultural heritage advisors. As at November 2011, there are 163 cultural heritage advisors registered with AAV across 63 companies.<sup>32</sup> This is a significant increase from 60 cultural heritage advisors operating in Victoria ahead of the introduction of the Act.

Based on a weighted average cost of a CHMP the industry received \$42.71 million from fees for preparing CHMPs in 2010-2011.<sup>33</sup>

DSE suggests that under the Act, the need for cultural heritage assessment and planning consultants has created a “lucrative niche industry”. DSE is of the opinion that aspects of the former system could be adapted to the Act to better engage Aboriginal communities in assessment and management functions, thereby diminishing the monopoly of cultural heritage advisors and potentially reducing some of the costs.

According to one stakeholder, “because of increased growth we are seeing more interstate firms and lots of younger people coming in...eighteen months ago there were big problems in terms of availability and access to consultants”. Issues around the capacity of the market to meet demand appear to be abating – according to the same stakeholders, availability and access to consultants “is not an issue this year”.

Increased market opportunities do not appear to be a result of an increase in the overall demand for CHMPs (given that the number of CHMPs is now broadly in line with the number of assessments done under the previous legislation). Rather, it appears demand for the services of cultural heritage advisors has increased mainly due to the increasing complexity of CHMPs completed and the requirement in the Act for the specific involvement of a cultural heritage advisor.

Advice from AAV suggests that the experience that cultural heritage advisors have been able to gain in Victoria has enabled them to be successful in other cultural heritage work across Australia. In fact, AAV advised that they had previously received reports that there was a lack of capacity in the Victorian cultural heritage advisor industry to deal with the demand of Victorian CHMPs due to the number of Victorian advisors working in Western Australia on work related to the mining boom. Consultations conducted for this assessment suggest that while this was previously a concern, it is no longer an issue for industry.

### 5.4 Developing university courses to support the growth of the cultural heritage advisor industry

Cultural heritage management is often taught as a component of archaeology in Australian universities. However, in recent years, it is being offered in some places as a distinct practical course separate from the more academic archaeology course. In Victoria, Latrobe University is in the process of developing a Masters Degree course with a significant component of this course concentrating on cultural heritage management. This recognises that most archaeology graduates go on to work in consulting, not in academia. Courses such as this could help to ensure more graduates are appropriately equipped to operate as heritage consultants in Victoria.<sup>34</sup>

---

<sup>32</sup> <http://www.dpcd.vic.gov.au/indigenous/aboriginal-cultural-heritage/cultural-heritage-advisors> [Accessed November 2011].

<sup>33</sup> This estimate is based on the number of CHMP prepared in 2010-11 and the weighted average cost of a CHMP taking a mid-point of the ranges outlined earlier in this report.

<sup>34</sup> Advice from AAV.

## 5.5 Better recording of Aboriginal cultural heritage

A register of Aboriginal cultural heritage has been in place in Victoria since 1972. The Register records Aboriginal cultural heritage places and objects found and identified around Victoria, for example, art sites, stone artefacts, and ceremonial places. Since the introduction of the Act, access to the Register has been limited according to need, for example RAPs are able to access the Register for their designated area and cultural heritage advisors are able to access the Register when preparing a CHMP.<sup>35</sup> Other people, such as researchers, are also able to have access to the Register if they obtain the permission of the RAP for their area of interest, or in the absence of a RAP, the Council.

Over 32,000 Aboriginal heritage places and objects are recorded on the Register. Since the commencement of the Act in 2007, 4,570 new Aboriginal heritage places and objects have been added to it.<sup>36</sup>

However, the NSW Aboriginal Land Council 2010 review cited some issues about the currency of information in the Register. One RAP indicated that it periodically checks records on the Register because information is “sometimes out of date”. In addition to some information being out of date, there have also sometimes been significant delays in recording sites on the Register. All preliminary recordings must be checked by AAV. Several interviewees described lengthy delays in the processing of sites of by AAV. The authors of the NSW Aboriginal Land Council 2010 review were told of one case where an unregistered scatter site was disturbed despite a preliminary recording having been submitted to AAV 18 months earlier.<sup>37</sup>

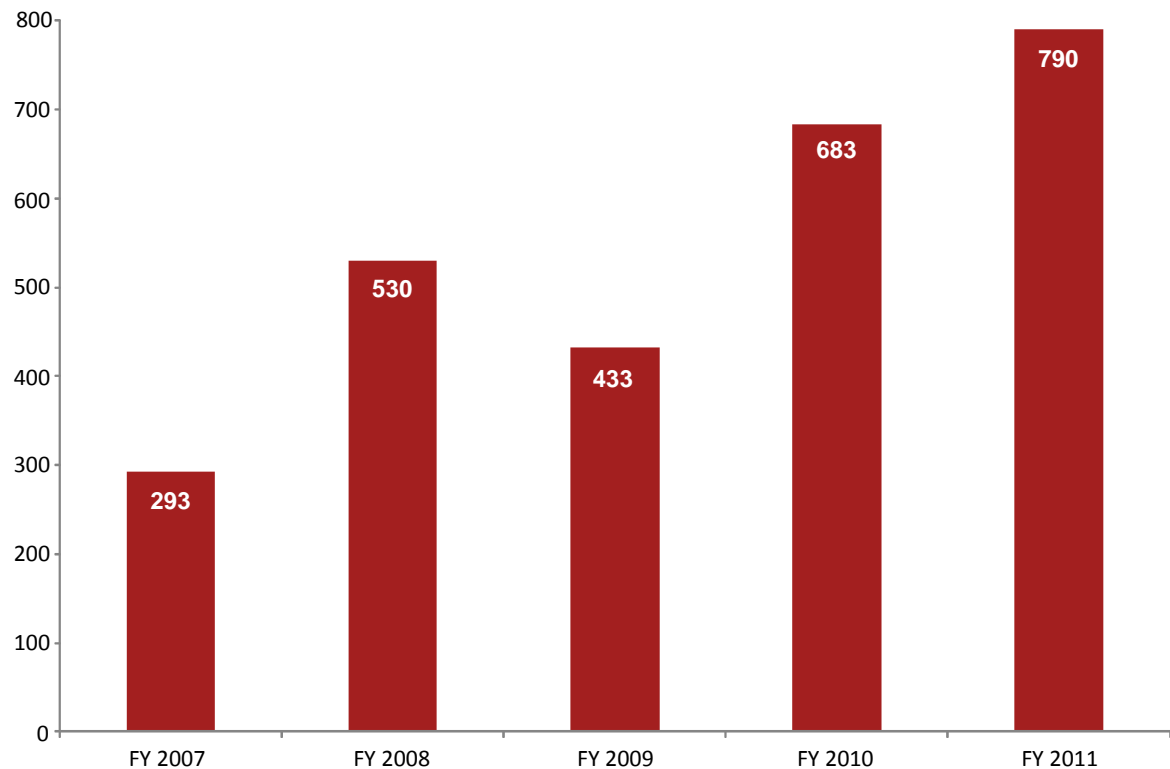
As shown in Figure 6 the number of people seeking to access the Register has generally increased over time, reaching 790 individuals applying for access to the Register in 2011.

---

<sup>35</sup> Department of Planning and Community Development, *Discussion Paper on the Review of the Aboriginal Heritage Act 2006*, September, 2011.

<sup>36</sup> Department of Planning and Community Development, *Discussion Paper on the Review of the Aboriginal Heritage Act 2006*, September, 2011.

<sup>37</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August 2010, page 44.

**Figure 6: Number of people seeking access to the Register (FY 2007-FY 2011)\***

\* FY 2007 figure only includes data from 28 May 2007 to 30 June 2007.

ACHRIS has been developed to provide online real time internet access to individuals and organisations which are granted access to it. ACHRIS is a web-based tool that uses the latest spatial technology to integrate information held in the Register. ACHRIS provides an online portal to the Register that allows authorised users to search the Register from anywhere, at any time. In addition, it provides for electronic lodgement of site cards and other information. ACHRIS aims to provide significant savings in time and cost to prepare CHMPs.

In November 2011, AAV was awarded the *Asia-Pacific Spatial Excellence Award* (People and Community category) for ACHRIS. It was noted by the Minister for Aboriginal Affairs that ACHRIS has 'resulted in streamlined business processes that significantly reduce the time, effort and cost of the assessment and protection of Aboriginal cultural heritage'.<sup>38</sup> ACHRIS also won the *People and Community Award* at the Victorian Spatial Excellence Awards earlier in 2011.<sup>39</sup>

<sup>38</sup> <http://www.premier.vic.gov.au/media-centre/media-releases/2541-international-award-for-achris-.html> [Accessed December 2011]

<sup>39</sup> <http://www.dpcd.vic.gov.au/indigenous/news-and-events/news/achris-wins-people-and-community-award> [Accessed December 2011].

### **Findings of Chapter 5**

- The Act requires a cultural heritage advisor be engaged to assist with the preparation of a CHMP which has increased market opportunities for cultural heritage advisors in Victoria.
- Under the Act a CHMP must be prepared at the level of detail and in accordance with minimum standards. This has improved the quality of CHMPs and enabled Aboriginal cultural heritage to be assessed and protected in a more consistent way.
- A number of stakeholders view some of Act's requirements as overly prescriptive or inadequate for the purpose of protecting Aboriginal cultural heritage. Stakeholders have also suggested there can be varying advice given by AAV which impacts on the extent of detail required in some CHMPs.

## 6 Impacts on government

Consultation with government stakeholders (including focus groups and an online survey of local government) identified a range of social and economic impacts of the Act on government in Victoria specifically:

- increased certainty by regulating the way Aboriginal cultural heritage is managed
- impact on State government
- impact on local government, and
- building relationships between RAPs and government.

### 6.1 Increased certainty by regulating the way Aboriginal cultural heritage is managed

Aboriginal cultural heritage was previously protected under a dual regime, using Commonwealth and State legislation. Local government authorities were required to 'identify, conserve and protect places of natural or cultural value from inappropriate development'. While the system established the obligation for planning and development authorities to ensure that Aboriginal cultural heritage was considered in the planning process, it did not establish a process for doing so, and different standards could be required for similar projects by Aboriginal groups.

The previous system was also administratively cumbersome for government to manage. Government agencies, developers, Aboriginal communities and others needed to understand their obligations under each piece of legislation, which could be difficult.

Because of these uncertainties, many local authorities referred Aboriginal cultural heritage issues to AAV (in particular, for advice as to whether a heritage assessment should be conducted). AAV received between 300 and 500 referrals a year (from local governments, developers and government authorities) under the previous system.

Another potential problem was that authorities required Aboriginal cultural heritage assessments to be prepared when this may not have been technically necessary. AAV estimates that at least five to ten unnecessary assessments were prepared each year.<sup>40</sup>

The most significant problem, however, was that decision makers did not consider the impact on Aboriginal cultural heritage because they did not fully appreciate their obligations or know how to go about meeting them. Local governments effectively bore the risk that Aboriginal cultural heritage was not always properly considered and therefore was destroyed or poorly managed, as local government authorities were responsible for considering Aboriginal cultural heritage and providing for the conservation and enhancement of Aboriginal places, sites and objects.<sup>41</sup>

A key objective of the Act is to establish processes for the timely and efficient assessment of activities that have the potential to harm Aboriginal cultural heritage. One way the Act seeks to protect Aboriginal cultural heritage is by making it an integral consideration for land use planning

---

<sup>40</sup> This information was provided by AAV for the purpose of this assessment.

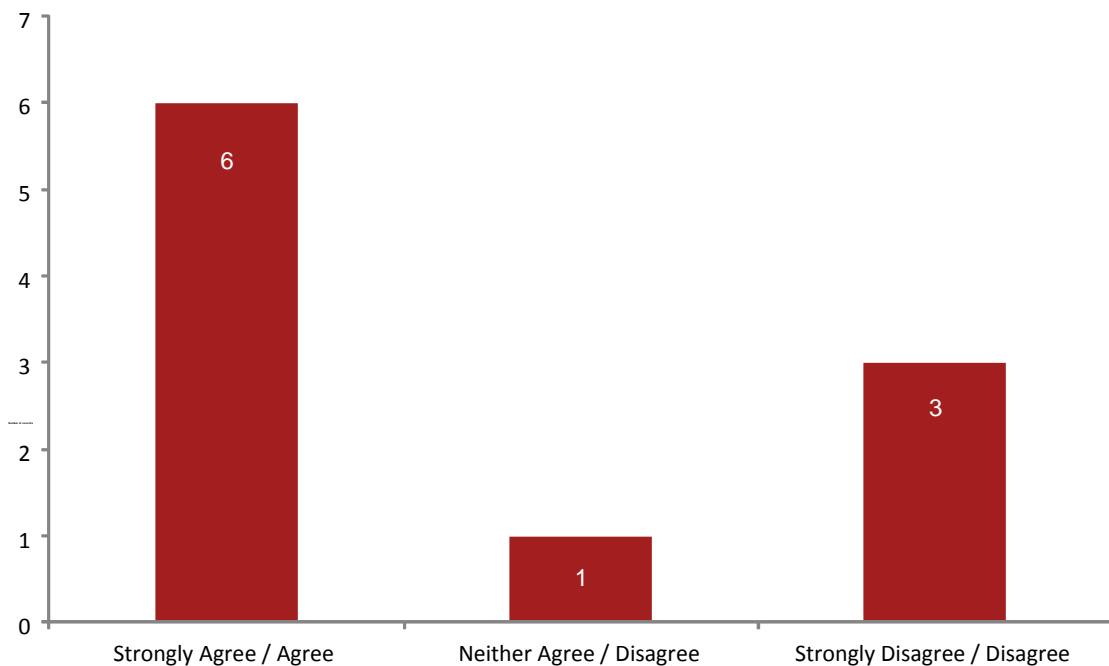
<sup>41</sup> The Allen Consulting Group, *Aboriginal Heritage Regulations 2007: Regulatory Impact Statement*, April, 2007.

and natural resource management agencies.<sup>42</sup> Statutory decision makers are prevented from issuing a permit or authorisation before Aboriginal cultural heritage has been considered.

In terms of local government views as to whether they understood when and how to satisfy the requirements of the Act, most surveyed for this report either strongly agreed or agreed that – in their roles as statutory decision makers, land owners / managers and infrastructure providers under the legislation – they understood when and how to satisfy the requirements of the Act.

The survey of local government authorities undertaken for the purposes of this assessment also sought to gauge the extent to which the Act is clear as to when a CHMP is required. Of the ten local government authorities who responded to this question, the majority thought that the Act is clear (see Figure 6).

**Figure 7: Survey results – ‘The Act is clear about when a CHMP is required’**



## 6.2 Impacts on State government

### AAV

Following the introduction of the Act, AAV undertook a range of initial activities to support the new legislative regime. This included enforcement activities, education, and assistance to local government. AAV incurs ongoing costs associated with processing applications for permits, assessing CHMPs in areas without a RAP, investigations and enforcement, costs associated with the Register, ongoing education and information provision, and support for the Council and RAPs.

Figures from 2010-11 show AAV spent \$4.7 million on the heritage operations listed above<sup>43</sup>. However this figure includes activities that were also being undertaken under the old system. AAV

<sup>42</sup> Aboriginal Affairs Victoria, *Discussion Paper on the Review of the Aboriginal Heritage Act 2006*, September, 2011.

<sup>43</sup> Information provided by AAV, December 2011.



occasionally needs to contract out evaluation services to qualified heritage professionals, as demands on its heritage staff can sometimes exceed capacity. From February 2011 to November 2011, AAV has submitted 91 CHMPs to external evaluators at a total cost of \$165,800. This figure does not account for hourly rates and on-costs of AAV staff, but is a broad indication of the average cost of evaluating a CHMP of around \$1,800.

This also provides an indication of the savings to AAV of having RAPs in place to evaluate CHMPs. Where a RAP is evaluating a CHMP it could save AAV the same amount on average per CHMP. For 2010-11, 183 CHMPs were evaluated by RAPs. This represents an indicative saving to government of around \$329,400.

### ***Council***

Advice from the Council suggests that there were no significant costs associated with establishing the Council. There are however ongoing costs including secretariat functions, sitting fees and travel costs for Council members, costs regarding legal advice, and other associated meeting costs.

The Council's ongoing costs include two permanent staff along with four project staff and Victorian Government Solicitor's Office costs. The Council currently meets every six weeks and Council members receive travel and accommodation compensation associated with attending meetings.

The Council has advised that it does not have a dedicated budget, with resources and staffing managed through AAV. According to the Council, this limits its ability to proactively identify and develop opportunities to fulfil all of its functions under the Act, particularly promoting public awareness of Aboriginal cultural heritage.

### ***Other government departments***

Departments and agencies also incur costs related to their role as land owners and/or managers or infrastructure providers. VicRoads, Parks Victoria, DSE and Department of Transport incur costs as sponsors of CHMPs for certain activities.

VicRoads has established a panel of cultural heritage advisors that prepare CHMPs, and is charged as follows:

- between \$5,000-\$15,000 for a desktop assessment
- between \$10,000-\$25,000 for a standard assessment, and
- between \$30,000-\$150,000 for a complex assessment.

With the exception of fees for a desktop assessment (which are in line with the average identified by cultural heritage advisors), it would appear that the cost of CHMPs for VicRoads are lower than the industry average for standard and complex assessments.

Parks Victoria noted that CHMPs costs have increased over time which has resulted in a greater proportion of development costs being allocated to CHMP fees rather than direct project expenditure.

DSE believes that the Act provides a greater level of certainty compared with the previous legislation (although suggests that some of the requirements are onerous and inefficient), however, this has come with a number of costs (monetary and time) related to the processes required. Specifically, the decision making costs have increased substantially, particularly in the case of complex CHMPs.

DSE suggests that it does not generally incur costs in terms of meeting with RAPs for consultations, however it does in the case of assessments and monitoring. DSE advises that costs can vary from the DPCD guidelines between RAPs and projects. This variation can have problematic budget

implications for DSE. From DSE's experience, some RAPs charge above the standards outlined and most RAPs have a schedule of fees however, there is variance within this range and at times, additional costs. DSE has also reported cases of variance in regard to the quality and reliability of tasks performed by RAPs.<sup>44</sup>

### 6.3 Impact on local government

Local governments perform two main roles under the Act:

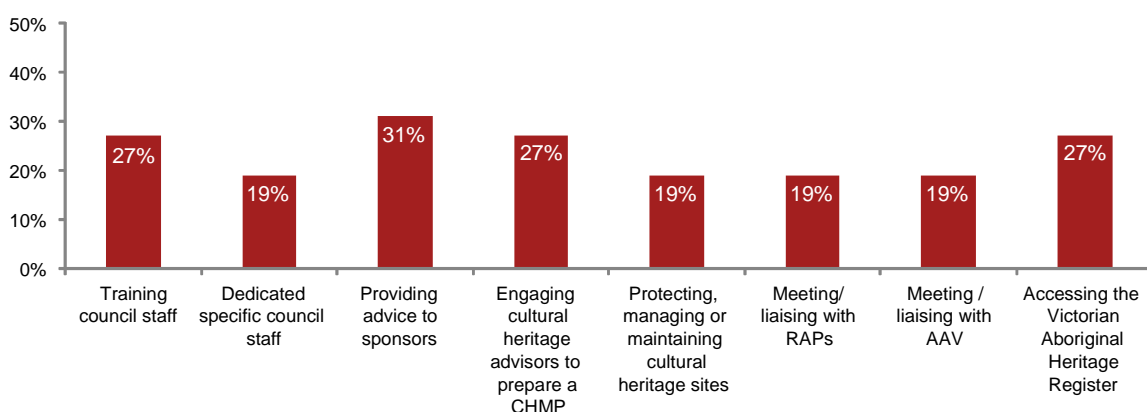
- Statutory decision maker – in this role, local governments must not grant a statutory authorisation for an activity that requires a CHMP unless there is an approved CHMP for the activity. Local government authorities must also ensure that any statutory authorisation granted is consistent with the approved CHMP.
- Land owner and manager and infrastructure provider – in this role, local government authorities are required to prepare a CHMP if they wish to undertake a high impact activity in an area of cultural heritage sensitivity. Local government authorities also need to apply for a cultural heritage permit to undertake activities that will, or are likely to, harm Aboriginal cultural heritage.

As part of this assessment an online survey was issued to all 79 local government authorities to understand the impact of the Act. Survey results suggest that in the last 12 months the main activities, undertaken by local government in relation to satisfying the requirements under the Act include:

- providing advice to sponsors
- training local government staff, and
- engaging cultural heritage advisors to prepare a CHMP.

A full list of responses by local government in relation to activities undertaken in relation to complying with the Act is detailed in Figure 8.

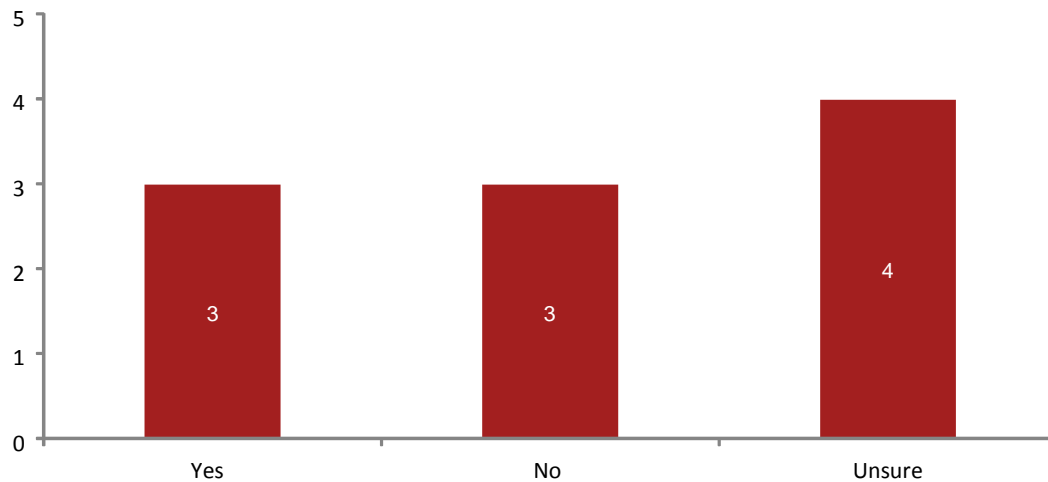
**Figure 8: Activities undertaken by local government in relation to satisfying the requirements under the Act**



<sup>44</sup> DSE Submission to PwC assessment.

Through the survey, local government was also asked whether they are adequately resourced to perform their roles under the Act. The results, as shown in Figure 9 are not conclusive with the majority of respondents indicating that they were unsure if they are adequately resourced.

**Figure 9: Local government survey result – ‘Is your local government authority adequately resourced to perform its roles under the Act?’**



In their role as land owner and manager and infrastructure provider, local governments interface with the legislation as a sponsor. In their role as a statutory decision maker, local government is impacted in terms of processing planning applications and approvals. In this regard, the Act provides a clear process for local government by indicating how planners must consider Aboriginal cultural heritage.

When the Act was introduced, consequential amendments were made to the Victoria Planning Provisions to better integrate CHMPs with local planning processes. The aim was to ensure that CHMPs are carried out prior to development activity taking place. Local government must check whether a CHMP is required prior to determination of a planning permit application. Where a CHMP is required, the local government authority cannot issue a planning permit until it has received a copy of the approved plan and must ensure that the planning permit is consistent with the recommendations outlined in the CHMP.

**Box 8: Victorian State Planning Policy Framework clause pertaining to Aboriginal cultural heritage (15.03-2)**

**Objective:** To ensure the protection and conservation of places of Aboriginal cultural heritage significance.

**Strategies:**

- Identify, assess and document places of Aboriginal cultural heritage significance, in consultation with relevant RAPs, as a basis for their inclusion in the planning scheme.
- Provide for the protection and conservation of pre- and post-contact Aboriginal cultural heritage places.
- Ensure that permit approvals align with recommendations of a CHMP approved under the Aboriginal Heritage Act 2006.

**Policy guidelines: Planning must consider as relevant:**

- The Aboriginal Heritage Act 2006 for all Aboriginal cultural heritage
- The findings and recommendations of the Council
- The findings and recommendations of the Council for post-contact Aboriginal heritage places where relevant.

The integration of the Act with local planning laws was both praised and criticised by the RAPs interviewed for the NSW Aboriginal Land Council 2010 review. On the one hand, one RAP observed that under the previous legislative framework heritage assessments were frequently not completed before development commenced. On the other hand, some RAPs expressed concern that local government authorities are not aware of, or chose to ignore, their obligation to consider whether a CHMP is required. One RAP reported that within its boundaries several local government authorities “don’t care and won’t push CHMPs”.<sup>45</sup>

It was suggested that this is not an issue with the legislation itself, but is more a question of local governments being better informed of their obligations and proactively educating the community about Aboriginal cultural heritage. One interviewee felt that it would be beneficial to set out the integrated planning and CHMP process in the Act.<sup>46</sup>

## 6.4 Building relationships between RAPs and government

Victorian government departments and agencies consulted for this assessment believed that the establishment of RAPs has strengthened links between themselves and Aboriginal communities. VicRoads and Parks Victoria in particular suggested that engaging and consulting with a RAP during the CHMP process was seen not only as a requirement under the Act, but also as an investment in the long term relationships with Aboriginal communities. Stakeholders suggested that government’s engagement with the RAP network extended beyond the requirements under the Act – for example, RAPs were often consulted as representatives of Traditional Owners in relation to other policy decisions. These departments advised that the establishment of the RAP network under

---

<sup>45</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August, 2010, page 41.

<sup>46</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August, 2010, page 41.

the Act has facilitated better engagement and relationships between government and local Aboriginal groups. The engagement facilitated by the establishment of RAPs in this respect is of broader value to the Victorian Government in ensuring that the views and perspectives of Aboriginal people are considered in the formulation of government policy and delivery mechanisms beyond the Aboriginal Affairs portfolio.

DSE suggests that the Act makes it clear who they need to talk to in managing cultural heritage values where there is a RAP. In these cases, DSE is able to act with certainty in consultation with RAPs. DSE feels that the Act, however, creates uncertainty where there is no RAP determined. In these cases, DSE has “no way of knowing when or if a RAP applicant will be a RAP in the future, other than when the Council publishes a decision online”.

The survey of local government undertaken for this assessment asked whether the Act has affected links between local Aboriginal groups and local government authorities. Of the ten local government authorities that responded, three said that it had strengthened links, four said there had been no change, one said that it had weakened links, and three provided responses that effectively meant they were not sure.

### **Findings of Chapter 6**

- The Act has provided increased clarity for government and industry alike, by regulating the way Aboriginal cultural heritage is managed.
- However the Act has imposed a range of costs on State and local governments to administer and comply with its requirements.
- The Act has increased the integration of CHMPs with local planning processes and reduced the costs for State government by RAPS often undertaking CHMP evaluations rather than AAV.
- The Act has also strengthened links between government and Aboriginal communities, through the establishment of RAPs.

## 7 Impacts on Victoria

The social and economic impacts of the Act on the State of Victoria include:

- managing and protecting Aboriginal cultural heritage
- broader public awareness and understanding of Aboriginal cultural heritage, and
- aspiring to best practice.

### 7.1 Managing and protecting Aboriginal cultural heritage

There is a range of values associated with the protection of Aboriginal cultural heritage places. Some places have scientific importance (for example archaeological, anthropological, historical). Places may also be valuable to the community, at local, national and international levels for cultural, tourism and protection reasons. Other places may have a spiritual importance that is confined to a specific sector of the community.<sup>47</sup>

In general terms, heritage has the potential to be valued by the community in terms of:

- physical assets that embody some forms of heritage — houses, public buildings, and so on — have a ‘use value’ like any physical asset and a heritage component may increase this use value, as people derive additional value from living or working in a heritage place, and
- beyond physical value, heritage assets are valued for a variety of intangible benefits. Indeed, people may value:
  - the existence of heritage, where although they might never visit a given place or be in possession of a particular object, they would feel a quantifiable loss if it were destroyed
  - the option to visit a heritage site, although they may not have immediate plans to visit, and
  - the chance to bequeath a heritage place to future generations, as part of a shared cultural legacy.<sup>48</sup>

Other intangible benefits of cultural heritage include educational, scientific, economic, political and market values. Cultural heritage also contributes to a ‘public good’ in the form of aesthetic and cultural experience.<sup>49</sup>

Cultural heritage, particularly Aboriginal cultural heritage, is often referred to as ‘non-renewable’ — and so it is difficult to put a monetary value on heritage loss. Aboriginal stakeholders and cultural heritage advisors who provided comment as part of the preparation of the Regulatory Impact Statement in 2007 all advised that it is not possible to assign a monetary value to Aboriginal cultural heritage.

Few Australian studies have assessed the non-market value of cultural heritage. One study by Rolfe and Windle showed that Aboriginal and non-Aboriginal people value conservation of Aboriginal

---

<sup>47</sup> J. Rolfe and J. Windle 2003, *Valuing the Protection of Aboriginal Cultural Heritage Sites*, The Economic Record, vol 79 (special issue), June, pp. S85–S95.

<sup>48</sup> I. Serageldin 1999, *Very Special Places: The Architecture and Economics of Intervening in Historic Cities*, The World Bank, Washington.

<sup>49</sup> S.K. Harding 1999, *Value, Obligation and Cultural Heritage*, 31 *Arizona State Law Journal* 291 (1999).

cultural heritage — even if those values differ — and there is a loss to numerous third parties if the heritage is inappropriately destroyed or altered

The Act facilitates the management and protection of Aboriginal cultural heritage through CHMPs, permits and agreements. This section discusses each of these in turn, before considering compliance with the legislative requirements more broadly.

### **CHMPs**

Before the Act, where Aboriginal heritage was managed, it was generally managed after planning permits had been issued. This meant that there were few opportunities to avoid or minimise harm from the outset of a development, and the process was essentially one of managed destruction. The focus was on monitoring of construction and obtaining consents to disturb or destroy Aboriginal cultural heritage as these were discovered. This also caused significant delay to development projects. What assessment of heritage that did occur was ad hoc and not targeted in any way. Under the Act, the CHMP process means that assessment occurs before the planning permit, providing an opportunity to avoid harm (through re-design), to minimise impacts or establish an agreed process to manage harm. No further monitoring or consents are required. Assessment is targeted at high impact activities in areas where there is likely to be Aboriginal cultural heritage.

Overall, stakeholders consulted for this assessment generally felt that Aboriginal cultural heritage is now better managed and protected compared to the previous legislative framework (although there are opportunities for improvement). Stakeholders generally attributed the improvement to the clarity provided by the legislation as well as the proactive (before development takes place), comprehensive and rigorous nature of CHMPs. CHMPs are also integrated with the planning system (as discussed elsewhere in this assessment).

### **Targeting the management of Aboriginal cultural heritage**

The ‘triggers’ for a CHMP are designed to target developments involving high impact activities in areas where Aboriginal cultural heritage is most likely to be present, see Box 9 below.<sup>50</sup>

---

<sup>50</sup> The *specific* triggers are set out in the Regulations rather than the Act (and so are not a focus of this assessment).

### Box 9: Triggers for the preparation of a CHMP

The Regulations require a CHMP for an activity if:

- all or part of the activity area for the activity is in an area of cultural heritage sensitivity (although an area of cultural heritage sensitivity - other than a cave - is no longer regarded as sensitive if all of it has been subject to past significant ground disturbance), and
- all or part of the activity is a high impact activity.

An area of cultural heritage sensitivity is an area in which Aboriginal cultural heritage is, or is likely to be, present. These areas are based on analysis of where known sites are located in the existing Register. This database has been developed over thirty years, and includes information such as the proximity of a site to a waterway.

A high impact activity is one that has the potential to have a high impact on Aboriginal cultural heritage. Examples of high impact activities include certain construction or building works; an activity for which an earth resource authorisation is required; certain timber production; and subdivisions into three or more lots if a dwelling may be constructed on each of the lots.

A CHMP is not required for exempt activities, such as building alterations, demolitions or removals; extensions to a dwelling; construction of one or two dwellings; construction of buildings ancillary to a dwelling such as a storage shed, garage, pool, fence or water tank; certain emergency works; subdivision of an existing building; sea-bed development and minor works.

According to AAV, by targeting specific areas and activities:

- CHMPs prepared under the Act are more likely to discover Aboriginal cultural heritage than was previously the case. Cultural heritage advisors consulted for this assessment indicated that CHMPs for medium to large projects find Aboriginal cultural heritage 80-90 per cent of the time, although CHMPs for small subdivisions in residential areas rarely find Aboriginal cultural heritage.
- CHMPs are prepared for activities that are more likely to have an adverse impact on Aboriginal cultural heritage. Whereas the old system did not discriminate in favour of any activity, the new system not only targets high impact activities but also exempts other activities on the basis that they were considered likely to have little or no impact on Aboriginal cultural heritage (minor works), be unavoidable (such as emergency activities), or involve activities where cultural heritage issues should have been considered at an earlier stage (such as a single house development, where a CHMP, if required, is completed earlier at the subdivision stage).
- As a result of these factors, there are now more complex CHMPs prepared than under the old system (which is discussed further in Chapter 4). According to one RAP consulted for the New South Wales (NSW) Aboriginal Land Council report, previously a desktop study, site walk through and site supervision were considered an appropriate level of research, whereas now a “full investigation” must be completed and the sponsor must have a contingency plan in place prior to work starting.

On the other hand, several RAPs interviewed as part of the NSW Aboriginal Land Council 2010 review – which compared certain state legislation for protecting Aboriginal cultural heritage – felt that all Country is sensitive and that development proponents should always be obliged to consider the impact of their development on Aboriginal cultural heritage and to consult with Traditional Owners.<sup>51</sup> There was a perception among Traditional Owners and others interviewed that the focus

---

<sup>51</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August, 2010, page 41.



of the Act is on 'stones and bones', with little recognition that sites may be significant because of Aboriginal tradition.<sup>52</sup>

A report by Victoria University in 2010 evaluated the operation of the Act and Regulations and was based on consultation with a range of stakeholders. The report notes that there was a general consensus that the intent of the legislation – the protection of Aboriginal cultural heritage – is positive and necessary, and that the legislation is generally superior in both intent and operation to earlier legislation that dealt with Aboriginal heritage protection.<sup>53</sup> That said, the report concluded that different understandings of Aboriginal cultural heritage affects whether or not stakeholders perceive their needs are met by the Act.

### Focusing on the protection of Aboriginal cultural heritage

The CHMP process seeks to steer the management of Aboriginal cultural heritage towards protection by enshrining the hierarchy of 'avoid, minimise, salvage'. The Act states that, when assessing whether a CHMP relating to an activity is to be approved, consideration must be given to:

- whether the activity will be conducted in a way that avoids harm to Aboriginal cultural heritage
- if it does not appear to be possible to conduct the activity in a way that avoids harm, whether the activity will be conducted in a way that minimises harm to Aboriginal cultural heritage, and
- any specific measures required for the management of Aboriginal cultural heritage likely to be affected by the activity, both during and after the activity. This may include salvage, however Aboriginal cultural heritage is to be salvaged only when it is not possible for that cultural heritage to be preserved in situ.

One RAP consulted for the purpose of this assessment provided an example of a tangible change in outcomes as a result of the Act. The RAP referred to a specific site in their area which, prior to the introduction of the Act, suffered the destruction of Aboriginal cultural heritage. However, since the introduction of the Act, valuable Aboriginal cultural heritage on this same site is being identified and protected.

To provide an overview of CHMP outcomes, AAV randomly sampled 100 CHMPs from the last financial year (2010-11). Of the 100 CHMPs sampled – 85 per cent were complex, 14 per cent were standard and 1 per cent were desktop CHMPs. Overall 48 per cent were assessed by RAPs and 52 per cent assessed by the Secretary, DPCD.

Of sampled CHMPs, 77 per cent found Aboriginal cultural heritage, and of these:

- 41.5 per cent avoided harm to Aboriginal cultural heritage
- 36 per cent adopted ways of minimising harm, and
- 35 per cent included mitigation measures.

---

<sup>52</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August, 2010, page 41.

<sup>53</sup> Victoria University, *Collaborative Approaches to Aboriginal Cultural Heritage Protection – An examination of the operation of the Victorian Aboriginal Heritage Act 2006 and Aboriginal Heritage Regulations 2007*, June, 2010, page 14.

### Cultural heritage permits

Cultural heritage permits allow certain activities to take place that impact on Aboriginal cultural heritage. Table 5 shows the number and type of permits that have been issued since the introduction of the Act.

**Table 5: Number of cultural heritage permits**

Permits	Excavate	Research	Harm	Buy/Sell	Remove from Victoria	Total
<b>2007-08</b>	9	2	39	5	0	<b>55</b>
<b>2008-09</b>	4	1	28	18	0	<b>51</b>
<b>2009-10</b>	4	1	34	12	2	<b>53</b>
<b>2010-11</b>	2	2	19	6	0	<b>29</b>
<b>Total</b>	<b>19</b>	<b>6</b>	<b>120</b>	<b>41</b>	<b>2</b>	<b>188</b>

Source: Data provided by AAV, September 2011

As shown in Table 5, the majority (65 per cent) of all permits to date have been in relation to carrying out an activity that will harm, or is likely to harm Aboriginal cultural heritage. This has been a consistent trend since the introduction of the Act. While there have been a total of 185 permits issued under the Act, permits did not feature significantly in any of the issues raised during stakeholder consultations.

The NSW Aboriginal Land Council 2010 review also received little feedback regarding cultural heritage permits during the course of their research. Some RAPs reported having never dealt with cultural heritage permits.<sup>54</sup>

### Cultural heritage agreements

Under the previous legislation there was an agreement process for protecting heritage which had the potential to create positive partnerships between landowners and Aboriginal people. However there was no requirement to notify authorities or document the agreements made.

The Act seeks to promote cultural heritage agreements as a way of protecting and managing Aboriginal cultural heritage. An agreement is made between a land or property owner and a RAP. It might cover the protection of a place on private land, the treatment of objects, rehabilitation of places and access arrangements. The Act also establishes a process for registering these agreements with the Department and also with the Land Titles Office of Victoria. The Act also creates incentives such as land tax and rate relief for landowners who enter into an agreement.

No stakeholders consulted for this assessment expressed a view in relation to cultural heritage agreements, and AAV's discussion paper indicates the first agreement is currently being negotiated.

According to AAV, in some cases RAPs, sponsors and land owners are pursuing other types of agreements to formalise roles and relationships under the Act, such as memorandum of understanding, or CHMP process agreements.

<sup>54</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August, 2010, page 44.

## Compliance and enforcement

The NSW Aboriginal Land Council report argues that compliance with cultural heritage laws is the real test of how effective a cultural heritage protection regime is in practice. The report found, however, that it is difficult to assess the level of compliance in relation to the Act and Regulations.<sup>55</sup>

The 2008 Review of the Regulations found that, based on reports to AAV, there has been a significant reduction in developments occurring without assessment or approvals compared to the previous system. The review found that (although it was difficult to be definitive based on the data available) that CHMPs are being prepared across the State, in relation to developments with the potential to harm heritage, and that local government areas that should have comparatively more CHMPs generally do have more. That said, every RAP consulted for the NSW Aboriginal Land Council 2010 review indicated that sites continue to be ‘regularly’ destroyed. For example, the NSW Aboriginal Land Council 2010 review described an alleged case where a contractor clearing weeds in a park on behalf of a state government department disturbed a well known, but unregistered, scatter site.<sup>56</sup>

It appears that there are now greater *incentives* to comply. According to AAV, before the introduction of the Act, the penalties for harming heritage were not high enough to act as an effective deterrent and it was difficult to prosecute offences. The Act now generally sets the highest penalties in Australia for harming Aboriginal cultural heritage and defines offences so they are clearer.

AAV undertakes a number of investigations each year. Of these, some do not uncover breaches of the Act, in others sponsors have voluntarily agreed to cease works. In a small number of cases, AAV uses the enforcement tools available to it, and seems to reserve prosecutions for the most serious cases. Since the Act’s introduction, AAV has conducted 166 investigations (as at June 2010) but only took further formal action in a small number of cases. In particular:

- one successful prosecution has been brought for selling an Aboriginal object without a permit – the NSW review found that AAV will investigate complaints promptly, but will not prosecute, with one RAP stating that each time that AAV was “looking for a bigger, better example for a prosecution”<sup>57</sup>
- five stop orders (which provide for emergency protection for cultural heritage from an imminent threat) have been issued
- no protection orders (which provide for longer term protection of Aboriginal places in respect of development activities) have been issued
- two audits (which can be used to check an activity when it is believed recommendations of a CHMP are not being followed, or the impacts on cultural heritage from an activity are believed to be greater than first thought) have been ordered, both in 2011.<sup>58</sup>

Table 6 below shows the number of investigations conducted each year and the outcomes.

<sup>55</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August, 2010, page 57.

<sup>56</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August, 2010, page 57.

<sup>57</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August, 2010, page 57.

<sup>58</sup> Aboriginal Affairs Victoria, *Discussion Paper on the Review of the Aboriginal Heritage Act 2006*, September, 2011, page 18.

**Table 6: Investigations and outcomes**

<b>Financial year (FY)</b>	<b>Investigations</b>	<b>Outcome of investigation*</b>
<b>FY 2008</b>	17 investigations were carried out or were ongoing including five relating to land development projects.	In nine cases there was no breach found. Of the five cases related to land development projects, only one case did not consider heritage (relating to minor works, road widening) - the others either had consent or had a CHMP
<b>FY 2009</b>	43 investigations were carried out or were ongoing including 21 relating to reported harm in Aboriginal cultural heritage.	In five cases objects were seized. In one case, harm occurred as a result of inaccurate site extent information and a CHMP was subsequently prepared. In two cases work was ceased voluntarily. In 32 cases there was no breach found.
<b>FY 2010</b>	27 investigations were carried out or were ongoing and 79 onsite meetings or inspections were carried out.	In one case, the Aboriginal object was forfeited (the defendant was convicted and fined). No cultural heritage audits or stop orders were required.
<b>FY 2011</b>	22 investigations were carried out or were ongoing and 63 onsite meetings or inspections were carried out.	Two cultural heritage audits were ordered by the Minister and two stop orders were issued.

Source: Department of Planning and Community Development, Annual Report 2007-08, pages 143-144, Department of Planning and Community Development, Annual Report 2008-09, pages 152-154, Department of Planning and Community Development, Annual Report 2009-10, pages 135-136, Department of Planning and Community Development, Annual Report 2010-11, page 187-188.

\* at the time of publication of the annual reports, some cases were still under investigation.

Under the previous legislation, community inspectors were appointed with powers to investigate potential instances of harm to Aboriginal heritage, and to impose penalties if required. The new legislation shifts responsibility for enforcement from community inspectors to public sector inspectors. These new inspectors are now exclusively public servants to ensure their actions are indemnified. Furthermore, public sector inspectors have specific powers to enforce the Act, including 'the ability to obtain a search warrant, to enter private property and to search and seize private property under certain circumstances'.<sup>59</sup>

The Council commented that Aboriginal cultural heritage is better protected where the requirements of the Act are followed. However, by not including the monitoring and auditing of CHMP recommendations post approval as a specific part of the CHMP process, these functions may be overlooked and therefore expose identified Aboriginal cultural heritage to risk. While the inspectorate role carried out by Victorian Government officers was acknowledged, the geographic distance between many sites and the inspectors means that it is not possible for a lot of 'proactive' identification of issues.

<sup>59</sup> Aboriginal Affairs Victoria, *Discussion paper: Review of the Aboriginal Heritage Act 2006*, September, 2011.

One RAP commented that under the previous legislation, some local communities had a cultural officer who was also an inspector. The inspector's powers included the power to issue on-the-spot stop work orders. Since the Act has been introduced, without the power to immediately stop work, all the RAP can do is complain to AAV and hope that the inspector can visit the site before the damage has been done.<sup>60</sup> Further, it was noted that some regional officers rely on Aboriginal groups for information which can only be reliably provided if monitoring activity has occurred – however there is no funding provided for this role. The Wurundjeri Tribe Land and Compensation Cultural Heritage Council (Wurundjeri), for example, have established standard procedures for undertaking inspections in respect of CHMP implementation, see Box 10 below.

#### **Box 10: Wurundjeri standard procedure for CHMP implementation and RAP inspections**

Wurundjeri have determined that a number of site inspections will be undertaken by Wurundjeri representatives during construction in order to audit the works and ensure that they comply with the recommendations and contingency plan contained within the CHMP.

The standard procedure includes three RAP inspections during the construction phase of the activity to check CHMP implementation. The first inspection must take place at the start of construction and can be combined with a Cross Cultural Training Session. The second must take place as close as possible to the half way point of construction. The third inspection must take place at the end of the construction phase of the activity.

Wurundjeri must be notified a week in advance before these three points are reached during the construction works. A Worker Request Form must be filled out and sent to the Wurundjeri to book a Wurundjeri representative in for each of the three inspections.

A Wurundjeri representative conducts the inspection and fills out the inspection form attached as an Appendix to the CHMP. A cultural heritage advisor/archaeologist may also attend this inspection if necessary.

If the inspection reveals suspected non-compliance of the CHMP, then there is a standard procedure. If the inspection reveals a suspected breach of the Act then these actions must be reported to AAV immediately and an inspector may be called out and/or a stop work order may be issued by AAV.

This procedure must be organised and paid for by the site contractors and/or sponsor.

Source: Provided by Wurundjeri, December 2011.<sup>61</sup>

A 2011 business process review of AAV's enforcement policies and procedures found that '[overall]... AAV staff have good working knowledge of the required legislation and the CHMP/permits evaluation process' but that it is difficult for staff to effectively monitor compliance with CHMPs and permits. This is because there:

- is no formal compliance framework or consistent procedures across the regions
- is no process to identify and classify CHMPs and permits by mapping these to associated risks and potential impacts
- are instances of CHMP recommendations that do not have timeframes.

<sup>60</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August 2010, page 57.

<sup>61</sup> Provided via AAV.

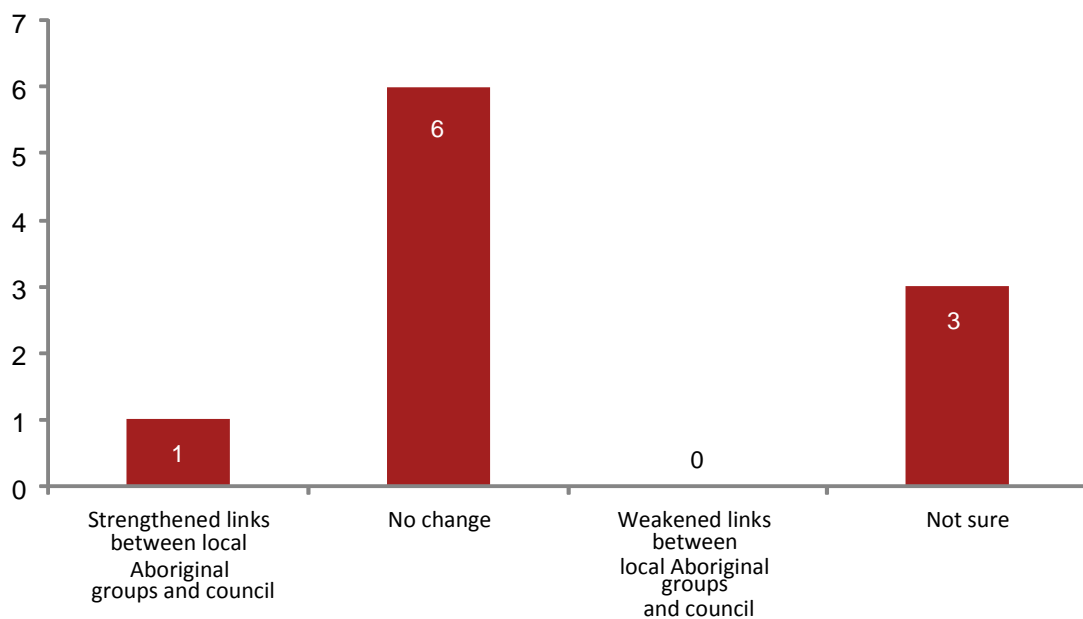
In response to these factors, 'AAV staff across the regions have adopted individual practices to monitor compliance with CHMPs', which 'are typically ad-hoc, informal and reactive.'<sup>62</sup>

## 7.2 Broader public awareness and understanding of Aboriginal cultural heritage

Many of those consulted for this assessment agreed that the awareness and understanding of Aboriginal cultural heritage had improved under the Act. In particular those engaging with the Act – such as government, cultural heritage advisors and Aboriginal communities – are educated about the intention and requirements of the Act. Some RAPs advised, however, that the use of cultural heritage advisors as agents for sponsors rather than sponsors engaging directly with RAPs may impact on levels of awareness by sponsors.

More broadly, the majority of respondents to the online survey of local government felt that there had been no change to community awareness and understanding of Aboriginal cultural heritage, as shown in Figure 10. It is not clear, however, how well positioned local government authorities are to gauge general levels of community awareness of Aboriginal cultural heritage.

**Figure 10: Council survey result – 'How has the Act affected awareness and understanding of Aboriginal cultural heritage by the broader community?'**



One function of the Council is to increase public awareness of cultural heritage and to educate all Victorians about cultural heritage. The NSW Aboriginal Land Council found, however, that in its first few years of operation, the Council has been occupied with appointment of RAPs and has undertaken limited work on public awareness – except for their website which contains resources to assist the community and developers.<sup>63</sup> This point was acknowledged by the Council when consulted

<sup>62</sup> PricewaterhouseCoopers 2011, *Aboriginal Affairs Victoria – Business Process Review*, prepared for the Department of Planning and Community Development, Melbourne, November, 2011.

<sup>63</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August, 2010.



for this assessment. The Council advised that due to resourcing constraints, their primary focus has been on determining RAP applications. This has meant that they have been unable to devote resources and attention to promoting awareness of Aboriginal cultural heritage within the broader community.

Other examples point to public awareness and understanding of Aboriginal cultural heritage. The Gunditj Mirring Traditional Owners Aboriginal Corporation played a key role in securing recognition of the historic and ongoing engineering expertise of the Gunditjmara people 'who developed and managed the hydraulics required to farm and harvest fish in south-western Victoria for 6,600 years', see Box 11 below.

**Box 11: 6,600 year-old Aboriginal project acclaimed by engineers**

The engineering expertise of the Gunditjmara people, who developed and managed the hydraulics required to farm and harvest fish in south-western Victoria for 6,600 years, was celebrated at Tyrendarra as an engineering heritage national landmark by Engineers Australia.

The ceremony, hosted by the Gunditj Mirring Traditional Owners Aboriginal Corporation and the Winda-Mara Aboriginal Corporation, included the unveiling of an interpretative panel and engineering heritage marker for the Budj Bim Aboriginal hydraulic works. The National President of Engineers Australia, Merv Lindsay, said that when reflecting on engineering achievements in Australia it was easy to talk about what has been built over the past couple of hundred years, and what might be needed for the next few generations.

*"What is truly remarkable about the Budj Bim engineering works is not only its ingenuity, but also at its core has been the delivery of a sustainable outcome for hundreds of generations. Attaining sustainable engineering outcomes by today's well-resourced engineering profession remains a challenge, and here we can see how it was achieved for thousands of years."* Lindsay said.

Volcanic activity some 30,000 years ago at Mt Eccles diverted water courses that created Lake Condah and Condah Swamp, and provided ideal resources for building and engineering structures. Channels, ponds and fish trap weir structures were developed continually to account for changing water levels with the seasons and longer term climate changes. The kooyang (short-finned eel) and other species were herded through the systems for storing in ponds or harvesting from woven baskets located in weirs. The permanent food supply led to a settled society in villages of stone huts, the development of a trading economy and the establishment of higher levels of governance through the hereditary succession of chiefs. The aquaculture declined from the late 1860s when continuing works were undertaken to drain Lake Condah and swamp for grazing land. However, rehabilitation has been well underway since the lodgement of the first Native Title land claim in 1996, and progress in reclaiming Budj Bim has been rapid, with engineering works, including aweir, to reverse the earlier drainage.

Source: Engineers Australia, '6,600 year-old Aboriginal project acclaimed by engineers', Media release, 21 October, [http://www.engineersaustralia.org.au/sites/default/files/shado/News%20and%20Media/Media%20Statements/2011MediaStatements/6600\\_year\\_old\\_aboriginal.pdf](http://www.engineersaustralia.org.au/sites/default/files/shado/News%20and%20Media/Media%20Statements/2011MediaStatements/6600_year_old_aboriginal.pdf) [Accessed December 2011].

In addition, the Koorie Heritage Trust Annual Report (2008-09) notes that the Business Education Unit of the Trust, which conducts walking tours through Melbourne CBD, enjoyed an increase of patronage from 9,275 in 2007-08 to 11,018 in 2008-09. A comment received at the Trust following the 'Walkin Birrarung' tour was:

*"What a great thing to do! This walk gave me new insight into an area I walk unthinkingly every day. The knowledge aspect of the walk was great. There were so many things I had no idea about*

– particularly the historic landscape and hydrology aspects. But perhaps the best part of the walk was the way it encouraged you to feel the landscape and history through stories and pictures”.<sup>64</sup>

In addition, there is a market for Aboriginal tourism, which can create employment for local communities. Better awareness, management and protection of Aboriginal cultural heritage can support the sustainability of this market for Aboriginal people, see Box 12 below.

#### **Box 12: The market for Aboriginal tourism**

According to statistics published by Tourism Victoria, the Aboriginal tourism market in Australia comprised 709,000 international overnight visitors (accounting for 40 million visitor nights) and 367,000 domestic overnight visitors (accounting for 3.1 million visitor nights) in 2009.

Victoria is estimated to have accounted for 8.2 per cent (or 58,000) of international Aboriginal tourism visitors in 2009, and 5.9 per cent (or 2.4 million) of international Aboriginal tourism visitor nights. China was the largest single source of international Aboriginal tourism visitors to Victoria in 2009 (accounting for 21 per cent of the market), followed by Europe (19 per cent), the United Kingdom (15 per cent) and North America (14 per cent).

Tourism Victoria has not published statistics about Victoria’s share of the domestic Aboriginal tourism market in 2009. However, historical data suggests that Victoria accounted for 13 per cent (or 89,000) of domestic Aboriginal tourism visitors in 2006.

In 2005 there were approximately 100 people employed in the Aboriginal cultural tourism industry in Victoria, with many based around or including Aboriginal cultural heritage places. Aboriginal and Torres Strait Islander people are also employed in protecting Aboriginal cultural heritage, for example, those in community-based programs and those involved in heritage assessment and monitoring of activities.

Source: Tourism Victoria, *Aboriginal tourism: Market profile year ending December 2009*, Melbourne, 2010, The Allen Consulting Group, *Aboriginal Heritage Regulations 2007: Regulatory Impact Statement*, April, 2007.

#### ***Compliance with international conventions***

The Act also assists in maintaining compliance with international conventions to which it is a signatory, such as the *United Nations Declaration of the Rights of Indigenous People*, in particular Article 31 of this declaration (see Box 13), and the Convention Concerning the protection of the World natural and cultural heritage (World Heritage Convention). The latter obliges all member states to have in place measures to protect and manage heritage as a part of the cultural heritage of all peoples.

---

<sup>64</sup> Koorie Heritage Trust, *Annual Report 2008-09*, 2009, [http://www.koorieheritagetrust.com/\\_Uploads/dbsAttachedFiles/KOO\\_10448\\_Annual\\_Report\\_04.pdf](http://www.koorieheritagetrust.com/_Uploads/dbsAttachedFiles/KOO_10448_Annual_Report_04.pdf) [Accessed December 2011].



**Box 13: Article 31 of the United Nations Declaration of the Rights of Indigenous People**

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with Indigenous peoples, States shall take effective measures to recognise and protect the exercise of these rights.

**From the Preamble of the United Nations World Heritage Convention**

1. Considering that parts of the cultural and natural heritage are of outstanding interest and therefore need to be preserved as a part of the world heritage of mankind as a whole.
2. Article 5 (4): to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage.

Source: United Nations, *United Nations Declaration of the Rights of Indigenous People*, 2008, United Nations, *United Nations Convention Concerning the Protection of the World Natural and Cultural Heritage* 1972.

## 7.3 Aspiring to best practice

In early 2010, the NSW Government announced it would consider options for independent Aboriginal heritage legislation for NSW. To inform the broader debate, the NSW Aboriginal Land Council commissioned 'independent research into the way in which Aboriginal cultural heritage matters are dealt with' in Queensland, South Australia and Victoria – with a particular focus in identifying 'whether the NSW Government should look to any other State's heritage model as best practice'.<sup>65</sup>

Though primarily a descriptive study, the NSW Aboriginal Land Council 2010 review does imply that the Victorian Aboriginal heritage system is preferable to those in NSW, Queensland and South Australia. The study notes that, although it 'highlights some critical feedback in Victoria, the author wishes to emphasise that the Victorian Act was generally viewed in positive terms by all those interviewed and in some sense represents a 'high water mark'.<sup>66</sup> In contrast:

- the Queensland system was seen to be strong, though in need of further strengthening
- there was a common perception that 'the regimes in Victoria and NSW provide better protection of cultural heritage' than the regime in South Australia, and

<sup>65</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August 2010.

<sup>66</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August 2010.

- the then *National Parks and Wildlife Act 1974* (NSW) ‘deem[ed] the Crown to be responsible for Aboriginal heritage, and recognise[d] few formal rights for Aboriginal people in the process’.<sup>67</sup>

### ***Proposed reforms to Australian Government legislation***

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* ‘enables the Australian Government to respond to requests to protect traditionally important areas and objects that are under threat, if it appears that state or territory laws have not provided effective protection’.<sup>68</sup> The purpose of the *Aboriginal and Torres Strait Islander Heritage Protection Act* is ‘the preservation and protection from injury or desecration of areas and objects in Australia and in Australian waters, being areas and objects that are of particular significance to Aboriginals in accordance with Aboriginal tradition’.<sup>69</sup>

The Australian Government has recently proposed reforms to the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*. These reforms arose out of concerns that the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* ‘has not been effective in meeting its purpose, which was to provide a direct and immediate means for the Commonwealth to protect traditional areas and objects when there are gaps in state and territory legislation’.<sup>70</sup>

As part of the proposed reforms, the Australian Government outlined what it considered to be best practice standards for the effective protection of Aboriginal heritage. These standards are closely aligned with the processes for protecting Aboriginal heritage established under the Act.

---

<sup>67</sup> New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August 2010.

<sup>68</sup> Department of Sustainability, Environment, Water, Population and Communities, *Indigenous heritage laws*, 2010.

<sup>69</sup> *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, s 4.

<sup>70</sup> Department of the Environment, Water, Heritage and the Arts, *Indigenous heritage law reform: Discussion paper*, August, 2009.

### Findings of Chapter 7

- Overall, Aboriginal cultural heritage is now generally better protected and managed compared to the previous regime.
- The Act ensures that CHMPs are prepared before developments take place as a result of close integration with the planning system. The triggers requiring the preparation of a CHMP mean that the system is now much more targeted at developments involving high impact activities in areas where Aboriginal cultural heritage is most likely to be present. As a result, CHMPs are more likely to discover Aboriginal cultural heritage.
- The CHMP process focuses on the protection of Aboriginal cultural heritage by enshrining the hierarchy of 'avoid, minimise, salvage' rather than one of managed destruction which was previously the case. Ensuring engagement with RAPs (or RAP applicants and Traditional Owners in non-RAP areas) at key points in the CHMP process assists sponsors, cultural heritage advisors and RAPs to negotiate better, more informed decisions about the management of Aboriginal cultural heritage.
- It is difficult to assess the overall level of compliance with the Act. While AAV undertakes a number of investigations each year, it is difficult for AAV to effectively monitor compliance with CHMPs and permits (due to the geographic distance between many sites) which may expose identified Aboriginal cultural heritage to risk.
- Public awareness and understanding of Aboriginal cultural heritage has improved, however primarily for those engaged with the Act. Better management and protection of Aboriginal cultural heritage can also support the sustainability of the market for Aboriginal tourism in Victoria.
- Most recently, the Act has also been identified by other Australian governments as being closely aligned to best practice processes for the effective protection of Aboriginal heritage.



# Appendices

Appendix A	Activity under the Act	67
Appendix B	Stakeholder consultations	75
Appendix C	Local government survey results	76
Appendix D	References	82



## Appendix A

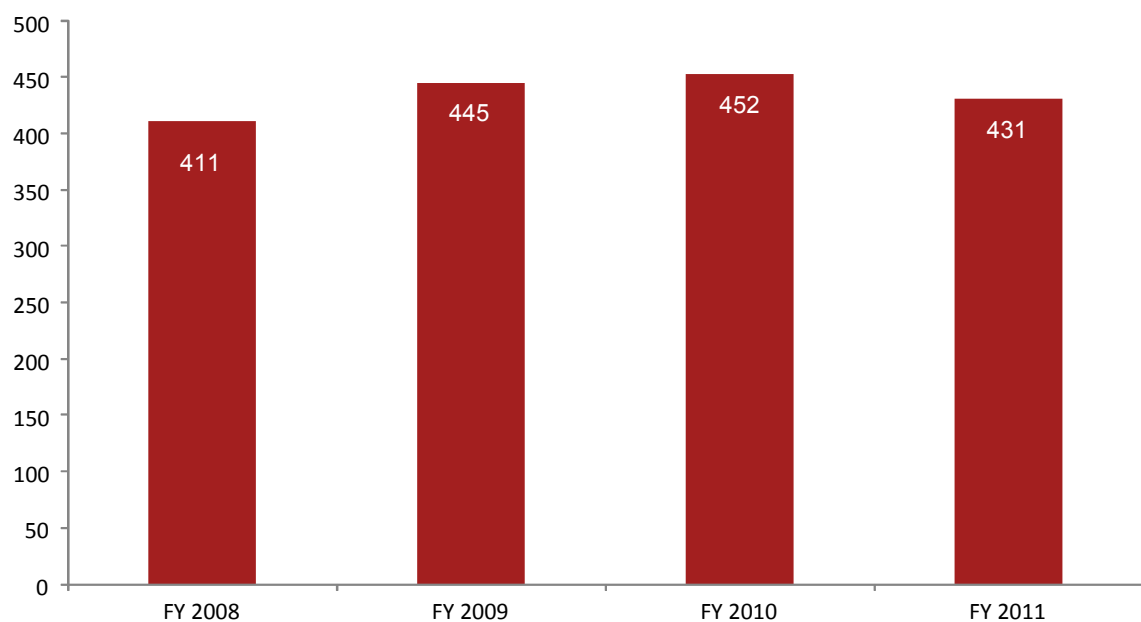
## Activity under the Act

This section discusses levels of activity under the Act, with a focus on CHMPs.

### *Notices of Intent*

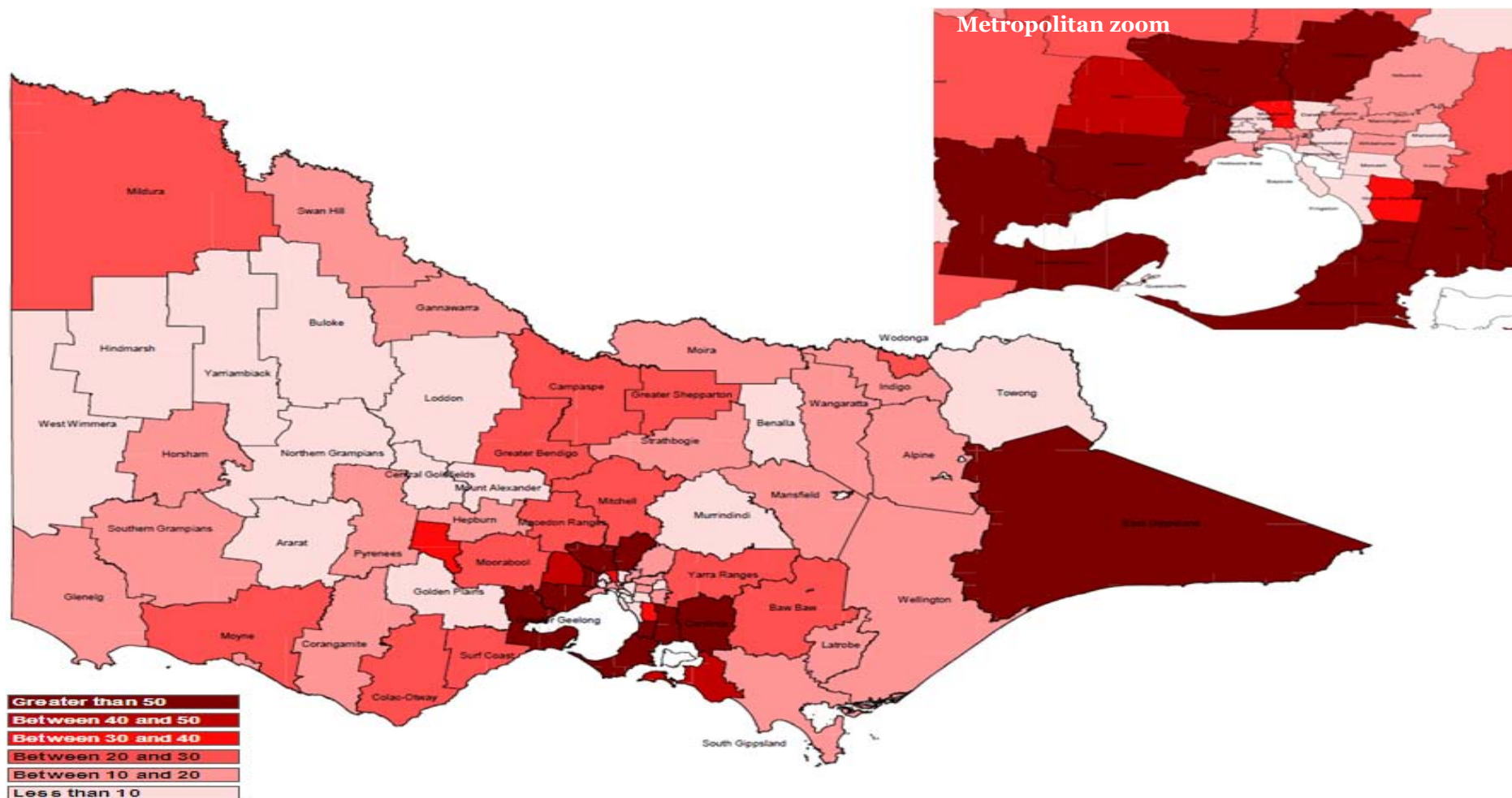
Sponsors of activities requiring a CHMP must notify the relevant local government of their intention, through a Notice of Intent to conduct a CHMP. Notices of Intent provide an indication of likely subsequent CHMP activity. There have been over 400 Notices of Intent to prepare a CHMP each year, see Figure 11. The municipalities with the highest number of Notices of Intent to prepare a CHMP are generally located in the growth corridors of Victoria, as well as in East Gippsland Shire as shown in Figure 12.

**Figure 11: Number of Notices of Intent (FY 2008-FY 2011)**



Source: Data provided by AAV, September 2011

Figure 12: Location of Notices of Intent (FY 2008-FY 2011)



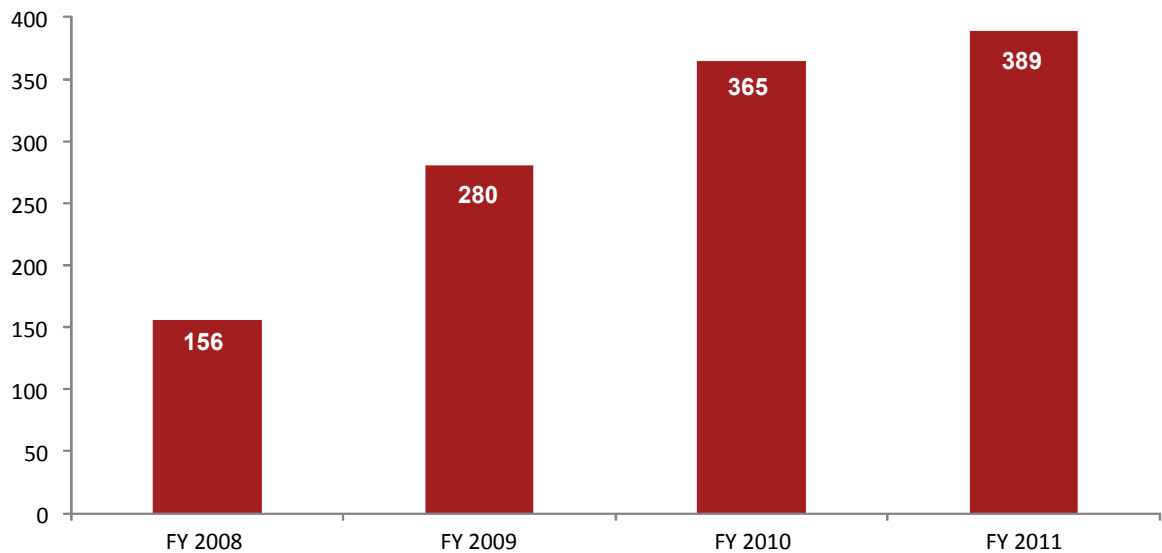
Source: Data provided by AAV, September 2011



### CHMPs

Under the last year of operation the previous legislative framework in 2006, AAV received 380 Aboriginal cultural heritage assessments (precursors to what are now known as CHMPs) in relation to approximately 50,000 activities requiring planning permits in Victoria. This equated to less than 1 per cent of such activities.<sup>71</sup> Since then, CHMPs have risen from 156 in 2008 to 389 in 2011, see Figure 13.

**Figure 13: Number of CHMPs approved (FY 2008-FY 2011)**

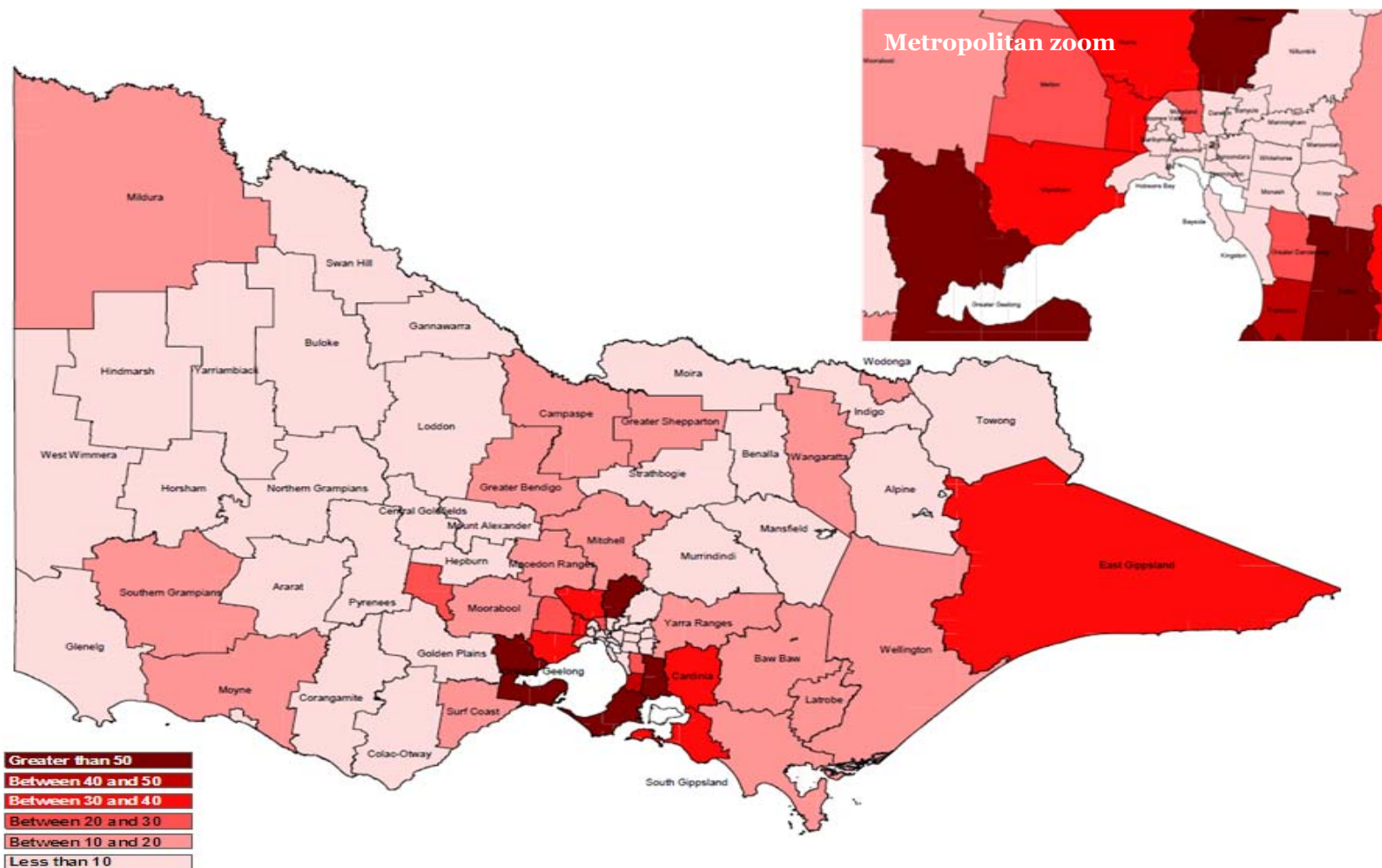


Source: Data provided by AAV, September 2011

As shown in Figure 14, Only four local government areas have had more than 50 CHMPs approved since the introduction of the Act – Casey City Council, Greater Geelong City Council, Mornington Peninsula City Council and Whittlesea City Council. Since the commencement of the Act, most municipalities have had fewer than 20 CHMPs approved in their region.

<sup>71</sup> The Allen Consulting Group, *Aboriginal Heritage Regulations 2007: Regulatory Impact Statement*, April 2007, page 9.

Figure 14: Location of approved CHMPs (FY 2008-FY 2011)



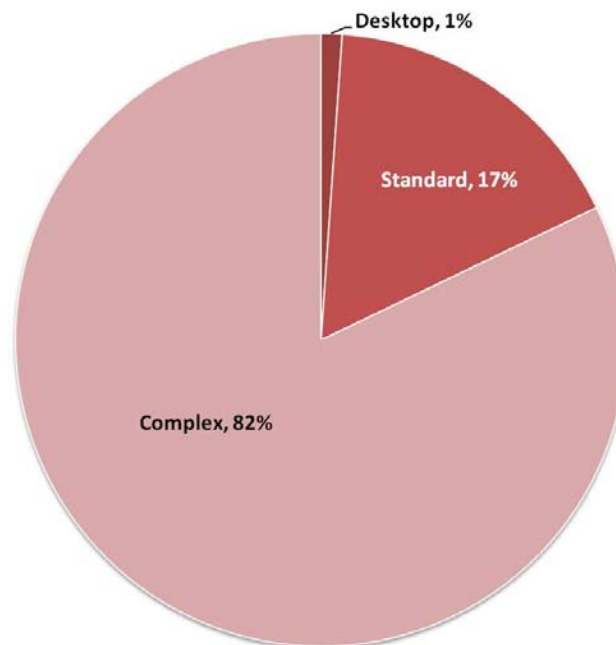
Source: Data provided by AAV, September 2011

---

### ***CHMPs by type***

As shown in Figure 15, from 2008 to 2011, 82 per cent of approved CHMPs were complex, 17 per cent were standard and 1 per cent were desktop.

**Figure 15: Type of approved CHMPs (FY 2008-FY 2011)**



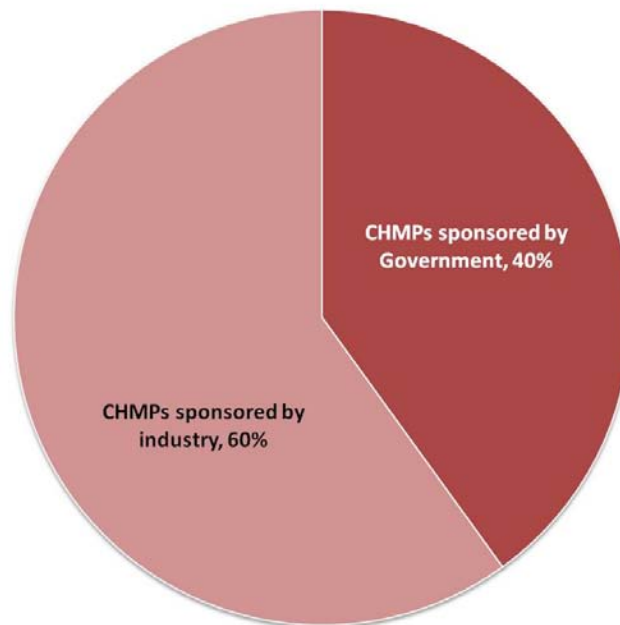
Source: Data provided by AAV, September 2011

---

***CHMPs by sponsor***

As shown in Figure 16, the majority of CHMPs are sponsored by industry.

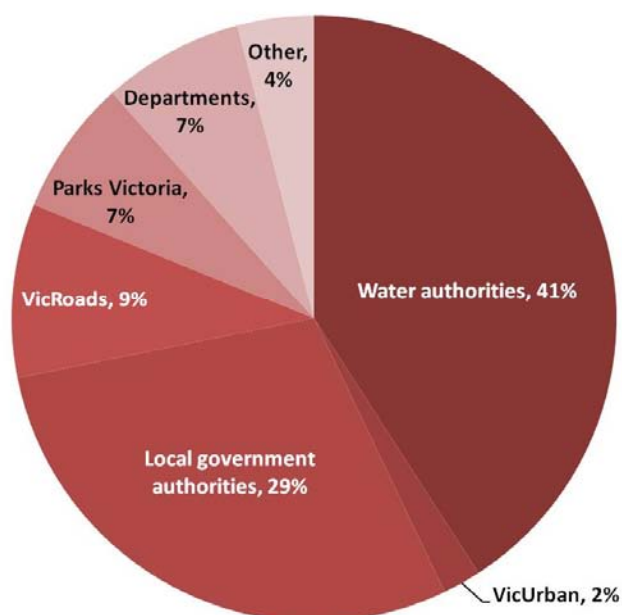
**Figure 16: Proportion of approved CHMPs by sponsor (FY 2008-FY 2011)**



Source: Data provided by AAV, September 2011

Of approved CHMPs where government is the sponsor, these come from multiple agencies (see Figure 17) – including various water authorities (41 per cent), local government (29 per cent) and VicRoads (9 per cent).

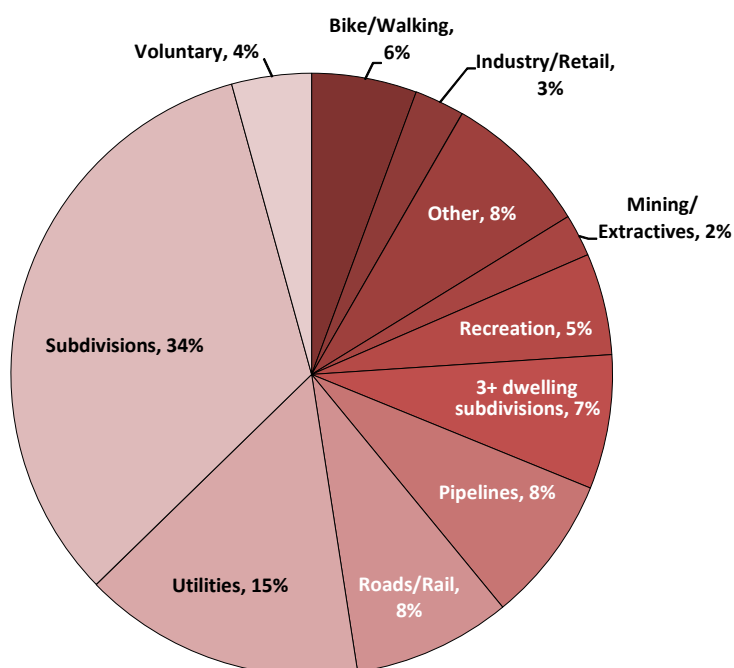
**Figure 17: Approved CHMPs sponsored by government (FY 2008-FY 2011)**



Source: Data provided by AAV, September 2011

Since the introduction of the Act, approximately one third of all approved CHMPs have been for large subdivisions. Other significant categories include utilities (15 per cent), roads and rail activities (8 per cent), pipelines (8 per cent), 3+ dwelling subdivisions (7 per cent) and mining and extractives (2 per cent), as shown in Figure 18.

**Figure 18: Type of approved CHMP by activity type (FY 2008-FY 2011)**

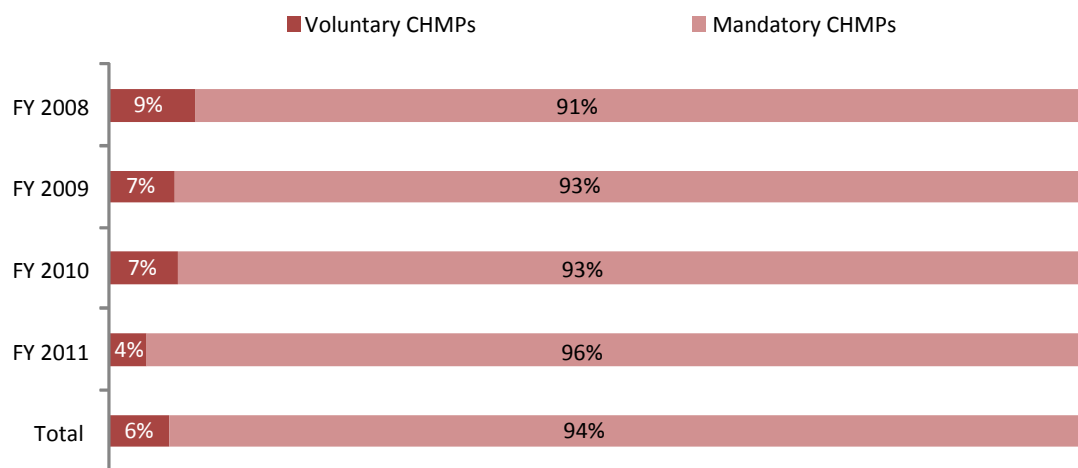


Source: Data provided by AAV, September 2011

### **Voluntary CHMPs**

Since 2008, there have been 74 voluntary CHMPs completed. The number of voluntary CHMPs is much smaller than the number of mandatory CHMPs, as shown in Figure 19.

**Figure 19: Proportion of approved CHMPs (FY 2008-FY 2011)**



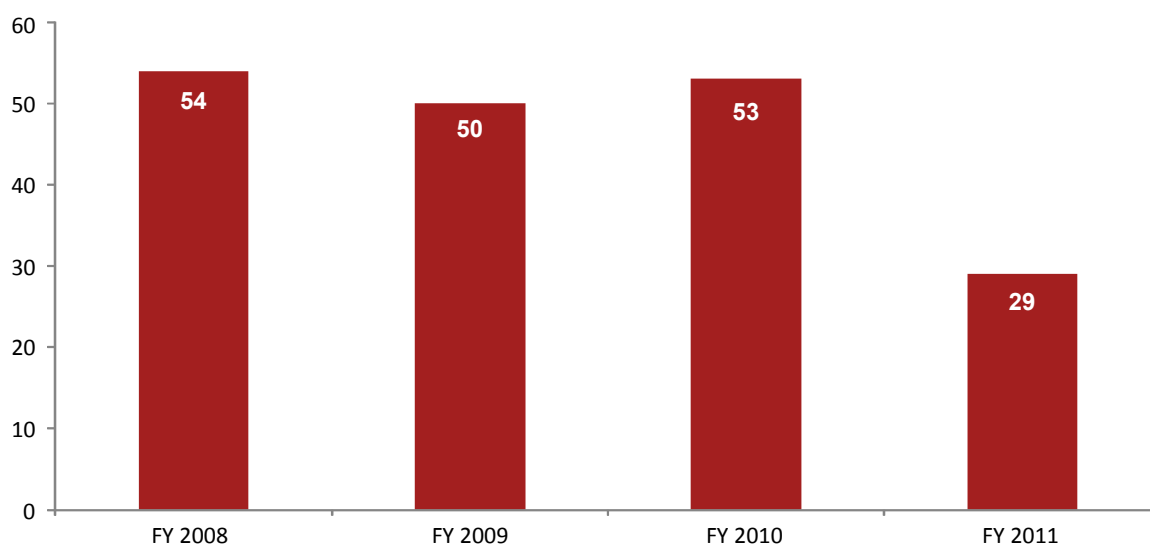
Source: Data provided by AAV, September 2011

During consultations it was identified that two municipalities, require CHMPs to be prepared in some cases where it may not strictly be required under the legislative framework.

### **Other cultural heritage instruments**

There are other instruments under the Act that aim to protect Aboriginal cultural heritage. These include cultural heritage permits, and interim and ongoing protection declarations. Figure 20 shows the number of cultural heritage permits issued since the introduction of the Act.

**Figure 20: Number of cultural heritage permits issued (FY 2008-FY 2011)**



Source: Data provided by AAV, September 2011

## Appendix B Stakeholder consultations

During August and September 2011, PwC conducted face-to-face and telephone interviews with the following key stakeholders:

- AAV
- Municipal Association of Victoria
- Urban Development Institute Australia, Victorian branch
- RAPs – including the Gunditj Mirring Traditional Owners Aboriginal Corporation and the Taungurung Clan.
- Council
- DSE
- Taylors Development Strategies, and
- Parks Victoria.

PwC also conducted two stakeholder focus groups with the following participants.

**Table 7: List of focus group participants**

### Peak industry bodies

Mineral Councils of Australia  
Construction Materials Processors Association  
Cement Concrete and Aggregates Association  
Consult Australia

### Government agencies

Department of Transport  
VicRoads

### Cultural heritage advisors

TerraCulture Heritage Consultants  
Ecology and Heritage Partners  
Australian Cultural Heritage Management  
Dr Vincent Clark and Associates  
Heritage Insight Pty Ltd  
AHMS  
Andrew Long and Associates

An online survey of local government was undertaken to ensure all local government authorities (irrelevant of geographic location) were offered the opportunity to participate in the consultation process. All local government authorities were informed of the survey and provided the opportunity to answer with anonymity. A copy of the online survey results is provided in Appendix C.

## Appendix C

### results

## Local government survey

Review of the Aboriginal Heritage Act 2006

Respondents:

33 displayed, 33 total

Status:

Archived

Launched Date:

12/09/2011

Closed Date:

11/09/2012

1. Which council do you represent?

View responses to this question

view

Total Respondents

16

(skipped this question)

17

2. What is your role with the council

View responses to this question

view

Total Respondents

15

(skipped this question)

18

3. How long have you been in this role? (select one)

	Response Total	Response Percent	Points	Avg
Less than 12 months	4	29%	n/a	n/a
Less than 12 months	5	36%	n/a	n/a
5 – 10 years	4	29%	n/a	n/a
More than 10 years	1	7%	n/a	n/a
Total Respondents	14	100%		
(skipped this question)	19			

4. Which of the above roles does your council perform under the Act? (select all relevant boxes)?

	Response Total	Response Percent	Points	Avg
Statutory decision maker	12	46%	n/a	n/a
Land owner and manager	11	42%	n/a	n/a
Infrastructure provider	11	42%	n/a	n/a
None of these roles	0	0%	n/a	n/a
I don't know	0	0%	n/a	n/a
Total Respondents	26			
(skipped this question)	7			

5. In Council's role as a statutory decision maker, your council understands when and how to satisfy the requirements of the Act (select one)














	Response Total	Response Percent	Points	Avg
Strongly Agree	3	25%	n/a	n/a
Agree	4	33%	n/a	n/a
Neither agree/disagree	1	8%	n/a	n/a
Disagree	3	25%	n/a	n/a
Strongly Disagree	1	8%	n/a	n/a
Total Respondents	12	100%		
(skipped this question)	21			


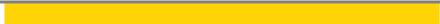












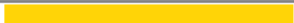






6. In Council's role as a land owner and manager, your council understands when and how to satisfy the requirements of the Act (select one)

	Response Total	Response Percent	Points	Avg
Strongly Agree	2	18%	n/a	n/a
Agree	5	45%	n/a	n/a
Neither agree/disagree	2	18%	n/a	n/a
Disagree	2	18%	n/a	n/a
Strongly Disagree	0	0%	n/a	n/a
Total Respondents	11	100%		



(skipped this question) 22				
7. In Council's role as an infrastructure provider, your council understands when and how to satisfy the requirements of the Act (select one)				
	Response Total	Response Percent	Points	Avg
Strongly Agree	2	18%	n/a	n/a
Agree	5	45%	n/a	n/a
Neither agree/disagree	1	9%	n/a	n/a
Disagree	2	18%	n/a	n/a
Strongly Disagree	1	9%	n/a	n/a
Total Respondents		11	100%	
(skipped this question) 22				
8. In the last 12 months, which of the following activities has your council implemented to satisfy the requirements under the Act? (select all relevant boxes)				
	Response Total	Response Percent	Points	Avg
Training council staff	7	27%	n/a	n/a
Developing internal policies and/or procedures	4	15%	n/a	n/a
Developing IT systems	3	12%	n/a	n/a
Providing educational material on website or in hard copy	2	8%	n/a	n/a
Reallocating council resources	1	4%	n/a	n/a
Dedicating specific council staff	5	19%	n/a	n/a
Providing advice to developers	8	31%	n/a	n/a
Engaging cultural heritage advisors to undertake due diligence assessments	4	15%	n/a	n/a
Engaging cultural heritage advisors to prepare CHMPs	7	27%	n/a	n/a
Applying for cultural heritage permits under the Act	1	4%	n/a	n/a
Protecting, managing or maintaining cultural heritage sites within council's area	5	19%	n/a	n/a
Meeting / liaising with Registered Aboriginal Parties	5	19%	n/a	n/a
Meeting / liaising with AAV	5	19%	n/a	n/a
Accessing the Victorian Aboriginal Heritage Register	7	27%	n/a	n/a
Checking CHMP requirements against planning permit requirements	4	15%	n/a	n/a
Checking developers compliance with CHMP requirements	1	4%	n/a	n/a
Other (please describe)	2	8%	n/a	n/a
<a href="#">view</a>				
Total Respondents		26		
(skipped this question) 7				
9. In the last 12 months, what costs has your council faced in satisfying its requirements under the Act? – please provide an estimate where possible (select all relevant boxes)				
	Response Total			
<a href="#">view</a> Training council staff	10			
<a href="#">view</a> Developing internal policies and/or procedures	9			
<a href="#">view</a> Developing IT systems	8			
<a href="#">view</a> Providing educational material on website or in hard copy	4			
<a href="#">view</a> Reallocating council resources	3			

<a href="#">view</a>	Dedicating specific council staff	3
<a href="#">view</a>	Providing advice to developers	8
<a href="#">view</a>	Engaging cultural heritage advisors to undertake due diligence assessments	4
<a href="#">view</a>	Engaging cultural heritage advisors to prepare CHMPs	7
<a href="#">view</a>	Applying for cultural heritage permits under the Act	1
<a href="#">view</a>	Protecting, managing or maintaining cultural heritage sites within council's area Meeting / liaising with Registered Aboriginal Parties	6
<a href="#">view</a>	Meeting / liaising with AAV	6
<a href="#">view</a>	Accessing the Victorian Aboriginal Heritage Register	7
<a href="#">view</a>	Checking CHMP requirements against planning permit requirements	7
<a href="#">view</a>	Checking developers compliance with CHMP requirements	2
Total Respondents		8
(skipped this question)		25
10. From 2007 (when the Act commenced operation) to now, how have costs to council changed? (select one)		
		Response Total Response Percent Points Avg
Increased		4 40% n/a n/a
Decreased		0 0% n/a n/a
I don't know		5 50% n/a n/a
Other (please describe)		1 10% n/a n/a
<a href="#">view</a>		
Total Respondents		10 100%
(skipped this question)		23
11. Is your council adequately resourced to perform its roles under the Act? (select one)		
		Response Total Response Percent Points Avg
Yes		3 30% n/a n/a
No		3 30% n/a n/a
I don't know		2 20% n/a n/a
Other (please describe)		2 20% n/a n/a
<a href="#">view</a>		
Total Respondents		10 100%
(skipped this question)		23
12. How do costs to council for managing Aboriginal cultural heritage matters under the Act compare to those under the previous legislation (before 2006)? (select one)		
		Response Total Response Percent Points Avg
Costs are greater under the Aboriginal Heritage Act than under previous legislation		3 30% n/a n/a
Costs are less under the Aboriginal Heritage Act than under previous legislation		0 0% n/a n/a
Costs are similar		1 10% n/a n/a
I don't know		6 60% n/a n/a
Other (please describe)		0 0% n/a n/a
Total Respondents		10 100%
(skipped this question)		23
13. The Act is clear about when a CHMP is required (select one)		
		Response Total Response Percent Points Avg

Strongly Agree		0	0%	n/a	n/a
Agree		6	60%	n/a	n/a
Neither agree/disagree		1	10%	n/a	n/a
Disagree		2	20%	n/a	n/a
Strongly Disagree		1	10%	n/a	n/a
Total Respondents		10	100%		
(skipped this question)			23		
14. The Act is clear about when a cultural heritage permit is required (select one)					
		Response Total	Response Percent	Points	Avg
Strongly Agree		0	0%	n/a	n/a
Agree		5	50%	n/a	n/a
Neither agree/disagree		3	30%	n/a	n/a
Disagree		1	10%	n/a	n/a
Strongly Disagree		1	10%	n/a	n/a
Total Respondents		10	100%		
(skipped this question)			23		
15. How has the Act affected links between local Aboriginal groups and your council? (select one)					
		Response Total	Response Percent	Points	Avg
Strengthened links between local Aboriginal groups and council		3	30%	n/a	n/a
No change		4	40%	n/a	n/a
Weakened links between local Aboriginal groups and council		1	10%	n/a	n/a
Other (please describe)		3	30%	n/a	n/a
<a href="#">view</a>					
Total Respondents		10	100%		
(skipped this question)			23		
16. How has the Act affected awareness and understanding of Aboriginal cultural heritage within council? (select one)					
		Response Total	Response Percent	Points	Avg
Strengthened links between local Aboriginal groups and council		5	50%	n/a	n/a
No change		4	40%	n/a	n/a
Weakened links between local Aboriginal groups and council		0	0%	n/a	n/a
Other (please describe)		2	20%	n/a	n/a
<a href="#">view</a>					
Total Respondents		10	100%		
(skipped this question)			23		
17. How has the Act affected awareness and understanding of Aboriginal cultural heritage by planning permit applicants? (select one)					
		Response Total	Response Percent	Points	Avg
Strengthened links between local Aboriginal groups and council		3	30%	n/a	n/a
No change		5	50%	n/a	n/a
Weakened links between local Aboriginal groups and council		1	10%	n/a	n/a
Other (please describe)		2	20%	n/a	n/a
<a href="#">view</a>					
Total Respondents		10	100%		

(skipped this question)

23

18. How has the Act affected awareness and understanding of Aboriginal cultural heritage by the broader community? (select one)

Strengthened links between local Aboriginal groups and council

1

10%

n/a

n/a

No change

6

60%

n/a

n/a

Weakened links between local Aboriginal groups and council

0

0%

n/a

n/a

Other (please describe)

3

30%

n/a

n/a

Total Respondents

10

100%

(skipped this question)

23

19. How has the Act impacted on the protection of Aboriginal cultural heritage in your local government area? (select one)

Improved protection of Aboriginal cultural heritage

3

30%

n/a

n/a

No change

5

50%

n/a

n/a

Weakened protection of Aboriginal cultural heritage

0

0%

n/a

n/a

Other (please describe)

3

30%

n/a

n/a

Total Respondents

10

100%

(skipped this question)

23

20. In the past year, how many CHMPs has council sponsored for infrastructure projects? (select one)

Less than 5 CHMPs

5

50%

n/a

n/a

5 – 10 CHMPs

1

10%

n/a

n/a

10 – 20 CHMPs

0

0%

n/a

n/a

More than 20 CHMPs

0

0%

n/a

n/a

I don't know

4

40%

n/a

n/a

Total Respondents

10

100%

(skipped this question)

23

21. In the past year, what was the typical cost of a CHMP? (provide an estimate where possible)

view

General CHMP cost

8

view

Desktop

3

view

Standard

3

view

Complex

3

Total Respondents

5

(skipped this question)

28

22. How have CHMP costs changed since the Act commenced operation in 2007? (select one)

Increased

1

10%

n/a

n/a

Decreased

0

0%

n/a

n/a

I don't know

6

60%

n/a

n/a

Other (please describe)

3

30%

n/a

n/a

<div>view</div>					
Total Respondents		10	100%		
(skipped this question)		23			
23. Are you satisfied with the quality of the CHMPs produced? (select one)					
		Response Total	Response Percent	Points	Avg
Yes		6	86%	n/a	n/a
No		1	14%	n/a	n/a
Total Respondents		7	100%		
(skipped this question)		26			
24. In the past year, how many times has council met with a Registered Aboriginal Party (select one)					
		Response Total	Response Percent	Points	Avg
Less than 5 times		4	40%	n/a	n/a
5 – 10 times		1	10%	n/a	n/a
10 – 20 times		0	0%	n/a	n/a
More than 20 times		0	0%	n/a	n/a
I don't know		5	50%	n/a	n/a
Total Respondents		10	100%		
(skipped this question)		23			
25. Did the Registered Aboriginal Party meet your expectations in terms of achieving a satisfactory outcome?					
		Response Total	Response Percent	Points	Avg
Yes		2	50%	n/a	n/a
No		2	50%	n/a	n/a
Total Respondents		4	100%		
(skipped this question)		29			
26. In the past year, what was the typical cost of a meeting with a Registered Aboriginal Party (provide an estimate where possible)					
View responses to this question				<div>view</div>	
Total Respondents		4			
(skipped this question)		29			
27. Are there any other social and/ or economic impacts not yet covered by this survey that your council has encountered since the introduction of the Aboriginal Heritage Act 2006?(please describe).					
View responses to this question				<div>view</div>	
Total Respondents		6			
(skipped this question)		27			
28. Are you happy for your responses to this survey to be publicly available and identifiable to your council?					
		Response Total	Response Percent	Points	Avg
Yes		2	22%	n/a	n/a
No		7	78%	n/a	n/a
Total Respondents		9			
(skipped this question)		24			

## Appendix D

## References

Aboriginal Affairs Victoria, *Discussion Paper on the Review of the Aboriginal Heritage Act 2006*, September, 2011.

Australian Human Rights Commission, *Native Title Report 2011*.

Chandler, Michael J. and Christopher Lalonde, 'Cultural continuity as a hedge against suicide in Canada's First Nations', *Transcultural Psychiatry*, vol.35, no.2, 1998.

David Campbell, Christopher Paul Burgess, Stephen Thomas Garnett, John Wakerman, 'Potential primary health care savings for chronic disease care associated with Australian Aboriginal involvement in land management', *Health Policy*, vol.99, no.1, 2011.

Department of the Environment, Water, Heritage and the Arts, *Indigenous heritage law reform: Discussion paper*, August, 2009.

Department of Planning and Community Development, *Discussion Paper on the Review of the Aboriginal Heritage Act 2006*, September, 2011.

Department of Planning and Community Development, *Guide to preparing a cultural heritage management plan for the purposes of the Aboriginal Heritage Act 2006*, Melbourne, February, 2010.

Department of Planning and Community Development, *Annual Report 2007-08*, pages 143-144.

Department of Planning and Community Development, *Annual Report 2008-09*, pages 152-154.

Department of Planning and Community Development, *Annual Report 2009-10*, pages 135-136.

Department of Planning and Community Development, *Annual Report 2010-11*, page 187-188.

Department of Planning and Community Development, *General Principles- RAP decision making*.

Department of Planning and Community Development, *Victorian Aboriginal Heritage Council Fact Sheet*.

Department of Planning and Community Development website [<http://www.dpcd.vic.gov.au>].

Department of Premier and Cabinet, *Appointment and Remuneration Guidelines for Victorian Government Boards, Statutory Bodies and Advisory Committees*, January, 2010 (updated July 2010).

Department of Sustainability, Environment, Water, Population and Communities, *Indigenous Heritage Laws*, 2010.

Eileen Willis, Meryl Pearce and Tom Jenkin, 'The demise of the Murray River: Insights into lifestyle, health and wellbeing for rural Aboriginal people in the riverland', *Health Sociology Review* vol.13, no.2, 2004.

Engineers Australia, '6,600 year-old Aboriginal project acclaimed by engineers', Media release, 21 October.

I. Serageldin, 'Very Special Places: The Architecture and Economics of Intervening in Historic Cities', The World Bank, Washington, 1999.



## References

- J. Rolfe and J. Windle, 'Valuing the Protection of Aboriginal Cultural Heritage Sites', *The Economic Record*, vol 79 (special issue), June, 2003.
- Jessica K Weir, Claire Stacey and Kara Youngetob, 'The Benefits Associated with Caring for Country: A literature review', *Australian Institute of Aboriginal and Torres Strait Islander Studies*, Canberra, June, 2011.
- Koorie Heritage Trust, *Annual Report 2008-09*, 2009.
- National Native Title Tribunal website [<http://www.nntt.gov.au/Native-Title-In-Australia/Victoria/Pages/Victoria.aspx>].
- New South Wales Aboriginal Land Council, *Caring for Culture: Perspectives on the effectiveness of the Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia*, August, 2010.
- Premier of Victoria website [<http://www.premier.vic.gov.au/media-centre/media-releases/2541-international-award-for-achris-.html>].
- PricewaterhouseCoopers 2011, *Aboriginal Affairs Victoria – Business Process Review*, prepared for the Department of Planning and Community Development, Melbourne, November, 2011.
- S.K. Harding 1999, *Value, Obligation and Cultural Heritage*, 31 *Arizona State Law Journal* 291 (1999).
- Social Compass 2009, *Past and Present – Introduction to Aboriginal Cultural Heritage Management*.
- Stephen Garnett and Bev Sithole, 'Sustainable northern landscapes and the nexus with Indigenous health: Health country, healthy people', *Land and Water Australia*, Canberra, 2007.
- The Allen Consulting Group, *Review of the Aboriginal Heritage Regulations 2007*, November, 2008.
- The Allen Consulting Group, *Aboriginal Heritage Regulations 2007: Regulatory Impact Statement*, April, 2007.
- Tourism Victoria, *Aboriginal tourism: Market profile year ending December 2009*, Melbourne, 2010.
- United Nations, *United Nations Declaration of the Rights of Indigenous People*, 2008.
- United Nations, *United Nations Convention Concerning the Protection of the World Natural and Cultural Heritage* 1972.
- VicHealth, *Life is Health is Life: Taking action to close the gap*, May, Melbourne, 2011.
- Victorian Competition and Efficiency Commission 2011, *The Victorian Regulatory System*, March, p.44.
- Victorian Planning schemes website [<http://planningschemes.dpcd.vic.gov.au>].
- Victoria University, *Collaborative Approaches to Aboriginal Cultural Heritage Protection – An examination of the operation of the Victorian Aboriginal Heritage Act 2006 and Aboriginal Heritage Regulations 2007*, June, 2010.

