

## Submission

### Review of *Aboriginal Heritage Regulations 2007*



Parks Victoria welcomes the opportunity to provide input into the Review of the *Aboriginal Heritage Regulations 2007* (the Regulations).

Parks Victoria recognises that the world class network of parks and reserves under its management responsibility form the core of Aboriginal cultural landscapes, which have been modified over many thousands of years of occupation. They are the product of thousands of generations of economic activity, material culture and settlement patterns.

Parks Victoria recognises that these parks and reserves are critical for Traditional Owners' ability to practice culture and to fulfil their responsibilities to care for Country. The Victorian Government's progressive handback of these lands to Traditional Owners, together with new joint management governance, are one means of achieving practical reconciliation and providing an opportunity for contemporary expression of Aboriginal culture and rights.

The Parks Estate is uniquely integral to the protection of Aboriginal cultural heritage and Aboriginal intangible heritage; and it provides a platform for community development through job creation and a range of potential commercial partnerships. It is core to Parks Victoria's 'Managing Country Together' principles that Aboriginal cultural and natural values are considered of equal importance in the management of the Parks Estate.

Given Parks Victoria's unique responsibilities as a Victorian statutory authority to manage Victoria's parks and reserves in partnership with Traditional Owners for the enjoyment of the entire Victorian community and the visitors to this state, it is crucial that we operate transparently and are accountable to Traditional Owners, the State Government and the Victorian public. Key to this accountability is ensuring that our work is achievable, sustainable and of benefit to Traditional Owners and the wider Victorian community that contribute to public funding to Parks Victoria's operations. This accountability has informed our submission to the review of the regulations.

This submission has focussed on key areas of the Regulations, as determined in consultation with our regional Aboriginal Heritage Coordinators and the Traditional Owner Partnerships and Aboriginal Heritage Branch. Parks Victoria would also welcome further discussions with public land managers and Aboriginal Victoria in relation to these matters.

#### Key Focus Areas:

- **Cost of Compliance** – the expense of Parks Victoria's compliance with the *Aboriginal Heritage Act 2006* (the Act) in comparison to other government departments, land managers and indeed developers and private companies is enormous. It is not yet clear if the cost, staff resources and time, put in to the preparation of Cultural Heritage Permits (CHPs) or Cultural Heritage Management Plans (CHMPs), either voluntary or mandatory, have had any outcomes that significantly benefit Traditional Owners or the management and protection of cultural heritage within the Parks Victoria estate. Further to this, the expenditure of public funds does not bring any significant benefit to park users and diverts money from conservation projects that could otherwise be competed in

partnership with Traditional Owners or other projects with greater economic outcomes for Traditional Owners, as well as opportunities for contemporary expression of Aboriginal culture and rights.

- **Cultural Heritage Managing Plans** – it has been identified that a refinement of areas of cultural heritage sensitivity and review of what constitutes a high impact activity in relation to general land management activities is required to better refine processes and ensure the best outcomes.
- **Cultural Heritage Permits**- These are required for much of the work Parks Victoria conducts and hold up the management and protection of Aboriginal cultural heritage.
- **Aboriginal Cultural Heritage Land Management Agreements (ACHLMAs)** – still in development, no ACHLMAs have been attempted with Parks Victoria as key public land managers as yet.

## Costs of Compliance and Resources Required

**Parks Victoria is responsible for managing an estate covering more than 4 million hectares, or about 17 percent of the total landmass of Victoria. Of that, 3,948,058 hectares equating to 95.8% of the Parks Victoria estate, are currently defined as an area of cultural heritage sensitivity under Division 3 of the *Aboriginal Heritage Regulations 2007*.**

**By comparison, Department of Environment, Land, Water and Planning (DELWP) currently manage 3,453,584 hectares of public and Crown land, however only 751,472 hectares are currently defined as being an area of cultural heritage sensitivity under Division 3 of the Regulations. This equates to 21.7% DELWP managed land.**

Parks Victoria is regularly required by the Act and on advice from Aboriginal Victoria to prepare Cultural Heritage Management Plans (CHMP) and Cultural Heritage Permits (CHP) allowing for ‘harm’ of cultural heritage during land management and infrastructure projects. Many of these projects require the engagement of a heritage advisor. Even if heritage advisors were employed in house, the scale of the Parks Victoria estate and the cultural heritage work required would still require significant and unsustainable resourcing.

Parks Victoria is concerned that the required resources and overall cost of preparing CHMPs and CHPs has led to minimal overall benefit for the management and protection of Aboriginal cultural heritage and Traditional Owner benefits on the parks estate. This is in contrast to the clear benefits the Act and Regulations have in relation to cultural heritage management systems enabling extensive private and commercial development in other parts of the state. In the context of the parks estate, it is unclear that the current system set out in the Regulations equates to the effective expenditure of Victorian State Government funds allocated to Parks Victoria. Further, in many CHP or CHMP cases, the real benefits for Traditional Owners and the protection of Aboriginal cultural heritage values within parks which PV has an obligation to maintain and conserve remains unclear.

### EXAMPLE:

**Protection works at burial sites require a Cultural Heritage Management Plan or Aboriginal Cultural Heritage Land Management Agreements. In areas where there is no RAP, a CHMP is a costly and time consuming exercise that is required prior to protection works commencing. In the case of northwest**

Victoria, while statutory approvals are prepared and approved/, burials are left unprotected and further disintegrate.

## Cultural Heritage Management Plans

The average cost for Parks Victoria to prepare a CHMP is approximately \$50 000, with some costing up to \$200 000, while Cultural Heritage Permits cost an average of \$6000.

Parks Victoria is responsible for managing over 12,000 known Aboriginal heritage places. Many of these are Isolated Artefacts and Artefact Scatters located on roads or within visitor sites (campgrounds, picnic area, carparks etc.). Parks Victoria's Northern region road network is over 12,546 Kilometres and includes 2580 registered places, most of these roads haven't been surveyed so the actual number of heritage places along this road network is unknown. For Parks Victoria to obtain CHMPs or CHPs for annual roadworks for this region is not practical in terms of costs, timelines and staff time.

Many activities conducted by Parks Victoria as part of usual operations are defined as high impact activities. Often these activities and projects are conducted in-house by staff using existing or cheap materials, resulting in an improved visitor experience or rectification of safety issues. As such, the activity and resources require little cost, yet may require a CHMP with associated costs that outstrip the cost of the project significantly. As such, the activity or project is often cancelled as there are inadequate funds for cultural heritage management expenses.

### EXAMPLE:

**A CHMP is currently being prepared to enable the construction of a boat ramp. The boat ramp will cost around \$10,000. However, the CHMP will cost approximately \$60,000 once completed.**

## Cultural Heritage Permits

The regulations could provide further clarity on the definition of harm, perhaps even broaden the scope and definitions to include protection or conservation. This will in turn provide greater clarity of when a CHP is required. For example, to do road works alongside or partially within a tree protection zone of a dead or fallen scarred tree is considered harm.

### EXAMPLE:

**Parks Victoria currently manages 30, 342 kilometres of road across the state. A cultural heritage assessment was recently conducted that involved a site inspection of 80 kilometres for proposed future road maintenance. This inspection required participation of a total of 12 Parks Victoria staff and Traditional Owner representatives over a period of 3 days.**

**27 isolated artefacts were located on the roads. A heritage advisor will be required to record the artefacts and prepare the permit, with an estimated cost of assessment and permit application totalling \$23, 000 for the 80 Kilometres. Even with heritage advisors employed in house, the cost and resources involved in replicating this exercise across the entire Parks Victoria road network is unsustainable with no clear positive outcomes for cultural heritage. This funding could be better directed toward Aboriginal burial protection works, cultural mapping, rock art conservation or any number of projects that would involve meaningful partnerships with Traditional Owners.**

Permits prepared by PV rangers are often refused by Aboriginal Victoria based on out of date information provided on older site cards that are included on the Victorian Aboriginal Heritage Register. The response from AV in relation to these applications is that the information included on older registrations is inadequate for determining that nature and extent of the cultural heritage. It is therefore unclear if it is the responsibility of PV to complete place inspection forms prior to submission of a permit application, or the responsibility of AV as the body responsible for maintaining the register. There are currently no standards for permits and the additional strain on PV resources if this is a requirement is unclear but of concern.

In such cases, it is also unclear if a heritage advisor is required to rerecord the site prior to a CHP application. If so, this is an additional cost that has little benefit for the protection of cultural heritage.

**EXAMPLE:**

**Parks Victoria is responsible for managing 87 percent of the recorded rockart in Victoria, which includes over 140 sites. For Parks Victoria and Traditional Owners to complete protection works (including graffiti removal, vegetation spraying, inserting driplines), we need to obtain Permits to Harm. Aboriginal Victoria requires each place to have a Place Inspection Form completed prior to the permit application being written. The time and cost taken to complete inspection forms and prepare Cultural Heritage Permits means Parks Victoria are only able to complete protection works at an average of 6 rockart sites per year.**

## Areas of Cultural Heritage Sensitivity

According to the current Regulations, the definition of *park* has the same meaning as in the *National Parks Act 1975*. In the *National Parks Act*, *Park means a national park, State park, marine national park, marine sanctuary or land that by reason of section 17A or 18*. This totals 116 parks. Yet the layer of area of cultural heritage sensitivity includes many more parks and reserves meaning Parks Victoria has a much higher area of cultural heritage sensitivity (95.8% of the parks estate) than any other land manager, and therefore are more likely to be required to prepare Cultural Heritage Management Plans.

## High impact activities

All high impact activities should include a certain amount of ground disturbance (such as 25 square meters) before they trigger a CHMP to allow for small extensions to existing facilities and for creating smaller facilities without having to prepare a CHMP.

**EXAMPLE:**

**According to Regulation 43 (1)(xv) and under the planning provisions, establishing a barbeque area where the only ground disturbing works would be the use of machinery for post-holes for a picnic table, a CHMP would be triggered. Harm to cultural heritage would be highly unlikely in many areas, and the cost of preparing a CHMP would be prohibitive.**

Activities such as installation of a walking track exceeding 100 meters currently trigger a CHMP. Parks Victoria suggest that this trigger length should be extended to 500 meters. The cost to Parks Victoria

preparing CHMPs for the state in relation to walking tracks alone is prohibitive and unsustainable in the long term.

Conversely, firebreaks and 'Management Vehicle Only roads' do not currently trigger a CHMP, however their impact to cultural heritage would be likely greater and should be included in the Regulations as a high impact activity for a length exceeding 500 meters.

## Aboriginal Cultural Heritage Land Management Agreements

While Parks Victoria has not yet prepared an Aboriginal Cultural Heritage Land Management Agreement, we welcome the approach to manage cultural landscapes in partnership with Traditional Owners. We see ACHLMAs as a mechanism for protecting important cultural values at a landscape level and welcome the opportunity to work with Aboriginal Victoria and RAPs to develop the ACHLMA guidelines and would like to work with Aboriginal Victoria to further develop the prescribed standards.