Traditional Owner Settlement Bill 2010

Introduction Print

EXPLANATORY MEMORANDUM

General

This Bill establishes a new Act to provide a framework for the State to advance reconciliation and promote good relations between the State and traditional owners, and to recognise traditional owners of land based on their traditional and cultural associations to certain Crown land in Victoria. The framework in the Bill facilitates this by authorising the making of a series of agreements between the State and certain entities that represent traditional owner groups, referred to in the Bill as traditional owner group entities.

The principal agreement under the Bill is a recognition and settlement agreement between the State and a traditional owner group entity for an area of public land. A recognition and settlement agreement will primarily provide recognition for traditional owners and will record a settlement of a native title claim.

In addition to this principal agreement, a recognition and settlement agreement may contain other, separate components known as land agreements, land use activity agreements, funding agreements and natural resource agreements.

Land agreements may relate to any or all of the following—

- granting land in fee simple, with or without conditions, in relation to unreserved public land (as that term is defined in clause 3);
- granting an aboriginal title to public land (as that term is defined in clause 11), subject to various conditions including that the land be managed as Crown land for a public purpose, and subject to a traditional owner land management agreement under the **Conservation, Forests and Lands Act 1987** concerning the establishment of a Traditional Owner Land Management Board in respect of that land; and

- establishing a Traditional Owner Land Management Board in relation to any other public land (as that term is defined in clause 11), subject to a traditional owner land management agreement under the **Conservation, Forests and Lands Act 1987**.

Land use activity agreements confer decision making rights on traditional owner group entities in relation to land use activities (as that term is defined in clause 27) carried out on public land.

Funding agreements provide funding to the traditional owner group entity.

Natural resource agreements document the aspirations of the traditional owner group relating to use of and access to natural resources, participation in the management of natural resources and agreed strategies to assist in the realisation of those aspirations.

In addition to the above heads of power to make agreements, the Bill contains provisions which enable the State to give effect to these agreements. These include—

- new powers to grant unreserved public land in fee simple, with or without conditions, under Division 3 of Part 3;
- new powers to grant an aboriginal title to public land, under Division 4 of Part 3;
- new requirements for decision makers and others to adhere to new processes in relation to land use activities, where a land use activity agreement is in force, under Part 4;
- powers to enter into funding agreements and arrangements under Part 5;
- new powers to authorise members of traditional owner group entities to use and access natural resources for traditional purposes, under Part 6.

The Bill amends the **Conservation, Forests and Lands Act 1987**, **Forests Act 1958**, **Crown Land (Reserves) Act 1978**, **Land Act 1958**, **National Parks Act 1975** and **Wildlife Act 1975** to expand the role of Traditional Owner Land Management Boards in relation to the management of public land.

The Bill also makes consequential amendments to several other Acts.

Clause Notes

PART 1—PRELIMINARY

Clause 1 sets out the purpose of the Bill, which is to advance reconciliation and promote good relations between the State and traditional owners and recognise traditional owner groups based on their traditional and cultural associations to certain land in Victoria, by—

- providing for the making of agreements between the State and traditional owner groups;
- amending other Acts, to ensure the agreements are effective; and
- making related and consequential amendments to other Acts.

Clause 2 provides for the commencement of the Bill. The provisions of the Bill come into operation on 1 July 2011, unless they are proclaimed earlier.

Clause 3 sets out the definitions for the purposes of the Bill, which support the operation of Parts 2, 3, 4, 5 and 6. Parts 3, 4 and 6 contain other definitions which are particular to those Parts.

The definitions in clause 3 are ***aboriginal title***, ***camp***, ***Department***, ***funding agreement***, ***indigenous land use agreement***, ***joint management plan***, ***land agreement***, ***land use activity agreement***, ***land use activity agreement register***, ***land management co-operative agreement***, ***native title***, ***Native Title Act***, ***natural resource agreement***, ***public land***, ***recognition and settlement agreement***, ***relevant land Minister***, ***traditional owner group***, ***traditional owner group entity***, ***traditional owner land management agreement***, ***traditional owner rights*** and ***unreserved public land***.

PART 2—RECOGNITION AND SETTLEMENT AGREEMENTS

Part 2 authorises the making of recognition and settlement agreements between the Minister and a traditional owner group entity in relation to an area of public land (as that term is defined in clause 3).

Division 1—Recognition and Settlement Agreements

Clause 4 enables the Minister to enter into a recognition and settlement agreement with the traditional owner group entity for an area of public land. In addition to the matters described in subclause (2), the agreement may comprise any one or more of the components set out in clauses 5 to 8.

Public land in this Part follows the definition in clause 3 of the Bill and means land under the **Crown Land (Reserves) Act 1978**, including alpine resorts, land in any park under the **National Parks Act 1975**, reserved forest under the **Forests Act 1958**, any land under the **Land Act 1958**, State Wildlife Reserves and Nature Reserves under the **Wildlife Act 1975** and any other Crown land over which native title might exist.

Clause 5 provides that a recognition and settlement agreement may include a land agreement. Further detail about land agreements is set out in the notes to Part 3 of the Bill.

Clause 6 provides that a recognition and settlement agreement may include a land use activity agreement. Further detail about land use activity agreements is set out in the notes to Part 4 of the Bill.

Clause 7 provides that a recognition and settlement agreement may include a funding agreement. Further detail about funding agreements is set out in the notes to Part 5 of the Bill.

Clause 8 provides that a recognition and settlement agreement may include a natural resource agreement. Further detail about natural resource agreements is provided in the notes to Part 6 of the Bill.

Clause 9 provides that a recognition and settlement agreement may recognise a number of rights of the traditional owner group. The recognition may relate to any one or more of the following rights—

- enjoying the culture and identity of the traditional owner group;

- maintaining a distinctive spiritual, material and economic relationship with the land and the natural resources on or depending on the land;
- accessing and remaining on the land;
- camping on the land;
- using and enjoying the land;
- taking natural resources on or depending on the land;
- conducting cultural and spiritual activities on the land;
- protecting places and areas of importance on the land.

Clause 9(2) provides that a when such a right is recognised through a recognition and settlement agreement, it is not taken to have any greater effect than is consistent with the law of Victoria. In effect, this clarifies that there is no conferral of new rights by virtue of that recognition or by virtue of the operation of clause 9. Conferral of rights is provided for under Parts 3, 4, 5 and 6 of the Bill.

The rights recognised pursuant to clause 9 are defined in clause 3 of the Bill as ***traditional owner rights***. That definition is used throughout Parts 4 and 6 of the Bill.

Division 2—Relationship with Indigenous Land Use Agreements

Clause 10 provides that a recognition and settlement agreement may include, or be, an indigenous land use agreement made under the Native Title Act 1993 of the Commonwealth (an "ILUA"). To the extent that a recognition and settlement agreement is an ILUA, it may, subject to the Native Title Act 1993, perform various functions under that Act, including recording a settlement of any actual or future native title claim.

PART 3—LAND PROVISIONS

Part 3 enables the Minister to enter into a land agreement with a traditional owner group entity. In effect, a land agreement may provide for four different arrangements to be made with a traditional owner group entity concerning land within the area of public land to which the recognition and settlement agreement relates.

- The first arrangement is the grant of an estate in fee simple to the traditional owner group entity over unreserved public land without ongoing conditions.

- The second arrangement is the grant of an estate in fee simple over unreserved public land, subject to conditions.
  The conditions may include limitations on the grant itself, and may also include ongoing management conditions, which would be set out in a land management co-operative agreement made under Part 8 of the **Conservation, Forests and Lands Act 1987**.

- The third arrangement is an agreement to grant an estate in fee simple to a traditional owner group entity over any public land, subject to various conditions including that the traditional owner group entity agree that the State may continue to use, occupy, control and manage the land as public land, and for the establishment of a Traditional Owner Land Management Board over that land. This is referred to in Part 3 as ***aboriginal title***.

- The fourth arrangement is an agreement to establish a Traditional Owner Land Management Board over any other public land (as that term is defined in Part 3).

To be given effect, the third and fourth arrangements require a separate agreement to be made between the traditional owner group entity and the Minister administering Part 8A of the **Conservation, Forests and Lands Act 1987**.

There are several other notable features of Part 3—

- Although the power to make land agreements lies with the Minister administering the Bill, Part 3 requires that Minister to obtain the consent of other relevant Ministers whose statutory powers, functions or duties may be affected by the making of a land agreement.

- There is a special definition of ***public land*** for the purposes of Part 3 of the Bill. The difference between this definition and the general definition in clause 3 is the exclusion of alpine resorts, State Game Reserves and land under paragraph (f) of the definition in clause 3.

- ***Unreserved public land*** is defined in clause 3 of the Bill to mean land to which paragraphs (d) or (f) of the definition of public land (in clause 3) apply.

Part 3 also contains new powers to enable the Minister to give effect to land agreements.

Division 1—Definitions

Clause 11 defines ***public land*** for the purposes of Part 3 of the Bill.

Division 2—Land Agreements

Clause 12 provides the power for the Minister to enter into a land agreement with a traditional owner group entity for any part of the land that is the subject of the recognition and settlement agreement. The clause sets out the kinds of matters about which the Minister and the traditional owner group entity may agree.

Subclause (2) authorises the land agreement to deal with the granting of unreserved public land in fee simple to the traditional owner group entity in accordance with the powers set out in Division 3 of Part 3 of the Bill. The consent of the Minister administering Division 6 of Part I of the **Land Act 1958** is required under subclause (4)(a) for any such agreement. The agreement is required to specify the conditions, if any, to which the grant is subject, based on the parameters set out in subclause (7) and clause 15. These may be conditions on the grant itself or conditions as to use and management of the land, to be recorded in a separate agreement under Part 8 of the **Conservation, Forests and Lands Act 1987**.

Subclause (3) authorises the land agreement to deal with the granting of aboriginal title over public land in accordance with the powers set out in Division 4 of Part 3 of the Bill. The consent of the relevant land Minister is required under subclause (4)(b) for any such agreement. ***Relevant land Minister*** is defined in clause 3 to be the Minister responsible for the administration of the Act under which the land is managed. Therefore, if a land agreement deals with the granting of aboriginal title over public land that is part of a park under the **National Parks Act 1975** and reserved forest under the **Forests Act 1958**, the consent of the Minister who administers both of those Acts will be required.

Subclause (5) requires a separate agreement to be reached under Part 8A of the **Conservation, Forests and Lands Act 1987** in relation to the appointment of a Traditional Owner Land Management Board over land in respect of which it is proposed that aboriginal title be granted.

Subclause (6) authorises the land agreement to be conditional upon a separate agreement under Part 8A of the **Conservation, Forests and Lands Act 1987** in relation to the appointment of a Traditional Owner Land Management Board over any other public land over which aboriginal title is not to be granted.

Subclause (8) authorises the land agreement to provide that the purpose for which land is reserved or set aside and declared should be altered prior to the grant of aboriginal title.

The change of reservation purpose will need to be completed before the aboriginal title is granted. Subclause (9) refers to the execution of new machinery inserted into the **Crown Land (Reserves) Act 1978** and **Forests Act 1958** for this purpose. See clauses 110 and 117.

Division 3—Grant of Estate in Land

Division 3 of Part 3 contains the powers necessary for the Minister to give effect to a land agreement that deals with the granting of land under clause 12(2).

Clause 13 requires the Minister to recommend the grant of an estate in fee simple in land to a traditional owner group entity where a land agreement provides for such a grant. If conditions are specified in the land agreement pursuant to clause 12(7), clause 13(b) requires that the Minister's recommendation include a recommendation that the grant be subject to those conditions. Clause 15 specifies the kind of conditions that can be imposed pursuant to clause 12(7).

Clause 14 enables the Governor in Council to make the grant recommended by the Minister.

Clause 15 authorises the imposition of conditions on the grant, if conditions are agreed under the land agreement pursuant to clause 12(7). The conditions can be any or all of the following—

- a condition that the estate and any legal or equitable interest in the estate is not able to be sold , transferred, disposed of, encumbered or otherwise dealt with;
- a condition that, subject to the Bill, the leasing or licensing of an estate or of any legal or equitable interest in the estate is prohibited or is restricted as specified in the limitation; and

- a condition that the estate is to be held by the traditional owner group entity on trust for the traditional owner group.

Clause 16 requires the Registrar of Titles to make any amendments to the Register under the **Transfer of Land Act 1958** that are necessary because of the operation of Division 3.

Clause 17 effectively deems the land to be unalienated Crown land, ensuring that the grant is effective.

Division 4—Grant of Aboriginal Title

Division 4 of Part 3 contains the powers necessary for the Minister to give effect to a land agreement that deals with the granting of aboriginal title under clause 12(3).

Clause 18 requires the Minister to recommend to the Governor in Council that the grant of aboriginal title be made to a traditional owner group entity where a land agreement provides for such a grant. ***Aboriginal title*** is defined in clause 3 as an estate in fee simple that is subject to Division 4 of Part 3.

Clause 19 enables the Governor in Council to make the grant recommended by the Minister. Clause 19 also provides a range of other matters that affect the making of the grant, and the validity and extent of the estate granted. They are—

- under subclause (1), that any grant made by the Governor in Council is subject to the provisions of Division 4 and any other conditions set out in the grant itself;
- under subclause (2), that the estate granted is inalienable and not able to be encumbered in any way, except for a transfer to another traditional owner group entity as provided for under subclause (4);
- further under subclause (2), that the estate is conditional upon there being in effect a transfer of rights of the kind provided for under clause 20;
- under subclause (3), that the estate is granted free of trusts, limitations, reservations, restrictions, encumbrances, estates and interests, in order to facilitate the making of the grant; note, however, that many of these are reinstated after the making of the grant by operation of clause 22;

- under subclause (5), that the estate is not subject to any limitation as to depth, therefore enabling an aboriginal title to include land such as cave systems;
- under subclause (6), that the conditions of Division 4 are encumbrances on the estate granted despite registration of the estate under the **Transfer of Land Act 1958**.

Clause 20 provides for aboriginal title to effectively remain public land, despite its granting in fee simple to the traditional owner group entity. The scheme operates on the proviso that, although the underlying legal ownership in the land transfers to the traditional owner group entity, the beneficial use and enjoyment of the land should, by the means set out in this clause, remain with the Crown, and the State's laws should continue to apply to the land as if it were Crown land.

Subclause (1) provides that a grant of aboriginal title is not able to be made unless the traditional owner group entity has entered into a special contract with the State (whether with the Minister administering the Bill or the relevant land Minister or both) to transfer a special right in the land to the State. The right transferred is the right to occupy, use, control and manage the land as public land.

Subclause (1) also contains limitations which protect the underlying legal interest of the traditional owner group entity in the land, by providing that, despite the effect of Division 4, the State has no right to further dispose of the land, or to lease or licence the land except as provided for in the Act under which the land was managed prior to the making of the grant.

Subclause (2) provides a series of statutory effects which follow the coming into force of the special contract described in subclause (1) together with a grant of aboriginal title.

First, subclause (2)(a) provides that the land is taken to be land under the Act under which the land was managed before the aboriginal title was granted. For example, land that was reserved under the **Crown Land (Reserves) Act 1978** prior to the grant will still be regarded as land under that Act following the grant, meaning that all of the provisions of that Act and any other Act or regulations will continue to apply to the land despite the making of the grant.

Second, subclause (2)(b) provides that the land is thus occupied, used, controlled and managed by the Crown as if it were land under the Act under which the land was managed before the

aboriginal title was granted. This validates the transfer of the special right provided for under subclause (1). It also has the effect of confirming that the traditional owner group entity does not retain a right to occupy, use, control or manage the land, having transferred that right to the Crown. This subclause is intended to clarify its subject matter as between the traditional owner group entity and the Crown. It is not intended to have any bearing on which particular instrumentality of the Crown or any other person has control and management of the land. For example, despite subclause (2)(b)—

- if there is a lessee of the land, the lessee may still fairly be regarded as the occupier of the land;
- in the case of a park under the **National Parks Act 1975**, if there is a management agreement in force with Parks Victoria under section 16A, Parks Victoria may still fairly be regarded as the manager of the land.

Third, subclause (2)(b) further provides that the purpose for which the land is taken to be occupied, used, controlled and managed is the ***prescribed purpose***, which is defined in clause 21 as the purpose for which the land was reserved immediately before the grant was made. This is an important limitation on the operation of this clause. Because the prescribed purpose is defined by reference to the purpose for which the land was reserved immediately before the grant was made, it follows that it will no longer be possible for the Crown to alter the purpose for which land is reserved, after the grant has been made.

Fourth, subclause (2)(c) confirms that references to Crown land throughout Victorian laws should be construed so as to include the subject land as if it were still Crown land. The provision is intended to have a broad effect, hence it is expressed to apply to references to Crown land whether they are specific references to land that is Crown land or general references to Crown land or references to Crown land howsoever worded. Examples of its application include—

- the reference to unalienated Crown lands in section 31 of the **Fences Act 1968** should be construed so as to include land that has been granted as aboriginal title;
- the reference to land to or in which the Crown has right, title or interest in section 7 of the **Limitation of Actions Act 1958** should be construed so as to include land that has been granted as aboriginal title;

- the references to Crown land, and property of the Crown, in section 79 of the **Land Tax Act 2005**, should be construed so as to include land that has been granted as aboriginal title.

Fifth, subclause (3) clarifies that the traditional owner group entity has the capacity to enter into the special contract referred to in subclause (1) before the grant has been made. This is necessary to cure any perceived defect in the capacity of the traditional owner group entity to enter into that contract prior to being the owner of the underlying legal interest in the land.

Clause 21 provides a definition of ***prescribed purposes*** for the purposes of clause 20, being—

- in the case of land under the **Crown Land (Reserves) Act 1978**, the purpose for which the land was reserved immediately before the land was made, including any amended purpose pursuant to clause 12(8);
- in the case of a park under the **National Parks Act 1975**, the purposes of the land being managed as part of the park of which the land was a part immediately before the grant was made;
- in the case of reserved forest under the **Forests Act 1958**, the purposes for which the land was declared and set aside under section 50(1) of that Act immediately before the grant was made, including any amended purpose under clause 12(8);
- in the case of a Nature Reserve or State Wildlife Reserve under the **Wildlife Act 1975**, the purposes for which the land was reserved immediately before the grant was made.

Clause 22 effectively reinstates without interruption or alteration any lease, licence, permit or other authority granted under the Act under which the land was managed immediately before the grant was made. This is necessary because of clause 19(3). Clause 22(2) also ensures that any contracts, agreements or other arrangements that relate to the management of the land continue to apply, such as maintenance or service contracts or management agreements.

Clause 23 provides that before aboriginal title is granted to a traditional owner group entity or is transferred or otherwise disposed of under clause 19(4), the traditional owner group entity must enter into an agreement under section 82P of the **Conservation, Forests and Lands Act 1987**, with both the Minister administering section 82P and the relevant land Minister. This has the effect of ensuring that there will always be arrangements in place for the appointment of a Traditional Owner Land Management Board in respect of land over which aboriginal title is granted.

Clause 24 provides a mechanism by which the Crown's special right to land over which aboriginal title is granted will be protected from any unauthorised dealing with the underlying legal interest in the land. Subclause (1) provides that the Minister must firstly notify the Registrar of Titles of the grant of aboriginal title under Part 3 of the Bill. Subclause (2) then requires the Registrar to lodge a caveat over the land on behalf of the Crown, prohibiting any transfer or dealing with the land, except in accordance with the Bill.

Clause 25 requires the Registrar to make amendments in the Register that are necessary as a result of the operation of Division 4.

Clause 26 clarifies that a grant of aboriginal title may be made despite certain prohibitions in the **Heritage Rivers Act 1992**.

PART 4—LAND USE ACTIVITIES

Part 4 establishes a new regime for recognising and protecting traditional owner rights (as that term is defined in clause 3 of the Bill) when they are affected by land use activities on public land (as that term is defined in clause 3). In broad terms, the effect of the regime is to ensure that specified activities ("land use activities") that could impact upon traditional owner rights are subject to a range of processes to ensure that the relevant traditional owner group entity is compensated for any significant impact on traditional owner rights of the traditional owner group. This is achieved by providing traditional owners with a role in decision making in relation to such land use activities. Land use activities of little or low impact on traditional owner rights are either unaffected by the regime or subject to a new advisory process. This is explained in detail below.

As part of a recognition and settlement agreement, the Minister may enter into a land use activity agreement with a traditional owner group entity. The main role of the agreement is to identify land use activities that the parties wish to bring under the operation of the regime in the area of public land to which the agreement relates. An agreement then classifies each identified activity into one of five classes, being ***routine activity***, ***advisory***

activity, ***negotiation activity, class A, negotiation activity, class B*** (together referred to in Part 4 as ***negotiation activities***) and ***agreement activity***.

Classification of activities under land use activity agreements

Whether and how a land use activity can be classified in a land use activity agreement depends on how the activity fits within a series of definitions set out in Part 4.

The categories of routine activity or advisory activity can include any ***land use activity*** (within the meaning of clause 28). This includes—

- leases, licences, permits and other authorities under certain Acts relating to public land (***public land authorisations***);
- exploration and mining licences and other works approvals for a range of earth resources activities, including approvals for pipelines (***earth resources or infrastructure authorisations***);
- activities of a public land manager such as clearing of land, construction of works, planned burning of land, revegetation of land;
- approval of a timber release plan and various other plans;
- the sale or other disposal of public land.

The category of negotiation activity, class B, can include any ***significant land use activity*** or any ***limited land use activity*** (as those terms are defined in clause 27). These are limited definitions. Significant land use activities are a subset of land use activities that have particular features. A limited land use activity is any land use activity that is for the purpose of ***specified public works*** (as that term is defined in clause 27) or the approval of a timber release plan.

The category of negotiation activity, class A, can only include significant land use activities (as that term is defined in clause 27).

The category of agreement activity can only include significant land use activities.

The regime affects activities in different ways depending on their classification, as explained below.

Routine activities

In general, any activity classified as a routine activity is not affected by its placement in a land use activity agreement and may proceed as if the land use activity agreement had not been made.

Special provision is made for routine activities to include activities that are earth resource or infrastructure authorisations (defined in clause 27) for exploration purposes. Such activities may be classified as routine activities

provided that predetermined conditions are agreed to by the person seeking the authorisation. See clause 33.

Advisory activities

Any activity classified as an advisory activity in a land use activity agreement becomes subject to a new notification regime. The decision maker for the activity (defined in clause 29) will be required, by clause 35, to notify the traditional owner group entity prior to carrying out the activity. A failure to do so by the decision maker will contravene clause 36.

Negotiation activities and agreement activities—the negotiation process

All activities classified as negotiation activities and agreement activities in a land use activity agreement become subject to a negotiation process before they may proceed. Irrespective of whether the land use activity is a negotiation activity or an agreement activity, the ***responsible person*** for the activity (defined in Division 3 of Part 4) must undergo a negotiation process set out in Division 4 of Part 4 with the traditional owner group entity that is party to the agreement. The aims of the negotiation process are for the responsible person and the traditional owner group entity to reach agreement with each other—

- that the activity may proceed;
- as to the conditions, if any, on which the activity should proceed;
- as to the ***community benefits*** (defined in clause 27), if any, that should be provided to the traditional owner group entity by the responsible person, to provide due recognition of, and compensation for, the impact of the land use activity on the traditional owner rights of the traditional owner group.

Any negotiation activity and agreement activity may proceed once the responsible person and traditional owner group entity have reached an agreement compliant with clause 51 and have notified the ***decision maker*** for that activity (defined in clause 29) that they have reached agreement, as required under Division 3.

Negotiation activities, class A—after the negotiation process

If, as a result of the negotiation process, the responsible person and the traditional owner group entity fail to reach agreement for a negotiation activity, class A, the parties may jointly refer the matter to the Victorian Civil and Administrative Tribunal ("**VCAT**") for determination at any time after the start of the negotiation process. Either party may unilaterally refer the matter to VCAT after six months from the start of the negotiation process. The start of the negotiation process is determined by the ***notice date*** as that term is defined in clause 27. When a matter is referred to VCAT, VCAT must then determine whether or not the activity may proceed, and if it may

proceed, the conditions, if any, which should apply as between the responsible person and the traditional owner group entity, including the making of a ***community benefit payment*** (defined in clause 27) by the responsible person to the traditional owner group entity. VCAT will also determine the quantum of the community benefit payment. VCAT may only make a determination that an activity may not proceed where the activity will substantially impact on traditional owner rights (see clause 54).

Negotiation activities, class B—after the negotiation process

If, as a result of the negotiation process, the responsible person and the traditional owner group entity fail to reach agreement for a negotiation activity, class B, the parties may refer the matter to VCAT for determination in the same way as for negotiation activities, class A. When a matter is referred to VCAT, VCAT must then determine whether the activity may proceed ordinarily, or whether it may proceed subject to conditions as between the responsible person and the traditional owner group entity, including the making of a community benefit payment by the responsible person to the traditional owner group entity. VCAT will also determine the quantum of the community benefit payment. VCAT is not able to make a determination that the activity may not proceed.

Agreement activities

If, as a result of the negotiation process, the responsible person and the traditional owner group entity fail to reach agreement for an agreement activity, the activity may not proceed.

Part 4 also makes provision for Ministerial determinations for negotiation activities, and the creation and operation of a public register of land use activity agreements.

Division 1—Definitions

Clause 27 defines terms for the purposes of Part 4 of the Bill. The terms defined are: ***advisory activity***, ***agreement activity***, ***agreement land***, ***community benefit***, ***community benefit payment***, ***earth resource or infrastructure authorisation***, ***limited land use activity***, ***negotiation activity***, ***negotiation activity***, ***class A***, ***negotiation activity***, ***class B***, ***notice date***, ***public land authorisation***, ***relevant Minister***, ***significant land use activity specified agricultural lease***, ***specified public works*** and ***VicForests***.

Subclauses (2) and (3) provide that the Governor in Council may declare a land use activity to be a significant land use activity, on the joint recommendation of the Minister and the relevant Minister.

Subclause (4) provides that any reference to the "granting" of an earth resources or infrastructure authorisation or public land authorisation includes "issuing" and "approving", to account for the various ways such authorisations are made under other Acts.

Subclause (5) clarifies that public land authorisations do not include options to renew.

Clause 28 defines ***land use activity***.

Clause 29 defines ***decision maker*** by reference to each type of land use activity. Essentially, the decision maker is the Minister or other public instrumentality responsible for carrying out particular activities or authorising them to proceed. Decision makers are constrained by Division 3 from doing so unless certain requirements are met.

Division 2—Land Use Activity Agreements

Clause 30 provides the Minister with the power to enter into a land use activity agreement with a traditional owner group entity for the whole or part of land that is the subject of a recognition and settlement agreement. Subclauses (2)-(4) constrain that power.

Subclause (2) effectively prohibits a land use activity agreement from providing for any matter inconsistent with the legislation with which Part 4 must interact.

Subclause (3) requires the Minister to obtain the consent of other Ministers whose statutory functions, powers and duties will be affected by a land use activity agreement.

Subclause (4) is intended to prevent any overlap of the regime in Part 4 of the Bill with the future acts regime in Part 2 of the Native Title Act 1993 of the Commonwealth.

Clause 31 requires a land use activity agreement to clearly state that it is such an agreement, and to clearly identify the public land to which it applies. It is intended that agreements may describe land by clear reference to a broad area and then exclude land with particular features or characteristics. The agreement is also required to contain a description of traditional owner rights of the traditional owner group entity, in order to make that description readily available for the purposes of negotiations under Division 3. The agreement can also contain a set of standard, agreed conditions for exploratory earth resource or infrastructure authorisations, for the purposes of clause 33. If accepted under clause 33, these conditions will apply despite anything to the contrary in the relevant Act.

Clause 32 sets out the basic architecture of a land use activity agreement. Subclauses (1) and (2) require the agreement to specifically list the land use activities which are to be subject to the agreement, and to categorise them into one of the 5 categories.

Subclause (3) limits the kind of activities that can be categorised as negotiation activities or agreement activities.

Subclause (4) permits the parties to agree that activities or classes of activity that are consistent with any joint management plan (see Part 9) are not subject to the land use activity agreement.

Subclause (5) permits the parties to agree to exclude certain land use activities from the scope of the agreement if they are currently being negotiated under the Native Title Act. The provision is expressed to apply to a "land use activity that is for the same activity that is a proposal…" to reflect that the point at which negotiation is required under the Native Title Act is different from the point at which negotiation may be required under the Bill.

Clause 33 provides for the impact on routine activities of being listed in a land use activity agreement. Subclause (1) confirms that routine activities are generally unaffected by land use activity agreements.

Subclause (2) provides that earth resource or infrastructure authorisations for exploration purposes are routine activities (i.e. not subject to the agreement), provided that the applicant for the authorisation has agreed to accept a standard set of conditions that are recorded in the land use activity agreement under clause 31(3). If the applicant does not accept those conditions or fails to comply with them, the earth resource or infrastructure authorisation will default to however it is categorised in the land use activity agreement, which could be routine, advisory or negotiation.

Clauses 34 to 36 provide the machinery for the notification regime for proposed advisory activities on agreement land.

Clause 37 enables a land use activity agreement to contain a process for joint negotiation and agreement in relation to multiple land use activities, where the activities relate to a single enterprise such as a major project or series of projects.

Clause 38 provides that all of the provisions of Part 4 that affect the making of land use activity agreements also apply to the variation of land use activity agreements. For example, a variation will require the consent of any relevant Minister and will require registration under Division 5 of Part 4 to take effect.

Clause 39 provides that a land use activity agreement does not apply to the carrying out of any land use activity by a decision maker (such as a land manager) in the case of an emergency (which includes the protection of property or life or the environment).

Division 3—Particular requirements for negotiation and agreement activities

Division 3 sets out who must negotiate with the traditional owner group entity in relation to each type of land use activity for agreement land, where that activity is listed in a land use activity agreement as a negotiation or agreement activity. This forms the basis of the definition of ***responsible person*** in clause 27.

The Division also restrains decision makers from granting, or proceeding with (as the case may be), such land use activities on agreement land until the responsible person and the traditional owner group entity have agreed where required or, in the sole case of negotiation activities, until VCAT or the Minister has determined that the activity may proceed.

Clause 40 deals with the granting of public land authorisations. The person responsible for complying with clause 40 is the person seeking to be the holder of the public land authorisation. For example, this would be a prospective licensee, lessee or permit holder.

Subclauses (1)-(2) require the responsible person to negotiate with a traditional owner group entity where a land use activity agreement specifies any public land authorisation as a negotiation activity. Note that in order to be specified as a negotiation activity, the public land authorisation must be a significant land use activity or a limited land use activity: see clause 32(3).

The aim of the negotiation is to reach agreement as to whether the authorisation should be granted, and, if it should, any suitable conditions as between the responsible person and the traditional owner group entity that should apply. The conditions can include provision by the responsible person of ***community benefits***, which is defined in clause 27 as any economic, cultural or social benefit provided to a traditional owner group entity.

Parties are free to negotiate about any conditions they choose to, and negotiations must be in good faith, but a party cannot be compelled to negotiate about certain matters, nor can parties choose to negotiate about prohibited matters that would lead to inconsistencies with the relevant Act. See the notes to clauses 50 and 51 for more detail.

It should be noted that conditions negotiated and agreed as between parties will not form conditions of the actual public land authorisation; rather, they will be conditions of contract as between the parties. This is the effect of clause 51; see the notes to that clause.

Subclause (3) provides that the responsible person is not entitled to the public land authorisation until the person has complied with subclauses (1) to (2), or unless VCAT or the Minister has determined that the authorisation be granted, in accordance with Subdivisions 2 and 3 of Division 4 of Part 4.

Subclauses (4) to (6) set out a near-identical process to subclauses (1) to (3) for public land authorisations specified in a land use activity agreement to be an agreement activity. Note that in order to be specified as an agreement activity, the public land authorisation must be a significant land use activity: see clause 32(3).

The only difference between subclauses (4) to (6) and (1) to (3) is that, where the responsible person and the traditional owner group entity fail to reach agreement under subclause (4), the responsible person is not entitled to the grant of the public land authorisation. There is no role for VCAT or the Minister in relation to agreement activities.

Subclause (7) ensures that the constraints imposed by this Division in respect of public land authorisations have effect despite any potential conflict with the Acts under which public land authorisations are granted.

Clause 41 is a special provision unique to public land authorisations that allows a decision maker to elect to become the responsible person for certain public land authorisations. Without limiting its potential application, it is intended that this may be used by a decision maker where expression of interest processes for significant development leases require the negotiation with traditional owners to be completed early.

Clause 42 complements clause 40 by constraining a decision maker from granting a public land authorisation unless the responsible person has reached agreement as required by clauses 40(1) or 40(4), or VCAT or the Minister have determined that the authorisation should be granted.

Clause 43 virtually follows an identical structure to clause 40 in relation to earth resources or infrastructure authorisations. The person responsible for complying with clause 43 is the applicant for an earth resources or infrastructure authorisation. The only difference between clauses 40 and 43 is that there is no provision for earth resources or infrastructure authorisations that are agreement activities, as this is not proposed as part of the regime.

Clause 44 mirrors clause 42 in respect of earth resources or infrastructure authorisations.

Clause 45 relates to clearing of land or carrying out of works on land by a decision maker, where the clearing or works is a negotiation or agreement activity. The decision maker is the responsible person for these activities.

Where the clearing or works is a negotiation activity, subclauses (1) to (2) require the decision maker to negotiate with the traditional owner group entity as to whether the activity should proceed, and, if it should, any suitable conditions as between the decision maker and the traditional owner group entity that should apply. The conditions can include provision by the decision maker of community benefits. Note that in order to be specified as a negotiation activity, the clearing or works must be a significant land use activity or a limited land use activity: see clause 32(3).

Subclause (3) constrains the decision maker from proceeding with the activity until the decision maker has complied with subclauses (1) to (2), or unless VCAT or the Minister has determined that the authorisation be granted, in accordance with Subdivisions 2 and 3 of Division 4 of Part 4.

Where the clearing or works is an agreement activity, subclauses (4) to (6) set out a near-identical process to subclauses (1) to (3), the only difference being that where the decision maker and the traditional owner group entity fail to reach agreement under subclause (4), the decision maker is not able to proceed with the clearing or works. There is no role for VCAT or the Minister in relation to agreement activities. Note that in order to be specified as an agreement activity, the clearing or works must be a significant land use activity: see clause 32(3).

Subclause (7) ensures that the constraints imposed by this Division in respect of clearing or works have effect despite any potential conflict with the Acts under which the agreement land is managed.

Clause 46 mirrors clause 45 in relation to the alienation of land. The responsible person is also the decision maker for this activity.

Clause 47 follows an identical structure to clause 43 in relation to the approval of timber release plans under the **Sustainable Forests (Timber) Act 2004**. The responsible person is VicForests. As with clause 43, there is no provision for the approval of a timber release plan to be an agreement activity, as this is prevented by virtue of the definition of limited land use activity coupled with the effect of clause 32(3).

Clause 48 follows an identical structure to clause 44 in relation to the approval of timber release plans. The decision maker is constrained from approving a timber release plan until the responsible person has reached agreement as required by clause 47(1), or VCAT or the Minister have determined that the plan should be approved.

Division 4—Negotiation and determination processes

Division 4 sets out—

- matters of process and limitations for negotiations required by Division 3 (Subdivision 1);
- the role of VCAT in determining disputes in relation to negotiation activities (Subdivision 2);
- the role of the Minister in relation to certain determinations of VCAT (Subdivision 3).

Subdivision 1—General Provisions

Clause 49 provides for a notice to be issued by a responsible person as the first step in negotiations. The date of the notice (defined as the ***notice date*** in clause 27) is relevant for the times at which a matter may be referred to VCAT or at which the Minister's powers may be exercised.

Clause 50 requires that a negotiation for the purposes of Part 4 must be conducted in good faith by both parties. However, this does not compel parties to negotiate about aboriginal cultural heritage (which is a matter for the **Aboriginal Heritage Act 2006**) or any

matter that is generally disconnected from the potential impact of the proposed activity on the traditional owner rights of the traditional owner group.

Clause 51 outlines the requirements for an agreement as to the consent and carrying out of a land use activity under Division 3. The clause confirms that the agreement is a contract between the parties. An agreement must not purport to override or be inconsistent with the relevant Act, regulations or management plan.

Clause 52 provides for the payment to the traditional owner group entity of the reasonable costs of negotiation under clause 50.

Subdivision 2—Negotiation Activities, Referral to VCAT

Clause 53 provides a right for either or both of the traditional owner group entity or a responsible person who have been negotiating in good faith under clause 50 to apply to VCAT to determine the matter. The parties may apply to VCAT jointly at any time. Either party may apply to VCAT unilaterally at any time that is six months or more after the notice date.

Clause 54 sets out what VCAT can determine in relation to a matter concerning a negotiation activity, class A. VCAT can determine whether or not the activity proceeds or is granted, as the case may be. VCAT is not entitled to determine that an activity cannot proceed unless VCAT is satisfied that the impact on traditional owner rights is substantial. Even then, however, VCAT can determine that the activity proceeds, subject to appropriate conditions imposed by VCAT including, but not limited to, a community benefit payment being made by the responsible person. See the notes to clause 56 for matters that VCAT must take into account, and clause 57 in relation to the nature of conditions VCAT can impose.

Clause 55 sets out what VCAT can determine in relation to a matter concerning a negotiation activity, class B, which is considerably different to what VCAT can determine in relation to negotiation activities, class A. In relation to negotiation activities, class B, VCAT's decision is premised on the basis that the activity will proceed, and VCAT's role is to determine whether conditions should be imposed, and, if so, what those conditions should be. Conditions can include a community benefit payment being made by the responsible person. VCAT does not determine whether or not the activity proceeds.

Clause 56 details the matters that VCAT must take into account in making a determination under clauses 54 or 55. This includes any submissions made by the traditional owner group entity and responsible person, the impact of the proposed activity on traditional owner rights, the economic impacts of the proposed activity and the reasonableness of any offer made by the responsible person as to the provision of community benefits.

Clause 56 also prevents VCAT from having regard to submissions or evidence to the extent that they relate to aboriginal cultural heritage, within the meaning of the **Aboriginal Heritage Act 2006**. That Act contains adequate processes for dealing with matters of aboriginal cultural heritage.

Clause 57 provides that conditions attached to a determination by VCAT have effect, if the activity proceeds, as if they were contractual terms between the responsible person and the traditional owner group entity.

All decisions of VCAT under this Subdivision take effect one week after they are made, unless stayed further: see the notes to clause 65.

Subdivision 3—Negotiation Activities, Ministerial Powers

Clause 58 enables the Minister to request a progress report from VCAT if a matter has not been determined within six months of the application being made to VCAT.

Clause 59 enables the Minister to request VCAT to make a determination for a matter referred to it under Subdivision 2, where the Minister is satisfied that the matter is urgent and where more than 4 months has elapsed since the application was made. The Minister may ask VCAT to make its determination within a specified time, although the time cannot be less than 6 months from the notice date. This is a preliminary step to the Minister determining the matter personally under clause 60.

Clause 60 provides the requirements for the Minister to determine a matter personally where VCAT has not made a determination within the timeframes specified under clause 59.

Clause 61 authorises the Minister to provide written notice to VCAT before making a determination under clause 60. Under this clause, VCAT is required to provide to the Minister, a copy of the agreement and all relevant material held in relation to the matter.

Clause 62 requires the Minister to notify the relevant parties of his or her intention to make a determination under clause 60 and of the process to be followed under clause 63.

Clause 63 outlines the procedure which must be followed by the Minister in making a determination under clause 60.

Clause 64 specifies the matters which must be taken into account in making a determination under clause 60.

Clause 65 provides the necessary machinery to stay the decision of VCAT pending a decision by the Minister whether to make his or her own determination under clause 66 in substitution for that of VCAT. All decisions of VCAT under Subdivision 2 have a lag time of one week before they take effect, to ensure that parties do not take action in reliance on the determination while it is open to the Minister to decide to make his or her own determination. If the Minister chooses to make his or her own determination, the Minister may by notice under this clause stay a determination of VCAT pending the Minister's determination. If the Minister does not issue the requisite notice in accordance with this clause, the decision of VCAT will take effect one week after it is handed down.

Clause 66 enables the Minister to make his or her own determination, in substitution for a determination made by VCAT. The Minister may only do this within two months of VCAT's determination and provided that notice of the Minister's intention has been given under clause 65. The provisions of Subdivision 2 apply to Ministerial determinations as if the Minister were VCAT; that is, the Minister can only make a determination that VCAT could have made, and must take into account the matters that VCAT was required to take into account.

Division 5—Register of Land Use Activity Agreements

Division 4 requires the establishment of a public register of land use activity agreements.

Clause 67 requires the Minister to establish a register of land use activity agreements.

Clause 68 provides for the employment of a registrar to administer the register.

Clause 69 provides for the employment of staff for the registrar.

Clause 70 provides a power for the registrar to delegate any of the registrar's powers to the registrar's staff, other than the power of delegation in clause 70.

Clause 71 imposes a duty on the registrar to maintain the register.

Clause 72 provides for the registration of land use activity agreements, which is a condition precedent to the coming into effect of an agreement under clause 73. To effect registration of an agreement, the registrar is required to place the agreement on the register together with the information required by clause 74, publish a notice to this effect in the Government Gazette, and notify Ministers whose responsibilities are expected to be affected by the registration of the agreement.

Clause 73 provides for the coming into effect of a land use activity agreement.

Subclause (1) provides that a land use activity agreement comes into effect on the publication of notice of its registration in the Government Gazette, or, if a later date is specified in the agreement, on that later date. Subclauses (2) and (3) contain transitional provisions which are explained below.

Subclause (2) provides that public land authorisations and earth resource or infrastructure authorisations existing at the time the land use activity agreement comes into force are not subject to the regime.

Subclause (3) provides a special exclusion from the regime for earth resource or infrastructure authorisations that are essentially for the same physical activity on land that has previously been valid or validated under the Native Title Act, but where the approval or authority was another kind of approval or authority than an earth resource or infrastructure authorisation as defined in the Bill. This is necessary because of differences between the regime under the Bill and that relating to future acts under Division 3 of Part 2 of the Native Title Act.

Clause 74 sets out the information regarding land use activity agreements which must be recorded on the register.

Clause 75 provides that all information in the land use activity agreements register is publicly available.

Clause 76 allows any person to apply, in a form approved by the registrar, to search the land use activity agreements register.

Clause 77 specifies that a copy of a land use activity agreement obtained from the register is presumed to be the land use activity agreement, and that any certificate of the registrar stating that there is no agreement in force, is, on the face of it, evidence of that fact.

PART 5—FUNDING AGREEMENTS

Part 5 provides for the making of a funding agreement between the Minister and the traditional owner group entity, as a component of a recognition and settlement agreement.

Clause 78 provides that the Minister may enter into an agreement with a traditional owner group entity for an area of public land in relation to the funding of the entity for the purpose of giving effect to the recognition and settlement agreement of which the funding agreement is part. Subclause 78(2) provides that any agreement made under subclause 78(1) may provide for money to be paid into a trust approved by the Minister for the purposes of the Bill.

PART 6—NATURAL RESOURCE AGREEMENTS

Part 6 provides for the making of a natural resource agreement between the Minister and the traditional owner group entity, as a component of a recognition and settlement agreement, and for authorisation orders.

Division 1—Definitions

Clause 79 defines certain terms for the purposes of Part 6 of the Bill. The terms defined are: ***authorisation order***, ***fauna***, ***fish***, ***flora***, ***forest produce***, ***natural resources***, ***traditional purposes*** and ***wildlife***.

Division 2—Natural Resource Agreements

Clause 80 authorises the Minister to enter into a natural resource agreement with a traditional owner group entity for the whole or part of land that is the subject of a recognition and settlement agreement.

Subclause 80(1) details the matters which may be included in such agreements.

Subclause 80(2) outlines the other Ministers (administering relevant Acts) with which the Minister must consult before entering into a natural resource agreement.

Clause 81 requires a natural resource agreement to include an agreement by the traditional owner group entity and the Minister concerning how, for practical purposes, membership of the traditional owner group entity should be verified by authorised officers. This is necessary because authorisation orders made under Part 6 only apply to members of traditional owner group entities, and it will be necessary for the purposes of enforcing relevant laws for authorised officers to be able to verify (using the agreed means) a person's membership of the traditional owner group entity.

Division 3—Natural Resource Authorisations

Division 3 provides for the granting of various authorisation orders by the Governor in Council, on the advice of the Minister administering the relevant Act, to members of a traditional owner group entity that has a natural resource agreement in force (referred to as a "relevant traditional owner group entity" in these notes).

Authorisation orders will enable members of a relevant traditional owner group entity to take and use (among other things) various natural resources without any individual member being required to hold a licence or permit or pay associated fees to undertake that activity.

Authorisation orders are limited to members of relevant traditional owner group entities and can only authorise activities for ***traditional purposes***, which is defined in clause 79 as personal, domestic or non-commercial communal needs of the traditional owner group.

Clause 82 provides for flora and fauna authorisation orders. Subclause (1) provides that the Governor in Council may, on the recommendation of the Minister administering the **Flora and Fauna Guarantee Act 1988**, authorise members of a relevant traditional owner group entity to take, keep, move or process protected flora or to take or keep fish which are members of a listed taxon or community of fauna for traditional purposes. An authorisation under this clause must be given by Order in Council and only provides authority to do the activities that are described in the Order.

Subclause (2) enables the Governor in Council to impose conditions on an authorisation order, on the recommendation of the Minister.

Subclause (3) requires the Minister, when making a recommendation to the Governor in Council, to take into account the aspirations and other matters set out in the natural resource agreement.

The authorisation under this clause is for the purposes of the **Flora and Fauna Guarantee Act 1988** which would otherwise prohibit such activities unless the person carrying out the activities was duly licensed or permitted to do so. Clauses 113 and 114 amend that Act to provide that a person does not commit a relevant offence under that Act to the extent that the person is authorised under and acting in accordance with an authorisation order under this clause.

Clause 83 provides for hunting authorisation orders. Subclause (1) provides that the Governor in Council may, on the recommendation of the Minister administering the **Wildlife Act 1975**, authorise members of a relevant traditional owner group entity to hunt, take or destroy wildlife for traditional purposes. An authorisation under this clause must be given by Order in Council and only provides authority to do the activities that are described in the Order.

Subclause (2) enables the Governor in Council to impose conditions on an authorisation order, on the recommendation of the Minister.

Subclause (3) requires the Minister, when making a recommendation to the Governor in Council, to take into account the aspirations and other matters set out in the natural resource agreement.

The authorisation under this clause is for the purposes of the **Wildlife Act 1975** which would otherwise prohibit such activities unless the person carrying out the activities was duly authorised to do so. Clause 136 amends that Act to provide that a person does not commit a relevant offence under that Act to the extent that the person is authorised under and acting in accordance with an authorisation order under this clause.

Clause 84 provides for forest produce authorisation orders. Subclause (1) provides that the Governor in Council may, on the recommendation of the Minister administering the **Forests Act 1958**, authorise members of a relevant traditional owner group entity to carry out a range of activities in relation to forest produce (including timber) in reserved forest, for traditional purposes. An authorisation under this clause must be given by Order in Council and only provides authority to do the activities that are described in the Order.

Subclause (2) enables the Governor in Council to impose conditions on an authorisation order, on the recommendation of the Minister.

Subclause (3) requires the Minister, when making a recommendation to the Governor in Council, to take into account the aspirations and other matters set out in the natural resource agreement.

The authorisation under this clause is for the purposes of the **Forests Act 1958** which would otherwise prohibit such activities unless the person carrying out the activities was duly licensed or permitted to do so. Clause 120 amends that Act to provide that the offence provisions under that Act do not apply to a person to the extent that the person is authorised under and acting in accordance with an authorisation order under this clause.

Clause 85 provides for water authorisation orders. Subclause (1) provides that the Governor in Council may, on the recommendation of the Minister administering the **Water Act 1989**, authorise members of a relevant traditional owner group entity to take and use water from a waterway or bore for traditional purposes. An authorisation under this clause must be given by Order in Council and only provides authority to do the activities that are described in the Order.

Subclause (2) clarifies that the authorisation order only applies to waterways or bores to which a person has lawful access in the circumstances set out in section 8(1) of the **Water Act 1989**.

Subclause (3) enables the Governor in Council to impose conditions on an authorisation order, on the recommendation of the Minister.

Subclause (4) requires the Minister, when making a recommendation to the Governor in Council, to take into account the aspirations and other matters set out in the natural resource agreement.

See related amendments to the **Water Act 1989** made by clause 131 of the Bill.

Clause 86 provides for camping authorisation orders.

Subclause (1) provides that the Governor in Council may authorise members of a relevant traditional owner group entity to camp for traditional purposes on relevant public land. An authorisation under this clause must be given by Order in Council. The Order in Council is made on the recommendation of the ***relevant land Minister***, which is defined in clause 3 of the Bill as the Minister administering the Act under which the land is managed.

Subclause (2) allows for a joint recommendation from relevant land Ministers if it is proposed that a camping authorisation order relate to an area of public land that includes land managed under different Acts.

The authorisation order only authorises camping for traditional purposes on land where a permit would otherwise have been required to camp on that land under an Act or regulations. By way of example, this means that—

- if camping is generally prohibited on an area of public land, the authorisation order has no effect in relation to the area in which camping is prohibited, because it is not an area in which camping is permitted under a permit;
- if camping is prohibited on an area of public land but is able to be permitted by the issuing of a permit, the authorisation order has effect in that area;
- if camping is permitted on an area of public land and there is no requirement for a person to hold a permit to camp in that area, the authorisation order has no effect in relation to the area in which camping is permitted;
- if an area of public land is leased and camping is permitted by or with the authority the lessee, the authorisation order has no effect in relation to the requirements of the lessee unless they constitute a permit under the Act or the regulations, which is unlikely to be the case.

Subclause (3) enables the Governor in Council to impose conditions on an authorisation order, on the recommendation of the Minister.

Subclause (4) requires the Minister, when making a recommendation to the Governor in Council, to take into account that part of the natural resource agreement that provides for the facilitation of the exercise of traditional owner rights, which is provided for under clause 80(1)(d).

Subclause (5) requires the relevant land Minister to consult with a committee of management or an Alpine Resort Management Board prior to making a recommendation for a camping authorisation order that affects land managed by either body.

As a matter of practicality, subclause (6) provides that the right of a member of a relevant traditional owner group entity under a camping authorisation order is subject to the right of any other person who is camping in an area under a permit. In effect, this means that the person who is camping with a permit cannot be compelled to vacate land in order to facilitate camping without a permit by the member of the relevant traditional owner group entity.

The authorisation under this clause is for the purposes of the Acts and regulations under which public land (as defined in clause 3) is managed. That means the **Crown Land (Reserves) Act 1978**, the **Forests Act 1958**, the **Land Act 1958**, the **National Parks Act 1975** and the **Wildlife Act 1975**.

Subclause (7) ensures that a person who camps on land under those Acts where it is authorised by a camping authorisation order under this clause, does not commit an offence for camping without a permit on that land.

Subclause (8) provides that the authorisation order does not apply where there is a requirement in the Act or regulations for a permit to use or occupy, for camping, a vehicle or other movable accommodation such as caravans.

Subclauses (9) and (10) provide an exemption from fees imposed by an Act or regulations. Fees imposed on campers by lessees of Crown land are not covered by these subclauses.

Clause 87 authorises the Governor in Council to vary the terms and conditions that apply to the carrying out of any activity under an authorisation order, based on the Ministers' recommendations under clauses 82 to 86.

Clause 88 provides that an authorisation order made under Part 6 does not have any effect outside of the area of land that is subject to the natural resource agreement with the traditional owner group entity. This provision is framed in the negative to avoid any implication that authorisation orders might somehow confer rights in relation to all land to which the natural resource agreement relates. The rights conferred under authorisation orders are limited to authorising an activity that would otherwise require a licence or permit or some other right to undertake. The activity must still be carried out in accordance with all other relevant laws, including laws relating to access to land. For example, if access to land is required in order to exercise a right under an authorisation order, and such physical access is unlawful, then the right under the authorisation order will not be able to be exercised in that area. It is therefore important not to

imply that the authorisation orders override laws relating to access to land, and other laws of general application.

Clause 89 provides requirements for the making, publication and commencement of an authorisation order.

Clause 90 provides for the duration of an authorisation order under Part 6.

PART 7—GENERAL

Clause 91 sets out the power of the Governor in Council to make Regulations in relation to certain matters under the Bill.

PART 8—AMENDMENT OF THE ABORIGINAL HERITAGE ACT 2006

Part 8 amends the **Aboriginal Heritage Act 2006**.

Clause 92 amends section 4(1) of the Act by inserting definitions of terms used in this Bill.

Clause 93 amends section 151 of the Act to provide that a traditional owner group entity under this Bill becomes the registered Aboriginal party for the purposes of the Act.

Clause 94 consequentially amends section 156 of the **Aboriginal Heritage Act 2006**.

PART 9—AMENDMENT OF THE CONSERVATION, FORESTS AND LANDS ACT 1987

Part 9 amends the **Conservation, Forests and Lands Act 1987**.

Clause 95 amends section 69 of the Act to enable the Secretary and a traditional owner group entity to enter into a land management co-operative agreement under that section in respect of land that is proposed to be granted to a traditional owner group entity, before the grant is made.

Clause 96 inserts or substitutes certain definitions from this Bill into section 82A. The new definitions ensure consistency between the arrangements that can be agreed under this Bill and what can be implemented under Part 8A of the Act.

Clause 97 inserts new section 82AB**,** which requires the Minister and the Secretary to take all reasonable steps to give effect to any traditional owner land management agreement under section 82P that is entered into for the purposes of a land agreement under Part 3 of this Bill. This ensures that where the Minister has

entered into an agreement under section 82P with a traditional owner group entity, as a condition of a land agreement under clause 12(5) or 12(6) of the Bill, the Minister and the Secretary will be required to give effect to that agreement by appointing a Traditional Owner Land Management Board and delegating the necessary powers, functions and duties to the Board. However, the Minister and the Secretary should not be required to do so if due to circumstances it is not reasonable to do so.

Clause 98 amends section 82B.

Subclause (1) inserts new section 82B(1A) to require that when a Traditional Owner Land Management Board is established for the purposes of a recognition and settlement agreement under this Bill, the determination establishing the Board clearly identifies that fact.

A Traditional Owner Land Management Board will be established for the purposes of a recognition and settlement agreement if the establishment of the Board is agreed in a traditional owner land management agreement under section 82P that is, in turn, entered into as a condition of a land agreement under clause 12(5) or 12(6) of the Bill.

Subclause (2) inserts new section 82B(5)(ba) to require that the manner and timing of ongoing management plans to be prepared by a Traditional Owner Land Management Board under Division 5A of the Act is specified in the determination that establishes a Board.

Clause 99 inserts new section 82BA to revoke the appointment of any committee of management where a Traditional Owner Land Management Board is appointed over the land and to provide for some transitional matters.

Clause 100 makes statute law revision amendments to section 82F(1).

Clause 101 inserts a new section 82FA to alter the Minister's powers to vary the appointed land, functions, powers, duties or role of a Traditional Owner Land Management Board where the Board is appointed for the purposes of giving effect to a recognition and settlement agreement.

Clause 102 inserts a new section 82GA to alter the Minister's powers to abolish a Traditional Owner Land Management Board where the Board is appointed for the purposes of giving effect to a recognition and settlement agreement.

Clause 103 makes a consequential amendment to section 82H to include as a function of a Board the preparation of a joint management plan under Division 5A.

Clause 104 amends section 82M.

Subclause (1) amends section 82M(3) to ensure that at least one member of a Traditional Owner Land Management Board is a nominee of the Secretary to the Department of Sustainability and Environment.

Subclause (2) inserts new section 82M(5) to alter the Minister's power to dismiss members of a Board where the Board is appointed for the purposes of giving effect to a recognition and settlement agreement.

Clause 105 amends section 82P to ensure that a traditional owner land management agreement under this section can be made with a traditional owner group entity in respect of public land over which aboriginal title is proposed to be granted under Part 3 of the Bill. This is necessary because clauses 12(5) and 23 of the Bill make the grant of aboriginal title conditional upon the prior entry into a traditional owner land management agreement under this section. The amendment makes it clear that a traditional owner group entity has the capacity to enter into the agreement despite not yet holding aboriginal title in the land.

Clause 106 inserts new Division 5A to provide for the preparation, consultation on and approval of joint management plans for appointed lands of a Traditional Owner Land Management Board.

New section 82PA requires a Traditional Owner Land Management Board (whether or not appointed for the purposes of giving effect to a recognition and settlement agreement) to prepare a management plan for the appointed land of the Board. The Board is to be assisted by the Secretary to the Department of Sustainability and Environment and must comply with the time frames referred to in the section.

New section 82PB sets out the requirements for a management plan prepared under Division 5A. The requirements differ depending on which kind or kinds of public land are appointed land to which the plan must relate.

New section 82PC provides that a management plan can deal with matters additional to the requirements set out in new section 82PB, however, the additional matters must be relevant to the management of the land.

New section 82PD sets out the process for the preparation and initial completion of a management plan.

New section 82PE requires public notice to be given of the initial completion of the management plan and to call for submissions on the initial completed plan. The period specified in the notice in relation to submissions must be at least two months: see new section 82PF.

New section 82PF provides for the making and consideration of submissions in accordance with the notice issued under new section 82PE. The section also specifies that the period during which submissions may be made must be at least two months.

New section 82PG enables the Secretary and the Traditional Owner Land Management Board to finalise their preparation of a management plan after taking into account submissions received during the public consultation process.

New section 82PH provides for the approval by the Minister of the management plan prepared under Division 5A. The section also provides for two other possibilities. First, rather than submitting for approval a plan prepared under Division 5A, the Secretary and the Board can instead adopt an existing management plan, and the Minister may approve that plan, provided that it has been subject to a similar public consultation process within the previous 3 years. Second, the Minister may also approve any other plan that has not been the subject of public consultation, if the Minister considers that public consultation is not warranted in that instance. If the Minister is not the relevant land Minister, the Minister must obtain that other Minister's consent prior to approving any management plan under new section 82PH.

New section 82PI provides that a management plan comes into effect when approved by the Minister and remains in effect until it is replaced or the Minister's approval is revoked. The Minister must consult with the Board and the Secretary prior to revoking his or her approval.

New section 82PJ provides that variations to management plans are subject to the same process as set out in Division 5A for the preparation of management plans.

Note that the Bill makes consequential amendments to other Acts to ensure that joint management plans are given effect. See clauses 112, 119, 123, 126 and 135.

Clause 107 amends the existing delegation powers in section 82Q to make them consistent with similar delegation powers in sections 11(3A) and (3B) of the Act.

Clause 108 inserts new section 123 into the Act, which is a transitional provision to enable new Division 5A (concerning joint management plans) to apply to a Traditional Owner Land Management Board that has been established prior to the commencement of Division 5A.

PART 10—AMENDMENT OF THE CROWN LAND (RESERVES) ACT 1978

Part 10 makes consequential amendments to the **Crown Land (Reserves) Act 1978**.

Clause 109 amends section 3 of the Act.

Subclause (1) inserts definitions of ***appointed land***, ***joint management plan***, ***traditional owner land management agreement*** and ***Traditional Owner Land Management Board***.

Subclause (2) inserts a note to flag that land under the Act may be affected by the land use activity regime under Part 4 of the Bill.

Clause 110 inserts new sections 11A and 11B to enable a reservation of land under the Act to be revoked and remade prior to the grant of aboriginal title over the land, as part of giving effect to a land agreement under Part 3 of the Bill. A regime for Parliamentary disallowance will apply to any revocation and remaking of a reservation under this provision.

Clause 111 substitutes a new section 18B to make it clear that the appointment of a Traditional Owner Land Management Board and the making of an agreement with such a Board under section 18B is mutually exclusive with the appointment of a committee of management or trustees under that Act, but is not mutually exclusive with an agreement with any other person under that section. This makes it clear that a Board can manage some aspects of land while another person manages other aspects of the same land.

Clause 112 inserts new section 20A to provide for the effect of a joint management plan approved under new section 82PJ of the **Conservation, Forests and Lands Act 1987**.

PART 11—AMENDMENT OF THE FLORA AND FAUNA GUARANTEE ACT 1988

Part 11 makes consequential amendments to the **Flora and Fauna Guarantee Act 1988**.

Clause 113 inserts new section 48A to provide that a person does not commit certain offences under the Act to the extent that the person is carrying out activities that are authorised by an authorisation order made under Part 6 of the Bill, and to the extent that the person is complying with the authorisation order.

Clause 114 inserts new section 52A to provide that a person does not commit other, certain offences under the Act to the extent that the person is carrying out activities that are authorised by an authorisation order made under Part 6 of the Bill, and to the extent that the person is complying with the authorisation order.

PART 12—AMENDMENT OF THE FORESTS ACT 1958

Part 12 makes consequential amendments to the **Forests Act 1958**.

Clause 115 amends section 3 of the Act.

Subclause (1) inserts definitions of ***appointed land***, ***joint management plan***, ***traditional owner group entity*** and ***Traditional Owner Land Management Board***.

Subclause (2) inserts a note to flag that reserved forest under the Act may be affected by the land use activity regime under Part 4 of the Bill.

Clause 116 repeals section 28(3) which contained definitions that are inserted into section 3 by clause 115.

Clause 117 inserts new section 50AA to enable a declaration and setting aside of land for a particular purpose to be revoked and remade prior to the grant of aboriginal title over the land, as part of giving effect to a land agreement under Part 3 of the Bill.

Clause 118 amends a floating heading in the Act.

Clause 119 inserts new section 57A to provide for the effect of a joint management plan approved under new section 82PJ of the **Conservation, Forests and Lands Act 1987**.

Clause 120 inserts new section 96C to provide that a person does not commit offences under the Act to the extent that the person is carrying out activities that are authorised by an authorisation order made under Part 6 of the Bill, and to the extent that the person is complying with the authorisation order.

PART 13—AMENDMENT OF THE LAND ACT 1958

Part 13 makes consequential amendments to the **Land Act 1958**.

Clause 121 amends section 3 of the Act.

Subclause (1) inserts definitions of ***appointed land***, ***joint management plan*** and ***Traditional Owner Land Management Board***.

Subclause (2) inserts a note to flag that land under the Act may be affected by the land use activity regime under Part 4 of the Bill.

Clause 122 repeals section 4B(3) which contained definitions that are inserted into section 3 by clause 121.

Clause 123 inserts new section 4C to provide for the effect of a joint management plan approved under new section 82PJ of the **Conservation, Forests and Lands Act 1987**.

PART 14—AMENDMENT OF THE NATIONAL PARKS ACT 1975

Part 14 makes consequential amendments to the **National Parks Act 1975**.

Clause 124 amends section 3 of the Act.

Subclause (1) inserts definitions of ***appointed land, joint management plan*** and ***Traditional Owner Land Management Board***.

Subclause (2) inserts a note to flag that parks under the Act may be affected by the land use activity regime under Part 4 of the Bill.

Clause 125 inserts new sections 16A(1A), 16A(1B) and 16A(2A), to make it clear that the appointment of a Traditional Owner Land Management Board and the subsequent making of an agreement with such a Board under section 16A is not mutually exclusive with an agreement with Parks Victoria to manage land under that section. This makes it clear that a Board can manage some aspects of land while Parks Victoria manages other aspects of the same land.

The clause also repeals section 16A(4) which contained definitions that are inserted into section 3 by clause 124.

Clause 126 inserts new section 16B to provide for the effect of a joint management plan approved under new section 82PJ of the **Conservation, Forests and Lands Act 1987**.

Clause 127 inserts new sections 17(2AA), 17B(2), 17D(4) and 18(3) to provide that existing management plans under these sections do not have effect where a joint management plan is in force.

Clause 128 inserts new section 47D(1A) to extend the existing requirements for tabling of management plans for the Alpine National Park to joint management plans prepared under new section 82PJ of the **Conservation, Forests and Lands Act 1987**, where joint management plans concern land in the Alpine National Park.

PART 15—AMENDMENT OF THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL ACT 1998

Part 15 amends the **Victorian Civil and Administrative Tribunal Act 1998**.

Clause 129 inserts new Part 19A into the Act, to establish a framework for constituting VCAT for proceedings under Part 4 of the Bill.

PART 16—AMENDMENT OF THE WATER ACT 1989

Part 16 makes consequential amendments to the **Water Act 1989**.

Clause 130 inserts a definition of ***traditional owner group entity*** into section 3 of the Act.

Clause 131 inserts new section 8A for the purposes of clause 85. New section 8A effectively provides that, for the purposes of the **Water Act 1989**, a member of a traditional owner group entity where so authorised by an authorisation order under clause 85 has the right to carry out the activities described in the order. The effect is to confirm that, to the extent that the person is acting in accordance with an authorisation order, the offence provisions in the **Water Act 1989,** such as section 289, will not apply because the authorisation order would provide the person with a right, or lawful authority, for the purposes of that Act.

PART 17—AMENDMENT OF THE WILDLIFE ACT 1975

Part 17 makes consequential amendments to the **Wildlife Act 1975**.

Clause 132 amends section 3 of the Act

Subclause (1) inserts definitions of ***appointed land, joint management plan, traditional owner group entity*** and ***Traditional Owner Land Management Board***.

Subclause (2) inserts a note to flag that land under the Act may be affected by the land use activity regime under Part 4 of the Bill.

Clause 133 inserts new section 18(5) to provide that an existing management plan under this section does not have effect where a joint management plan is in force.

Clause 134 repeals section 18A(3) which contained definitions that are inserted into section 3 by clause 132.

Clause 135 inserts new section 18B to provide for the effect of a joint management plan approved under new section 82PJ of the **Conservation, Forests and Lands Act 1987**.

Clause 136 inserts new section 47B to provide that a person does not commit certain offences under the Act to the extent that the person is carrying out activities that are authorised by an authorisation order made under Part 6 of the Bill, and to the extent that the person is complying with the authorisation order.

PART 18—MISCELLANEOUS AMENDMENT OF OTHER ACTS

Part 18 inserts a note into various other Acts to flag that certain things under those Acts may be affected by the land use activity regime under Part 4 of the Bill (the "relevant note"), and makes other minor amendments.

Clause 137 inserts the relevant note into section 3 of the **Alpine Resorts (Management) Act 1997**.

Clause 138 inserts the relevant note after section 80 of the **Geothermal Energy Resources Act 2005**.

Clause 139 inserts the relevant note after section 193 of the **Greenhouse Gas Geological Sequestration Act 2008**.

Clause 140 amends the **Mineral Resources (Sustainable Development) Act 1990**. Subclause (1) inserts the relevant note after section 25. Subclause (2) inserts the relevant note after section 77I.

Clause 141 inserts the relevant note after section 797 of the **Offshore Petroleum and Greenhouse Gas Storage Act 2010**.

Clause 142 makes a consequential amendment to Schedule 6 of the **Offshore Petroleum and Greenhouse Gas Storage Act 2010**, which will update the reference in clause 27 of the Bill to the **Petroleum (Submerged Lands) Act 1982** with a reference to the **Offshore Petroleum and Greenhouse Gas Storage Act 2010**, when that Act commences operation.

Clause 143 inserts the relevant note after section 152 of the **Petroleum (Submerged Lands) Act 1982**.

Clause 144 inserts the relevant note after section 138 of the **Petroleum Act 1998**.

Clause 145 inserts the relevant note after section 135 of the **Pipelines Act 2005**.

Clause 146 inserts the relevant note after sections 40 and 43 of the **Sustainable Forests (Timber) Act 2004**.

PART 19—REPEAL OF AMENDING PROVISIONS

Clause 147 provides for the automatic repeal of Parts 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of the Bill on 1 July 2012. The repeal of these Parts of the Bill does not in any way affect the continuing operation of the amendments made by these Parts of the Bill (see section 15(1) of the **Interpretation of Legislation Act 1984**).