

PARLIAMENT OF VICTORIA

Traditional Owner Settlement Bill 2010

TABLE OF PROVISIONS

<i>Clause</i>	<i>Page</i>
PART 1—PRELIMINARY	2
1 Purposes	2
2 Commencement	3
3 Definitions	3
PART 2—RECOGNITION AND SETTLEMENT AGREEMENTS	8
Division 1—Recognition and Settlement Agreements	8
4 Minister may enter into recognition and settlement agreements	8
5 Land agreements in recognition and settlement agreements	8
6 Land use activity agreements in recognition and settlement agreements	8
7 Funding agreements in recognition and settlement agreements	8
8 Natural resource agreements in recognition and settlement agreements	9
9 Recognition of traditional owner rights	9
Division 2—Relationship with Indigenous Land Use Agreements	10
10 Relationship with indigenous land use agreements	10
PART 3—LAND PROVISIONS	11
Division 1—Definitions	11
11 Definitions	11
Division 2—Land Agreements	11
12 Land agreements	11
Division 3—Grant of Estate in Land	14
13 Minister to recommend grant of land	14
14 Grant of land by Governor in Council	14
15 Reservations, exceptions and conditions which may be imposed on grant	14
16 Registrar to make necessary amendments	15
17 Effect of granting of estate in land	15

<i>Clause</i>	<i>Page</i>
Division 4—Grant of Aboriginal Title	15
18 Minister to recommend grant of land	15
19 Grant of aboriginal title	16
20 Transfer of rights to the State	17
21 Prescribed purposes	18
22 Saving of leases etc.	19
23 Requirements as to agreement under Part 8A of the Conservation, Forests and Lands Act 1987	20
24 Registrar to record caveat	20
25 Registrar to make necessary amendments	20
26 Division not affected by other Acts	20
 PART 4—LAND USE ACTIVITIES	 21
Division 1—Definitions	21
27 Definitions	21
28 Definition of <i>land use activity</i>	27
29 Definition of <i>decision maker</i>	29
Division 2—Land Use Activity Agreements	31
30 Power to enter into an agreement as to land use activities	31
31 Requirements for land use activity agreements	32
32 Listing and classification of land use activities to which agreement applies	33
33 Specification of activities as routine activities	34
34 Ministerial direction as to advisory activities	34
35 Requirement to comply with directions	35
36 Effect of direction	35
37 Process as to multiple activities	35
38 Variation of agreements	35
39 Application in emergency situations	36
Division 3—Particular requirements for negotiation and agreement activities	 36
40 Requirements for person seeking public land authorisation	36
41 Decision maker may determine to undertake compliance in place of person seeking authorisation	38
42 Obligations of decision maker to ascertain compliance	38
43 Requirements for earth resource or infrastructure authorisations	39
44 Obligations of decision maker to ascertain compliance	40
45 Requirements for clearing of land, carrying out of works	41
46 Requirements for persons seeking alienation of land	43
47 Requirements for approval of timber release plans	45
48 Obligations of decision maker to ascertain compliance	46

<i>Clause</i>	<i>Page</i>
Division 4—Negotiation and determination processes	46
Subdivision 1—General Provisions	46
49 Responsible person to notify traditional owner group entity	46
50 Requirement to negotiate in good faith	47
51 Requirements as to agreement as to carrying out of land use activity	48
52 Fees for costs of negotiating	49
Subdivision 2—Negotiation Activities, Referral to VCAT	49
53 Application for VCAT determination	49
54 VCAT determination, negotiation activities, class A	50
55 VCAT determination, negotiation activities, class B	51
56 Matters VCAT must take into account in making determination	51
57 Effect of VCAT determination as to conditions	52
Subdivision 3—Negotiation Activities, Ministerial Powers	52
58 Report to Minister where determination not made in specified time	52
59 Minister may request determination in urgent cases	53
60 Minister may make determination	53
61 Notice by Minister to VCAT	54
62 Notification to parties	54
63 Procedure for determining matter	55
64 Matters to be taken into account	55
65 Notice of Ministerial determination and stay of VCAT determination	55
66 Power of Minister to substitute determination	56
Division 5—Register of Land Use Activity Agreements	57
67 Land use activity agreement register	57
68 Employment of registrar of land use activity agreements	57
69 Staff of the registrar	57
70 Delegation	57
71 Registrar to maintain register	58
72 Registration of land use activity agreements	58
73 Coming into effect of agreement	59
74 Information that is recorded on the register	60
75 Information that is available from the register	60
76 Right to search the register	61
77 Evidentiary provisions	61
PART 5—FUNDING AGREEMENTS	62
78 Power to enter into funding agreement	62

<i>Clause</i>	<i>Page</i>
PART 6—NATURAL RESOURCE AGREEMENTS	63
Division 1—Definitions	63
79 Definitions	63
Division 2—Natural Resource Agreements	63
80 Power to enter into natural resource agreements	63
81 Evidence of membership	65
Division 3—Natural Resource Authorisations	66
82 Natural resource flora and fauna authorisation	66
83 Natural resource hunting authorisation	66
84 Natural resource forest authorisation	67
85 Natural resource water authorisation	68
86 Natural resource camping authorisation	68
87 Variation of terms and conditions on authorisation orders	70
88 Land to which authorisation order does not apply	70
89 Making, publication and commencement of authorisation order	71
90 Period of authorisation order	71
PART 7—GENERAL	72
91 Regulation making powers	72
PART 8—AMENDMENT OF THE ABORIGINAL HERITAGE ACT 2006	74
92 Definitions	74
93 Determination of application for registration	74
94 Revocation of registration	74
PART 9—AMENDMENT OF THE CONSERVATION, FORESTS AND LANDS ACT 1987	76
95 Power to enter into land management co-operative agreements	76
96 Amendment of definitions in Part 8A	76
97 Insertion of new section to follow section 82A	78
82AB Role of Minister and Secretary where recognition and settlement agreement exists	78
98 Establishment of Traditional Owner Land Management Board	78
99 Insertion of new section 82BA	79
82BA Revocation of appointment of committee of management	79
100 Variation of role etc. of Board	80
101 New section inserted after section 82F	80
82FA Requirements for variation where recognition and settlement agreement applies	80

<i>Clause</i>	<i>Page</i>
102	81
New section inserted after section 82G	
82GA	81
Requirements for abolition where recognition and settlement agreement applies	
103	82
Functions of Traditional Owner Land Management Boards	
104	82
Appointment and dismissal of members	
105	83
Agreements as to the establishment of Traditional Owner Land Management Boards	
106	83
Insertion of new Division to follow Division 5 of Part 8A	
Division 5A—Joint Management Plans	83
82PA	83
Joint preparation of management plans	
82PB	84
Requirements of specific Acts as to management to apply	
82PC	86
Other requirements for management plans	
82PD	86
Completion of preparation of management plan	
82PE	86
Notice of completed management plan	
82PF	87
Making and consideration of submissions	
82PG	87
Agreement to management plan	
82PH	88
Approval of plan by Minister	
82PI	89
Effect of plan	
82PJ	89
Variation of joint management plan	
107	90
Delegation powers	
108	90
New section inserted after section 122	
123	90
Transitional provision— Traditional Owner Settlement Act 2010	
PART 10—AMENDMENT OF THE CROWN LAND (RESERVES) ACT 1978	92
109	92
Definitions	
110	92
New sections inserted after section 11	
11A	92
Revocation and further reservation of land	
11B	93
Parliamentary scrutiny of Order in Council	
111	94
Section 18B substituted	
18B	94
Power of Secretary to enter into management agreements	
112	95
New section inserted after section 20	
20A	95
Land to be managed consistently with joint management plan	
PART 11—AMENDMENT OF THE FLORA AND FAUNA GUARANTEE ACT 1988	96
113	96
New section 48A inserted	
48A	96
Offences under section 47 not to apply for authorised traditional owners	

<i>Clause</i>	<i>Page</i>
114 New section 52A inserted	96
52A Offences under section 52 not to apply for authorised traditional owners	96
PART 12—AMENDMENT OF THE FORESTS ACT 1958	97
115 Definitions	97
116 Consequential repeal of definitions	97
117 Insertion of new section after section 50	98
50AA Revocation and further setting aside and declaration of land	98
118 Amendment of heading	98
119 New section inserted after section 57	99
57A Land to be managed consistently with joint management plan	99
120 New section 96C inserted	99
96C Offences not to apply for authorised traditional owners	99
PART 13—AMENDMENT OF THE LAND ACT 1958	100
121 Definitions	100
122 Consequential repeal of definitions	100
123 New section inserted after section 4B	100
4C Land to be managed consistently with joint management plan	100
PART 14—AMENDMENT OF THE NATIONAL PARKS ACT 1975	102
124 Definitions	102
125 Secretary may enter into management agreements	102
126 New section inserted after section 16A	103
16B Land to be managed consistently with joint management plan	103
127 Management plans	103
128 Tabling of management plans	105
PART 15—AMENDMENT OF THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL ACT 1998	106
129 Insertion of new Part 19A in Schedule 1	106
PART 19A—TRADITIONAL OWNER SETTLEMENT ACT 2010	106
91B Constitution of Tribunal for Traditional Owner Settlement Matters	106

<i>Clause</i>	<i>Page</i>
PART 16—AMENDMENT OF THE WATER ACT 1989	107
130 Definitions	107
131 New section 8A inserted	107
8A Traditional owner rights	107
PART 17—AMENDMENT OF THE WILDLIFE ACT 1975	109
132 Definitions	109
133 Management plans	109
134 Repeal of section 18A(3)	110
135 New section inserted after section 18A	110
18B Land to be managed consistently with joint management plan	110
136 New section 47B inserted	110
47B Offences not to apply for authorised traditional owners	110
PART 18—MISCELLANEOUS AMENDMENT OF OTHER ACTS	111
137 Amendment of the Alpine Resorts (Management) Act 1997 , insertion of note	111
138 Amendment of Geothermal Energy Resources Act 2005 , insertion of note	111
139 Amendment of the Greenhouse Gas Geological Sequestration Act 2008 , insertion of note	111
140 Amendment of Mineral Resources (Sustainable Development) Act 1990 , insertion of notes	112
141 Amendment of the Offshore Petroleum and Greenhouse Gas Storage Act 2010 , insertion of note	112
142 Amendment of the Offshore Petroleum and Greenhouse Gas Storage Act 2010 , insertion of consequential amendment 13 Traditional Owner Settlement Act 2010	113
143 Amendment of the Petroleum (Submerged Lands) Act 1982 , insertion of note	113
144 Amendment of the Petroleum Act 1998 , insertion of note	113
145 Amendment of the Pipelines Act 2005 , insertion of note	114
146 Amendment of the Sustainable Forests (Timber) Act 2004 , insertion of notes	114
PART 19—REPEAL OF AMENDING PARTS	115
147 Repeal of amending Parts	115
ENDNOTES	116

PARLIAMENT OF VICTORIA

Introduced in the Assembly

Traditional Owner Settlement Bill 2010

A Bill for an Act to recognise traditional owner groups based on their traditional and cultural associations to certain land in Victoria, to provide for the making of agreements between the State and traditional owner groups, to recognise and confer rights on traditional owner groups as to access to or ownership or management of certain public land and as to decision making rights and other rights that may be exercised in relation to the use and development of the land or natural resources on the land, to make any amendments that are necessary to other Acts to ensure the agreements are effective, to make any related and consequential amendments to other Acts and for other purposes.

Preamble

Aboriginal peoples have lived for more than a thousand generations in this State. They maintained complex societies with many languages, kinship systems, laws, politics and spiritualities. They enjoyed a close spiritual connection with their country and developed sustainable economic practices for their lands, waters and natural resources. Land formed the basis of their existence and identity and was owned

s. 1

and managed according to traditional laws and customs. They had a special relationship with their lands, which held great meaning to them.

The arrival of Europeans in this State ruptured the spiritual, political and economic order of the Aboriginal peoples. They faced the loss of their ancestral land and grave threats to their culture, but the Aboriginal peoples have survived.

The Constitution Act 1975 now recognises the unique status of the Aboriginal peoples as descendants of Australia's first peoples. It recognises that Aboriginal peoples have made a unique and irreplaceable contribution to the identity and well-being of this State.

It is now expedient, as a means of reconciliation, to provide for agreements to be negotiated between the State and traditional owner groups to enable Aboriginal cultures to be recognised, in particular the recognition of the special relationship of Aboriginal peoples with their land, to recognise traditional owner rights and for rights to be conferred on identified traditional owner groups.

The Parliament of Victoria therefore enacts:

PART 1—PRELIMINARY

1 Purposes

The purposes of this Act are to advance reconciliation and promote good relations between the State and traditional owners and to recognise traditional owner groups based on their traditional and cultural associations to certain land in Victoria by—

5

(a) providing for the making of agreements between the State and traditional owner groups—

(i) to recognise traditional owner rights and to confer rights on traditional owner groups as to access to or ownership or management of certain public land; and

(ii) as to decision making rights and other rights that may be exercised in relation to the use and development of the land or natural resources on the land; and

(b) making any amendments to other Acts that are necessary to ensure the agreements are effective; and

(c) making any related and consequential amendments to other Acts.

2 Commencement

(1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.

(2) If this Act does not come into operation before 1 July 2011, it comes into operation on that day.

3 Definitions

In this Act—

aboriginal title means a grant of an estate in fee simple in land that is subject to Division 4 of Part 3;

camp means—

(a) to erect, occupy or use, for accommodation, a tent, tarpaulin or any similar form of accommodation, shelter or temporary structure; or

(b) to occupy or use a swag or sleeping bag; or

(c) to occupy or use for accommodation purposes a vehicle, vessel or other moveable form of accommodation;

Department means the Department of Justice;

funding agreement means an agreement under Part 5;

indigenous land use agreement has the same meaning as in Division 3 of Part 2 of the Native Title Act;

joint management plan has the same meaning as in the **Conservation, Forests and Lands Act 1987**;

land agreement means an agreement under Division 2 of Part 3;

land management co-operative agreement means an agreement under Part 8 of the **Conservation, Forests and Lands Act 1987**;

land use activity agreement means an agreement under Division 2 of Part 4;

land use activity agreement register means the register established under section 67;

native title has the same meaning as in the Native Title Act;

Native Title Act means the Native Title Act 1993 of the Commonwealth;

natural resource agreement means an agreement under Division 2 of Part 6;

public land means the following—

- (a) land under the **Crown Land (Reserves) Act 1978** including land under the **Alpine Resorts Act 1983**;
- 5 (b) land in any park within the meaning of the **National Parks Act 1975**;
- (c) reserved forest within the meaning of the **Forests Act 1958**;
- 10 (d) unreserved Crown land under the **Land Act 1958**;
- (e) land in any State Wildlife Reserve or Nature Reserve, within the meaning of the **Wildlife Act 1975**;
- 15 (f) any other Crown land in Victoria that may be the subject of an application of the kind listed in the Table to section 61 of the Native Title Act;

recognition and settlement agreement means an agreement under section 4;

20 *relevant land Minister*, in relation to public land, means the Minister administering the Act under which the land is managed;

traditional owner group, in relation to an area of public land, means—

- 25 (a) if there is a group of persons who are the persons in the native title group in relation to the area in accordance with section 24CD of the Native Title Act, that group of persons, other than a
- 30 group of persons that is a representative body under section 24CD(3)(b) of that Act; or

(b) if there are native title holders (within the meaning of the Native Title Act) in relation to the area, the native title holders; or

5

(c) in any other case, a group of persons who are recognised by the Attorney-General, by notice published in the Government Gazette as the traditional owners of the land, based on Aboriginal traditional and cultural associations with the land;

10

traditional owner group entity, in relation to an area of public land, means—

15

(a) a corporation within the meaning of the Corporations (Aboriginal and Torres Strait Islander) Act 2006 of the Commonwealth; or

20

(b) a company limited by guarantee that is registered under the Corporations Act; or

(c) a body corporate—

25

that a traditional owner group for the area of public land has appointed to represent them in relation that area, for the purposes of this Act;

traditional owner land management agreement has the same meaning as in the **Conservation, Forests and Lands Act 1987**;

30

traditional owner rights, in relation to a recognition and settlement agreement, means the traditional owner rights recognised in the agreement;

Traditional Owner Settlement Bill 2010

Part 1—Preliminary

s. 3

unreserved public land means land to which paragraph (d) or (f) of the definition of ***public land*** applies.

PART 2—RECOGNITION AND SETTLEMENT AGREEMENTS

Division 1—Recognition and Settlement Agreements

4 Minister may enter into recognition and settlement agreements

(1) The Minister, on behalf of the State, may enter into an agreement with the traditional owner group entity for an area of public land as to any one or more of the matters set out in the following sections of this Division.

(2) A recognition and settlement agreement may include provision for any matter which is required or permitted by this Act or which is necessary or convenient to give effect to the agreement.

5 Land agreements in recognition and settlement agreements

A recognition and settlement agreement may include a land agreement with the traditional owner group entity in relation to land that is the subject of the agreement.

6 Land use activity agreements in recognition and settlement agreements

A recognition and settlement agreement may include a land use activity agreement with the traditional owner group entity in relation to land that is the subject of the agreement.

7 Funding agreements in recognition and settlement agreements

A recognition and settlement agreement may include a funding agreement with the traditional owner group entity for the purpose of giving effect to the recognition and settlement agreement.

8 Natural resource agreements in recognition and settlement agreements

A recognition and settlement agreement may include a natural resource agreement with the traditional owner group entity in relation to land that is the subject of the agreement.

9 Recognition of traditional owner rights

(1) A recognition and settlement agreement may, in relation to land that is the subject of the agreement, provide for the recognition of rights of the traditional owner group in relation to any one or more of the following—

- (a) the enjoyment of the culture and identity of the traditional owner group;
- (b) the maintenance of a distinctive spiritual, material and economic relationship with the land and the natural resources on or depending on the land;
- (c) the ability to access and remain on the land;
- (d) the ability to camp on the land;
- (e) the ability to use and enjoy the land;
- (f) the ability to take natural resources on or depending on the land;
- (g) the ability to conduct cultural and spiritual activities on the land;
- (h) the protection of places and areas of importance on the land.

(2) Any recognition of a right in an agreement under subsection (1) is not to be taken to have any greater effect than is consistent with the law of Victoria.

Division 2—Relationship with Indigenous Land Use Agreements

10 Relationship with indigenous land use agreements

A recognition and settlement agreement may be wholly or partly constituted by the whole or part of an indigenous land use agreement, for the purposes of the settlement of any application of a kind listed in the Table to section 61 of the Native Title Act.

5

PART 3—LAND PROVISIONS

Division 1—Definitions

11 Definitions

(1) In this Part, *public land* means—

5

(a) land under the **Crown Land (Reserves) Act 1978**, other than land under the **Alpine Resorts Act 1983**;

(b) land in any park within the meaning of the **National Parks Act 1975**;

10

(c) reserved forest within the meaning of the **Forests Act 1958**;

(d) unreserved Crown land under the **Land Act 1958**;

15

(e) land in any Nature Reserve or State Wildlife Reserve, within the meaning of the **Wildlife Act 1975**, other than land in a State Game Reserve (within the meaning of that Act).

20

(2) Words and phrases used in this Part that are defined in the **Transfer of Land Act 1958** have the same meaning as in that Act.

Division 2—Land Agreements

12 Land agreements

25

(1) The Minister, on behalf of the State, may 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 as to any one or more of the matters set out in this section.

- 5 (2) A land agreement may provide that if land that is the subject of the agreement is unreserved public land, an estate in fee simple in the land is to be granted to the traditional owner group entity in accordance with Division 3.
- 10 (3) A land agreement may provide that if land that is the subject of the agreement is public land, aboriginal title in the land is to be granted to the traditional owner group entity in accordance with Division 4.
- 15 (4) A land agreement—
(a) must not make provision under subsection (2) unless the consent of the Minister administering Division 6 of Part I of the **Land Act 1958** has first been obtained; and
(b) must not make provision under subsection (3) unless the consent of the relevant land Minister has first been obtained.
- 20 (5) If a land agreement provides for the grant of aboriginal title in land that is the subject of the agreement, the agreement must provide that the grant of aboriginal title is subject to the Minister administering Part 8A of the **Conservation, Forests and Lands Act 1987** entering into a
25 traditional owner land management agreement as to the management of the land that is the subject of the grant with the traditional owner group entity.
- 30 (6) If a land agreement makes provisions for the management of public land (that is not land that is provided for under subsection (5)), the agreement may provide that the provisions are subject to the Minister administering Part 8A of the
35 **Conservation, Forests and Lands Act 1987** entering into a traditional owner land management

agreement with the traditional owner group entity as to the management of the land.

- 5 (7) If a land agreement provides for the grant of an estate in fee simple under Division 3 in land that is the subject of the agreement the agreement may provide that the grant of the estate in fee simple is subject to—
- 10 (a) the conditions agreed to in the agreement as conditions to be set out in the grant; and
- 15 (b) the Secretary (within the meaning of section 69 of the **Conservation, Forests and Lands Act 1987**) entering into a land management co-operative agreement as to the management of the land that is the subject of the grant with the traditional owner group entity.
- 20 (8) If a land agreement makes provision under subsection (3) and the land is—
- (a) land under the **Crown Land (Reserves) Act 1978**, the agreement may provide that the land is to be reserved for the purpose specified in the agreement; or
- 25 (b) land under the **Forests Act 1958**, the agreement may provide that the land is to be set aside and declared for the purpose specified in the agreement.
- 30 (9) If a land agreement has a provision under—
- (a) subsection (8)(a), the provision is conditional on the land being reserved for the purpose specified in the agreement under sections 11A and 11B of the **Crown Land (Reserves) Act 1978**; or

- 5 (b) subsection (8)(b), the provision is conditional on the land being set aside and declared under section 50AA of the **Forests Act 1958** for the purpose specified in the agreement.

Division 3—Grant of Estate in Land

13 Minister to recommend grant of land

10 If a land agreement provides for the grant of an estate in fee simple in land that is the subject of the agreement, the Minister must take all reasonable steps to recommend to the Governor in Council that—

- 15 (a) an estate in fee simple be granted to the traditional owner group entity that is the party to the agreement; and
- (b) the grant be subject to the conditions that, in accordance with this Division, are agreed to in the agreement as conditions to be set out in the grant.

14 Grant of land by Governor in Council

20 The Governor in Council may grant the land that is the subject of the Minister's recommendation to the traditional owner group entity in accordance with the recommendation of the Minister.

15 Reservations, exceptions and conditions which may be imposed on grant

25 The conditions that a land agreement may specify as conditions to which the grant of an estate in fee simple in land under section 14 may be subject are the following—

- 30 (a) the 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;

5 (b) the condition that, subject to this Act, 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;

(c) the condition that the estate is to be held by the traditional owner group entity on trust for the traditional owner group.

16 Registrar to make necessary amendments

10 The Registrar of Titles must make any amendments to the Register under the **Transfer of Land Act 1958** that are necessary because of the operation of this Division.

17 Effect of granting of estate in land

15 On the grant of an estate in land under section 14, the land is deemed to be discharged from all trusts, limitations, reservations, restrictions, encumbrances, estates and interests that applied to the land immediately before the making of the grant.
20

Division 4—Grant of Aboriginal Title

18 Minister to recommend grant of land

25 If a land agreement provides for the grant of aboriginal title in land that is the subject of the agreement, the Minister must take all reasonable steps to recommend to the Governor in Council that an estate in fee simple that is subject to this Division be granted to the traditional owner group entity that is the party to the agreement.

19 Grant of aboriginal title

- 5 (1) In accordance with a recommendation of the
Minister under section 18, the Governor in
Council may grant an estate in fee simple in land
to a traditional owner group entity that is—
- (a) subject to this Division; and
- (b) any other terms, conditions, limitations and
restrictions set out in the grant.
- 10 (2) The following provisions apply to the grant of the
estate in fee simple under subsection (1)—
- (a) the grant is subject to the limitation that the
traditional owner group entity is not able to
sell, transfer, dispose of, encumber or
15 otherwise deal with the estate or any legal or
equitable interest in the estate; and
- (b) the grant is subject to the limitation that the
traditional owner group entity is not able to
lease or licence the estate or any legal or
equitable interest in the estate; and
- 20 (c) the grant is subject to the condition that the
State holds a right transferred in accordance
with section 20.
- (3) On the grant of an estate in fee simple under
25 subsection (1), the land is discharged from all
trusts, limitations, reservations, restrictions,
encumbrances, estates and interests that applied to
the land immediately before the making of the
grant.
- 30 (4) Despite subsection (2)(a), the traditional owner
group entity who holds the estate in fee simple
may transfer or dispose of the estate the entity has
in the land to another traditional owner group
entity if—

(a) the traditional owner group entity that holds the estate has first obtained the written consent of the Minister; and

(b) section 23 has been complied with.

5

(5) The grant of an estate in fee simple under subsection (1) is not subject to any limit as to depth directed by the Governor in Council under section 339 of the **Land Act 1958**.

10

(6) Despite section 42(2)(a) of the **Transfer of Land Act 1958**, a folio of the Register or registered instrument that relates to land that is the subject of the grant of an estate in fee simple under subsection (1) is subject to the provisions of this Division.

15

20 Transfer of rights to the State

(1) The grant of an estate in fee simple under section 19 must not be made unless the traditional owner group entity has entered into a contract for the transfer to the State of a right (to which this section applies) to occupy, use, control and manage the land, being a right that is subject to the limitation that—

20

(a) the State is not able to sell, transfer, dispose of, encumber or otherwise deal with any legal or equitable interest in the land; and

25

(b) except as provided for in the relevant Act, the State is not able to lease or licence any legal or equitable estate or interest in the land.

30

(2) On the transfer of a right to occupy, use, control and manage land under a contract under subsection (1)—

35

(a) the land is taken to be land under the Act (the *relevant Act*) under which the land was occupied, used, controlled and managed

immediately before the grant of the estate in fee simple; and

(b) the land is taken to be occupied, used, controlled and managed by the State under the relevant Act for the prescribed purposes; and

(c) in relation to the land, any reference in any other Act or legislative or other instrument—

(i) to "Crown land" generally or words of similar import; or

(ii) to land under the relevant Act—

however described, is taken to include the land.

(3) For the avoidance of doubt, a contract under this section may be entered into by the traditional owner group entity even though the grant of the estate in fee simple under section 19 has not been made.

21 Prescribed purposes

In section 20, *prescribed purposes*, in relation to land, means—

(a) in the case of land under the **Crown Land (Reserves) Act 1978**, the purpose for which the land was reserved immediately before the grant was made;

(b) in the case of a park, within the meaning of 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;

5 (c) in the case of reserved forest, within the meaning of the **Forests Act 1958**, any purposes, for which the land was declared and set aside under section 50(1) of that Act immediately before the grant was made;

10 (d) 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.

22 Saving of leases etc.

Despite section 19(3)—

15 (a) any lease, licence, permit or other authority, granted under the Act under which the land was managed immediately before the grant of the estate in fee simple under section 19 is taken to continue in force, as if it had been granted under that Act as it applies to the land on and after the grant of the estate in fee simple and the transfer of rights referred to in section 20(2);

25 (b) any contract, agreement or arrangement relating to the management of the land, in force immediately before the grant of the estate in fee simple under section 19, is taken to continue in force as if the contract, agreement or arrangement had been entered into on and after the grant of the estate in fee simple and the transfer of rights referred to in section 20(2).

30

23 Requirements as to agreement under Part 8A of the Conservation, Forests and Lands Act 1987

Before aboriginal title in land is—

(a) granted to a traditional owner group entity;
or

(b) transferred or otherwise disposed of under section 19(4)—

the traditional owner group entity, to whom the land is to be granted, transferred or otherwise disposed of must enter into an agreement under section 82P of the **Conservation, Forests and Lands Act 1987** with the Minister administering that section and with the relevant land Minister.

24 Registrar to record caveat

(1) On the grant of aboriginal title under this Part, the Minister must notify the Registrar of Titles of the grant.

(2) On receiving a notice under subsection (1), the Registrar, on behalf of the Crown, must, in respect of any land registered in the Register in the name of a traditional owner group entity as land over which aboriginal title is granted, record a caveat prohibiting any transfer or dealing with the land, except in accordance with this Act.

25 Registrar to make necessary amendments

The Registrar of Titles must make any amendments in the Register that are necessary because of the operation of this Division.

26 Division not affected by other Acts

This Division has effect despite anything to the contrary in the **Heritage Rivers Act 1992**.

PART 4—LAND USE ACTIVITIES

Division 1—Definitions

27 Definitions

(1) In this Part—

5 *advisory activity*, in relation to a land use activity
 agreement, means a land use activity that is
 specified in the agreement as an advisory
 activity for the purposes of section 32(2)(b);

10 *agreement activity*, in relation to a land use
 activity agreement, means a land use activity
 that is specified in the agreement as an
 agreement activity for the purposes of
 section 32(2)(d);

15 *agreement land*, in relation to a land use activity
 agreement, means the land that is the subject
 of the agreement;

community benefit means an economic, cultural
 or social benefit provided to a traditional
 owner group entity;

20 *community benefit payment* means a payment
 made to the traditional owner group entity as
 compensation for the impact of the land use
 activity on the traditional owner rights of the
 traditional owner group;

25 *earth resource or infrastructure authorisation*
 means any of the following—

- (a) a licence granted under section 25 of
 the **Mineral Resources (Sustainable
 Development) Act 1990**;

- 5
- (b) an extractive industry work authority granted under section 77I of the **Mineral Resources (Sustainable Development) Act 1990**;
- 10
- (c) a written consent for petroleum operation given under section 138 of the **Petroleum Act 1998**;
- (d) the acceptance under Division 3 of Part 9 of the **Pipelines Act 2005** of an Environment Management Plan;
- 15
- (e) a written consent given for geothermal energy operation under section 80 of the **Geothermal Energy Resources Act 2005**;
- (f) the acceptance by the Minister of an environment plan under the regulations made under the **Petroleum (Submerged Lands) Act 1982**;
- 20
- (g) an approval for greenhouse gas operation under section 193 of the **Greenhouse Gas Geological Sequestration Act 2008**;
- limited land use activity*, in relation to agreement land, means—
- 25
- (a) a land use activity that is the granting of an approval of a timber release plan under Part 5 of the **Sustainable Forests (Timber) Act 2004**; or
- 30
- (b) a land use activity that is for purpose of the establishment, use or operation of any specified public works;

negotiation activity, in relation to a land use activity agreement, means a land use activity that is specified in the agreement as a negotiation activity for the purposes of section 32(2)(c);

negotiation activity, class A, in relation to a land use activity agreement, means a land use activity that is specified in the agreement as a negotiation activity, class A for the purposes of section 32(2)(c);

negotiation activity, class B, in relation to a land use activity agreement, means a land use activity that is specified in the agreement as a negotiation activity, class B for the purposes of section 32(2)(c);

notice date means the date on which a notice given under section 49 comes into effect;

public land authorisation means any of the following—

- (a) a lease, licence, permit or other authority under the **National Parks Act 1975**;
- (b) a lease, licence, permit or other authority under the **Crown Land (Reserves) Act 1978**;
- (c) a lease, licence, permit or other authority under the **Forests Act 1958**;
- (d) a lease, licence, permit or other authority under the **Land Act 1958**;
- (e) a tour operator licence under Part IIA of the **Wildlife Act 1975**;

relevant Minister, in relation to a land use activity, means the Minister administering the Act under which the activity is being carried out;

responsible person, in relation to the carrying out of a limited land use activity or a significant land use activity, means the person required to reach agreement with the traditional owner group entity under Division 3 in relation to the activity;

routine activity, in relation to a land use activity agreement, means a land use activity that is specified in the agreement as a routine activity for the purposes of section 32(2)(a);

significant land use activity, in relation to any agreement land, means a land use activity which is one of the following—

- (a) the granting of a public land authorisation (other than a specified agricultural lease) which confers a right on any person to use occupy or otherwise access the land for a period of more than 10 years;
- (b) the clearing of the land or the carrying out of any works on the land which has a substantial impact on the physical quality of the land, having regard to the size and scale of the activity;
- (c) the grant of any earth resource or infrastructure authorisation in respect of the land, being an approval—
 - (i) that allows for the extraction, injection, utilisation, treatment or processing of an earth resource above, on or below the surface of the land; or

(ii) for the purposes of commercial development and production of an earth resource; or

(iii) for the purposes of exploration for an earth resource, if the exploration is not to be carried out in accordance with the conditions for carrying out such exploration that are set out in the agreement;

(d) any land use activity described in paragraph (g) of the definition of *land use activity*;

(e) any other land use activity which has been declared to be a significant land use activity under subsection (2);

specified agricultural lease means a lease of an area of public land of less than 40 hectares, where the primary purpose of the lease is to use the land for—

(a) cultivation for the purpose of selling the produce of the cultivation (whether in a natural, processed or converted state); or

(b) the maintenance of animals or poultry for the purpose of selling the animals or poultry or their natural increase or bodily produce; or

(c) the cultivation or propagation for sale of plants; or

(d) land used to keep or breed aquatic animals or to cultivate or propagate aquatic plants;

specified public works means any of the following works if provided for a public purpose—

5

(a) a road, railway, bridge or other transport facility (other than an airport or port);

(b) a jetty or wharf;

(c) a navigation marker or other navigational facility;

10

(d) an electricity transmission or distribution facility;

(e) a gas transmission or distribution facility;

(f) lighting of streets or other public places;

15

(g) a well or bore for obtaining water;

(h) a pipeline or other water supply or reticulation facility;

20

(i) a drainage facility, or a levee or other device for the management of water flows;

(j) an irrigation channel or other irrigation facility;

(k) a sewerage facility, other than a treatment facility;

25

(l) a cable, antenna, tower or other communication facility;

(m) an automatic weather station;

(n) a public recreation facility;

30

(o) any other works carried out by or on behalf of the Crown;

VicForests has the same meaning as in the
**Conservation, Forests and Lands
Act 1987.**

- 5
- (2) The Governor in Council may, by Order in Council, declare a land use activity to be a significant land use activity.
- (3) A declaration under subsection (2) must be made on the joint recommendation of the Minister and the relevant Minister in relation to the activity.
- 10
- (4) In this Act, a reference to the granting of a public land authorisation or the granting of an earth resource or infrastructure authorisation, includes a reference to—
- (a) the issuing of such an authorisation; and
- 15
- (b) if the authorisation is by way of approving, the giving of approval.
- (5) In this Act a reference to the granting of a public land authorisation does not include, in the case of a lease or licence over land, the issuing of a
- 20
- further term of the lease or licence where the lease or licence confers a right on the lessee or licensee to a further term.

28 Definition of *land use activity*

25

In this Act ***land use activity***, in relation to agreement land or any part of agreement land, means any of the following—

- (a) the—
- (i) granting of a public land authorisation over the land; or
- 30
- (ii) amendment to or variation of a public land authorisation over the land, if the amendment or variation allows a change to an activity authorised by that authorisation;

-
- (b) the—
- (i) granting of any earth resource or infrastructure authorisation in respect of the land; or
 - 5 (ii) amendment to or variation of an earth resource or infrastructure authorisation in respect of the land, if the amendment or variation allows a change to an activity authorised by that
 - 10 authorisation;
- (c) the clearing of the land;
 - (d) the planned controlled burning of the land;
 - (e) the carrying out of works on the land;
 - (f) the revegetation of the land;
 - 15 (g) in relation to land under the **Land Act 1958**, any alienation of the land by the granting of an estate in fee simple, other than a grant made under this Act;
 - 20 (h) the reservation of land under the **Crown Land (Reserves) Act 1978** or the revocation of any reservation of the land under the **Crown Land (Reserves) Act 1978**;
 - 25 (i) an approval of a timber release plan under Part 5 of the **Sustainable Forests (Timber) Act 2004**;
 - (j) a change to an approved timber release plan under Part 5 of the **Sustainable Forests (Timber) Act 2004**;
 - 30 (k) the declaration of a management plan under section 28 of the **Fisheries Act 1995**;
 - (l) the preparation of a management plan under section 17, 17B, 17D or 18 of the **National Parks Act 1975**;

- 5
- (m) the preparation of a management plan under section 18 of the **Wildlife Act 1975**;
 - (n) the preparation of a working plan for Wildlife Management Co-operative Areas under section 32 of the **Wildlife Act 1975**.

29 Definition of *decision maker*

In this Act *decision maker* means—

- 10
- (a) in relation to the granting of a public land authorisation over the land, the person or body authorised by the Act under which the land is managed, or regulations made under that Act, to grant the authorisation;
 - 15 (b) in relation to the granting of an earth resource or infrastructure authorisation in respect of the land, the person authorised to grant the authorisation by the Act under which the authorisation is granted or the regulations under which the authorisation is granted;
 - 20 (c) in relation to the clearing of public land, the planned controlled burning of public land, the carrying out of works on public land and the revegetation of public land, the person or body responsible under the Act under which the land is managed for the management of the land;
 - 25 (d) in relation to the alienation of land under the **Land Act 1958** by the granting of an estate in fee simple, the Minister responsible for the administration of the provision under which the land may be alienated by the grant of the estate;
 - 30

5

(e) in relation to the reservation of land under the **Crown Land (Reserves) Act 1978** or the revocation of any reservation of land under the **Crown Land (Reserves) Act 1978**, the Minister administering section 4 of that Act;

10

(f) in relation to—

(i) the initial approval of a timber release plan under Part 5 of the **Sustainable Forests (Timber) Act 2004**, the Secretary, within the meaning of that section;

15

(ii) a change to an approved timber release plan under Part 5 of the **Sustainable Forests (Timber) Act 2004**, the Secretary, within the meaning of that section;

20

(g) in relation to the declaration of a management plan under section 28 of the **Fisheries Act 1995**, the Minister responsible for making the declaration under the **Fisheries Act 1995**;

25

(h) in relation to the preparation of a management plan under section 17, 17B, 17D or 18 of the **National Parks Act 1975**, the Secretary within the meaning of those sections;

30

(i) in relation to the preparation of a management plan under section 18 of the **Wildlife Act 1975**, the Secretary within the meaning of that section;

35

(j) in relation to the preparation of a working plan for Wildlife Management Co-operative Areas under section 32 of the **Wildlife Act 1975**, the Secretary within the meaning of that section.

Division 2—Land Use Activity Agreements

30 Power to enter into an agreement as to land use activities

- 5 (1) The Minister, on behalf of the State, may enter into an agreement with a traditional owner group entity for the whole or any part of the land that is the subject of the recognition and settlement agreement as to the carrying out of land use activities on or in relation to that land.
- 10 (2) A land use activity agreement must not make any provision for—
- 15 (a) the granting, amending or varying of a public land authorisation or an earth resource or infrastructure authorisation that is inconsistent with the Act under which the authorisation is being granted, amended or varied or any regulations or management plan made under that Act;
- 20 (b) the carrying out of any other land use activity that is inconsistent with the Act under which the activity is being carried out or any regulations or management plan made under that Act.
- 25 (3) The Minister must not enter into a land use activity agreement unless, if the agreement is to list—
- 30 (a) any public land authorisation or earth resource or infrastructure authorisation, the consent of the Minister administering the provision of the Act under which the authorisation may be granted has first been obtained; and

(b) a land use activity specified in paragraph (c), (d), (e) or (f) of the definition of *land use activity*, the consent of the Minister administering the Act under which the land is managed has first been obtained; and

(c) a land use activity specified in paragraph (g) of the definition of *land use activity*, the consent of the Minister administering Division 6 of Part I of the **Land Act 1958** has first been obtained.

(4) The Minister must not enter into a land use activity agreement unless the Minister is satisfied—

(a) that the agreement forms part of a recognition and settlement agreement that is part of an indigenous land use agreement that is capable of being registered under Division 3 of Part 2 of the Native Title Act; or

(b) that the Federal Court has determined that native title does not exist in relation to the land that is the subject of the agreement.

31 Requirements for land use activity agreements

(1) A land use activity agreement must be expressed to be a land use activity agreement.

(2) A land use activity agreement must—

(a) clearly identify the land to which it applies; and

(b) set out any traditional owner rights recognised in the recognition and settlement agreement in which the land use activity agreement is included.

5 (3) A land use activity agreement may, in relation to earth resource of infrastructure authorisations that are for exploration only, specify conditions as to exploration that may be accepted by persons applying for such authorisations.

10 (4) Any conditions specified in a land use activity agreement under subsection (3) that are accepted by an applicant for an authorisation have effect despite anything to the contrary in the Act or regulations under which the authority is granted.

32 Listing and classification of land use activities to which agreement applies

15 (1) A land use activity agreement must specifically list the land use activities, the carrying out of which is subject to the agreement.

(2) A land use activity agreement must specify—

(a) which of the land use activities set out in the agreement are routine activities;

20 (b) which of the land use activities set out in the agreement are advisory activities;

25 (c) which of the land use activities set out in the agreement are negotiation activities and which of these are negotiation activities, class A and which of these are negotiation activities, class B;

(d) which of the land use activities set out in the agreement are agreement activities.

30 (3) A land use activity agreement must not specify a land use activity as a—

(a) negotiation activity, class B unless that activity is—

(i) a limited land use activity; or

(ii) a significant land use activity;

(b) as a negotiation activity, class A or an agreement activity unless that activity is a significant land use activity.

5 (4) A land use activity agreement may specify that any land use activity or any class of land use activity that is consistent with a joint management plan for the land is not subject to the agreement.

10 (5) A land use activity agreement may specify that a land use activity that is for the same activity that is a proposal to which Subdivision P of Division 3 of Part 2 of the Native Title Act applies is not subject to the agreement.

33 Specification of activities as routine activities

15 (1) Subject to subsection (2), if a land use activity agreement specifies an activity as a routine activity, the agreement may not specify any requirements in relation to the carrying out of the activity on the agreement land.

20 (2) The granting of an earth resource or infrastructure authorisation that is for the purpose of exploration for an earth resource is taken to be a routine activity for the purposes of a land use activity agreement if the person who is applying for the authorisation agrees to accept the conditions that are specified in the land use activity agreement in accordance with section 31(3).

34 Ministerial direction as to advisory activities

30 (1) If a land use activity agreement specifies a land use activity as an advisory activity, the Minister may give written directions as to the actions that must be taken by the decision maker for that activity to notify the traditional owner group entity of any proposal to carry out the activity on agreement land.

(2) Any direction given under subsection (1)—

(a) must set out the land use activities to which it applies; and

(b) may be given at the time the agreement is entered into or at any time during the operation of the agreement.

35 Requirement to comply with directions

A decision maker who is carrying out an advisory activity on any agreement land to which a direction under section 34 applies, must give effect to the direction in carrying out the activity.

36 Effect of direction

A direction of the Minister under section 34 has effect despite anything to the contrary in the Act or regulations under which the land use activity is being carried out.

37 Process as to multiple activities

The agreement may provide a process that enables the negotiations and decisions by the traditional owner group entity under the agreement in relation to the carrying out of a number of activities on the land to be conducted as a joint process where each of the activities to be negotiated and decided on relates to a single enterprise.

38 Variation of agreements

The provisions of this Part apply to the variation of a land use activity agreement as if the varying of the agreement were the entering into of a new agreement.

39 Application in emergency situations

A land use activity agreement is not to be taken to prevent or impose any requirements on the carrying out of any activity by a decision maker in an emergency for the purpose of protecting property or life or for the purposes of protecting the environment.

Division 3—Particular requirements for negotiation and agreement activities

40 Requirements for person seeking public land authorisation

- (1) If a provision of a land use activity agreement specifies that the grant of any public land authorisation over any agreement land is a negotiation activity, any person who is seeking to be the holder of such an authorisation must reach agreement with the traditional owner group entity as to—
 - (a) the granting of the authorisation; and
 - (b) the conditions to which the agreement to grant the authorisation is subject, including the provision of community benefits, if any.
- (2) In reaching agreement under subsection (1), regard must be had to the nature of the activity and its impact on the traditional owner rights of the traditional owner group.
- (3) The person seeking the authorisation is not entitled to the grant of the authorisation until the person has complied with subsection (1) or VCAT or the Minister has determined under this Part that the authorisation may be granted.

- 5 (4) If a provision of a land use activity agreement specifies that the grant of any public land authorisation over any agreement land is an agreement activity, any person who is seeking to be the holder of such an authorisation must reach agreement with the traditional owner group entity as to—
- 10 (a) the granting of the authorisation; and
(b) the conditions to which the agreement to grant the authorisation is subject, including the provision of community benefits, if any.
- 15 (5) In reaching agreement under subsection (4), regard must be had to the nature of the activity and its impact on the traditional owner rights of the traditional owner group.
- (6) The person seeking the authorisation is not entitled to the grant of the authorisation unless the person has complied with subsection (4).
- 20 (7) The provisions of this section have effect despite anything to the contrary in the Act or regulations under which the authorisation is being granted.

Notes

- 25 1 The processes set out in Division 4 of this Part apply to the granting of public land authorisations to which this section applies.
- 30 2 Section 32(3) provides that a land use activity agreement must not specify a land use activity as a negotiation activity, class B unless the activity is a limited land use activity or a significant land use activity. The provision also provides that a land use activity agreement must not specify a land use activity as a negotiation activity, class A or an agreement activity unless the activity is a significant land use activity.

41 Decision maker may determine to undertake compliance in place of person seeking authorisation

5 (1) In the case of the grant of a particular public land authorisation over any agreement land, the decision maker may determine that he or she is to be responsible, in place of the person seeking the authorisation, for complying with those requirements of section 40(1)(a) or (b) or section 40(4)(a) or (b) that are specified by the decision maker in the determination.

10 (2) A decision maker must not make a determination under subsection (1) unless the decision maker is satisfied that it is in the interests of the State or the area in which the authorisation is being issued for the decision maker to do so.

15 (3) A determination made under subsection (1) must—

(a) be made by instrument published in the Government Gazette; and

20 (b) specify the requirements that he or she is to be responsible for complying with.

(4) The Minister may make guidelines about the making of determinations under this section.

25 (5) Guidelines made by the Minister under subsection (4) must be published in the Government Gazette and on the Department's website.

42 Obligations of decision maker to ascertain compliance

30 If, in the case of the grant of a particular public land authorisation over any agreement land, the person seeking the authorisation is required to comply with section 40, the decision maker must not decide to grant the authorisation unless—

- 5
- (a) the decision maker has received a notice signed by the traditional owner group entity and the responsible person stating that an agreement that complies with section 51 has been reached; or
- 10
- (b) in the case of the grant of an authorisation in respect of which VCAT has made a determination under Subdivision 2 of Division 4 that the authorisation should be granted, the decision maker has received a copy of the VCAT determination; or
- 15
- (c) in the case of the grant of an authorisation in respect of which the Minister has made a determination under Subdivision 3 of Division 4 that the authorisation should be granted, the decision maker has received a copy of that determination.

43 Requirements for earth resource or infrastructure authorisations

- 20
- (1) If a provision of a land use activity agreement specifies that the grant of any earth resource or infrastructure authorisation in relation to any agreement land is a negotiation activity, any person who is applying for such an authorisation must reach agreement with the traditional owner group entity as to—
- 25
- (a) the granting of the authorisation; and
- (b) the conditions to which the agreement to grant the authorisation is subject, including the provision of community benefits, if any.
- 30
- (2) In reaching agreement under subsection (1), regard must be had to the nature of the activity and its impact on the traditional owner rights of the traditional owner group.

5 (3) The applicant for the authorisation is not entitled to the grant of the authorisation until the applicant has complied with subsection (1) or VCAT or the Minister has determined under this Part that the authorisation may be granted.

(4) The provisions of this section have effect despite anything to the contrary in the Act or regulations under which the authorisation is being granted.

Notes

10 1 The processes set out in Division 4 of this Part apply to the granting of earth resource or infrastructure authorisations to which this section applies.

15 2 Section 32(3) provides that a land use activity agreement must not specify a land use activity as a negotiation activity, class B unless the activity is a limited land use activity or a significant land use activity. The provision also provides that a land use activity agreement must not specify a land use activity as a negotiation activity, class A or an agreement activity unless the activity is a significant land use activity.

20 **44 Obligations of decision maker to ascertain compliance**

25 If, in the case of the grant of a particular earth resource or infrastructure authorisation over any agreement land, the person seeking the authorisation is required to comply with section 43, the decision maker must not decide to grant the earth resource or infrastructure authorisation unless—

30 (a) the decision maker has received a notice signed by the traditional owner group entity and the responsible person stating that agreement that complies with section 51 has been reached; or

35 (b) in the case of the grant of an authorisation in respect of which VCAT has made a determination under Subdivision 2 of Division 4 that the authorisation be granted,

the decision maker has received a copy of the VCAT determination; or

- 5 (c) in the case of the grant of an authorisation in respect of which the Minister has made a determination under Subdivision 3 of Division 4 that the authorisation be granted, the decision maker has received a copy of that determination.

10 **45 Requirements for clearing of land, carrying out of works**

- (1) If a decision maker for any agreement land proposes to—

- (a) clear any of the land; or
(b) carry out works on any of the land—

15 and that clearing of land or carrying out of works is specified as a negotiation activity in the land use activity agreement, the decision maker must reach agreement with the traditional owner group entity as to—

- 20 (c) the clearing of the land or the carrying out of works; and
(d) the conditions to which the agreement to clear the land or carry out works is subject, including the provision of community
25 benefits, if any.

Note

30 In this section the *decision maker* is the person or body responsible for the management of the land under the Act under which the land is managed, see the definition of *decision maker*.

- 5
- 10
- 15
- 20
- 25
- 30
- (2) In reaching agreement under subsection (1), regard must be had to the nature of the activity and its impact on the traditional owner rights of the traditional owner group.
 - (3) The decision maker must ensure that the clearing of the land or the carrying out of the works does not take place until the decision maker has complied with subsection (1) or VCAT or the Minister has determined that the activity may be carried out.
 - (4) If a decision maker for any agreement land proposes to—
 - (a) clear any of the land; or
 - (b) carry out works on any of the land—and that clearing of land or carrying out of works is specified as an agreement activity in the land use activity agreement, the decision maker must reach agreement with the traditional owner group entity as to—
 - (c) the clearing of the land or the carrying out of works; and
 - (d) the conditions to which the agreement to clear the land or carry out works is subject, including the provision of community benefits, if any.
 - (5) In reaching agreement under subsection (4), regard must be had to the nature of the activity and its impact on the traditional owner rights of the traditional owner group.
 - (6) The decision maker must ensure that the clearing of the land or the carrying out of the works does not take place until the decision maker has complied with subsection (4).

- (7) The provisions of this section have effect despite anything to the contrary in the Act under which the land is managed or regulations under that Act.

Notes

- 1 The processes set out in Division 4 of this Part apply to the clearing of land and the carrying out of works on the land to which this section applies.
- 2 Section 32(3) provides that a land use activity agreement must not specify a land use activity as a negotiation activity, class B unless the activity is a limited land use activity or a significant land use activity. The provision also provides that a land use activity agreement must not specify a land use activity as a negotiation activity, class A or an agreement activity unless the activity is a significant land use activity.

46 Requirements for persons seeking alienation of land

- (1) If a decision maker proposes to alienate any agreement land by the granting of an estate in fee simple in the land and that alienation is specified as a negotiation activity in the land use activity agreement, the decision maker must reach agreement with the traditional owner group entity as to—
- (a) the alienation of the land; and
- (b) the conditions to which the agreement to alienate the land is subject, including the provision of community benefits, if any.

Note

In this section the *decision maker* is the Minister responsible for the administration of the provision under which the land may be alienated by the grant of the estate, see the definition of *decision maker*.

- (2) In reaching agreement under subsection (1), regard must be had to the nature of the activity and its impact on the traditional owner rights of the traditional owner group.

- 5 (3) The decision maker must ensure that the alienation of the land does not take place until the decision maker has complied with subsection (1) or VCAT or the Minister has determined under this Part that the alienation may take place.
- 10 (4) If a decision maker proposes to alienate any agreement land by the granting of an estate in fee simple in the land and that alienation is specified as an agreement activity in the land use activity agreement, the decision maker must reach agreement with the traditional owner group entity as to—
- 15 (a) the alienation of the land; and
- (b) the conditions to which the agreement to alienate the land is subject, including the provision of community benefits, if any.
- 20 (5) In reaching agreement under subsection (4), regard must be had to the nature of the activity and its impact on the traditional owner rights of the traditional owner group.
- (6) The decision maker must ensure that the alienation does not take place until the decision maker has complied with subsection (4).
- 25 (7) The provisions of this section have effect despite anything to the contrary in the Act or regulations under which the alienation of the land is being carried out.

Notes

- 30 1 The processes set out in Division 4 of this Part apply to the alienation of land to which this section applies.
- 35 2 Section 32(3) provides that a land use activity agreement must not specify a land use activity as a negotiation activity, class B unless the activity is a limited land use activity or a significant land use activity. The provision also provides that a land use activity agreement must not specify a land use activity as a negotiation activity, class A or an agreement activity unless the activity is a significant land use activity.

47 Requirements for approval of timber release plans

(1) If a provision of a land use activity agreement specifies that the giving of an approval for a timber release plan under Part 5 of the **Sustainable Forests (Timber) Act 2004** is a negotiation activity in the land use activity agreement, VicForests must reach agreement with the traditional owner group entity as to—

(a) the giving of the approval; and

(b) the conditions to which the agreement to give the approval is subject, including the provision of community benefits, if any.

(2) In reaching agreement under subsection (1), regard must be had to the nature of the activity and its impact on the traditional owner rights of the traditional owner group.

(3) VicForests is not entitled to the giving of the approval until VicForests has complied with subsection (1) or VCAT or the Minister has determined under this Part that the approval should be given.

(4) The provisions of this section have effect despite anything to the contrary in the **Sustainable Forests (Timber) Act 2004**.

Notes

- 1 The processes set out in Division 4 of this Part apply to the giving of approval to which this section applies.
- 2 Section 32(3) provides that a land use activity agreement must not specify a land use activity as a negotiation activity, class B unless the activity is a limited land use activity or a significant land use activity. The provision also provides that a land use activity agreement must not specify a land use activity as a negotiation activity, class A or an agreement activity unless the activity is a significant land use activity.

48 Obligations of decision maker to ascertain compliance

If, in the case of the giving of an approval for a timber release plan under Part 5 of the **Sustainable Forests (Timber) Act 2004**, VicForests is required to comply with section 47, the decision maker must not decide to give the approval unless—

- (a) the decision maker has received a notice signed by the traditional owner group entity and VicForests stating that agreement that complies with section 51 has been reached; or
- (b) in a case in respect of which VCAT has made determination under Subdivision 2 of Division 4 that the approval be given, the decision maker has received a copy of the VCAT determination; or
- (c) in a case in respect of which the Minister has made a determination under Subdivision 3 of Division 4 that the approval be given, the decision maker has received a copy of that determination.

Division 4—Negotiation and determination processes

Subdivision 1—General Provisions

49 Responsible person to notify traditional owner group entity

- (1) Before proceeding with a limited land use activity or significant land use activity that is specified as a negotiation activity or agreement activity in a land use activity agreement and that is an activity in respect of which agreement must be reached under Division 3, the responsible person must

notify the traditional owner group entity of the proposal to carry out the activity.

- (2) A notice under subsection (1) must specify—
- (a) the contact details of the responsible person; and
 - (b) the description of the proposed activity and a map showing the location of the activity; and
 - (c) the date the notice comes into effect (which must not be earlier than the date on which the notice is given); and
 - (d) a statement that the traditional owner group entity and the responsible person are required to negotiate with each other in good faith.

50 Requirement to negotiate in good faith

- (1) For the purposes of reaching agreement under Division 3 as to the carrying out of the activity, the responsible person and the traditional owner group entity must negotiate with each other in good faith.
- (2) For the purposes of subsection (1)—
- (a) a refusal to negotiate about matters that are not related to the impact on the traditional owner rights of the proposed land use activity; or
 - (b) a refusal to negotiate about aboriginal cultural heritage within the meaning of the **Aboriginal Heritage Act 2006**—
- is not a failure to negotiate in good faith.

51 Requirements as to agreement as to carrying out of land use activity

(1) An agreement as to the carrying out of a land use activity under Division 3—

- (a) must be in writing, signed by all parties to the agreement; and
- (b) must be binding on all parties to it.

(2) If—

- (a) the responsible person and the traditional owner group entity reach an agreement that complies with subsection (1); and
- (b) the responsible person is not also the decision maker in relation to the activity—

the responsible person and the traditional owner group entity must provide a copy of the agreement to the decision maker.

(3) An agreement as to the carrying out of a land use activity under Division 3 must not make any provision for—

- (a) the granting, amending or varying of a public land authorisation or an earth resource or infrastructure authorisation that is inconsistent with the Act under which the authorisation is being granted, amended or varied or any regulations or management plan made under that Act; or
- (b) the carrying out of any other land use activity that is inconsistent with the Act under which the activity is being carried out or any regulations or management plan made under that Act.

52 Fees for costs of negotiating

- 5 (1) Subject to subsection (3), the responsible person is liable to pay to the traditional owner group entity the reasonable costs of negotiating under section 50.
- (2) For the purposes of subsection (1), reasonable costs are costs calculated as prescribed by the regulations.
- 10 (3) Costs are not liable to be paid where the traditional owner group entity is the applicant for a determination of VCAT in relation to a negotiation activity.

Subdivision 2—Negotiation Activities, Referral to VCAT

53 Application for VCAT determination

- 15 (1) Either or both of a traditional owner group entity and a responsible person who has or have complied with section 50 as to the carrying out of an activity that is specified in a land use activity agreement as a negotiation activity may apply to
- 20 VCAT for a determination under this Subdivision.
- (2) An application must not be made under subsection (1) by either the traditional owner group entity or a responsible person acting alone until 6 months or more after the notice date for the negotiation.
- 25 (3) An application under subsection (1) may be made in relation to the carrying out of more than one activity.
- 30 (4) If an application is made for more than one activity, the application must not be made until 6 months or more after the last notice date for a negotiation for an activity to which the application applies.

54 VCAT determination, negotiation activities, class A

(1) On application under section 53, in relation to an activity that is negotiation activity, class A, VCAT may determine—

5 (a) where the activity is the grant of public land authorisation or an earth resource or infrastructure authorisation that the granting of the authorisation may or may not proceed; or

10 (b) where the activity is the clearing of land or the carrying out of works on land that the clearing or carrying out of works may or may not proceed; or

15 (c) where the activity is the alienation of land by the Crown by the granting of an estate in fee simple in the land that the alienation may or may not proceed.

20 (2) If VCAT is satisfied that the land use activity will not substantially impact on the traditional owner rights of the traditional owner group, VCAT must determine that the land use activity may proceed.

25 (3) If VCAT determines that an activity may proceed under subsection (1), VCAT may determine whether a community benefit payment must be made to the traditional owner group entity.

(4) If VCAT determines that a community benefit payment must be made under subsection (3), VCAT must determine the amount of the payment.

30 (5) If VCAT determines that an activity may proceed, VCAT may determine that the activity is to proceed subject to any conditions that VCAT determines being complied with by the responsible person and the traditional owner
35 group entity.

- (6) In making a determination under this section, VCAT must not provide for any matter dealt with under the **Aboriginal Heritage Act 2006**.

55 VCAT determination, negotiation activities, class B

- (1) On application under section 53, in relation to an activity that is negotiation activity, class B, VCAT may determine—

(a) whether a community benefit payment must be made to the traditional owner group entity; and

(b) whether the activity is to proceed subject to any conditions that VCAT determines being complied with by the responsible person and the traditional owner group entity.

- (2) If VCAT determines that a community benefit payment must be made, VCAT may determine whether or not the benefit is to be paid to the traditional owner group entity before the activity may proceed.

- (3) If VCAT determines that a community benefit payment must be made, VCAT must determine the amount of the payment.

- (4) In making a determination under this section, VCAT must not provide for any matter dealt with under the **Aboriginal Heritage Act 2006**.

56 Matters VCAT must take into account in making determination

- (1) In making a determination under section 54 or 55, VCAT must have regard to—

(a) any submissions made by the traditional owner group entity and the responsible person;

- 5
- (b) the impact of the proposed activity on traditional owner rights of the traditional owner group, which may include—
- (i) any effect on the environment which may have such an impact;
- (ii) whether the proposed activity is to take place on, above or below the surface of the land;
- 10
- (c) the economic impacts of the proposed activity;
- (d) the reasonableness of any offer made by the responsible person as to the provision of community benefits.

15

(2) In making a determination under section 54 or 55, VCAT must not have regard to aboriginal cultural heritage within the meaning of the **Aboriginal Heritage Act 2006**.

57 Effect of VCAT determination as to conditions

- 20
- (1) If VCAT determines conditions under section 54(5) or 55(1)(b), the conditions have effect, if the activity proceeds, as if the conditions were terms of a contract between the responsible person and the traditional owner group entity.
- 25
- (2) Subsection (1) has effect in addition to any other effect that the determination of VCAT has.

Subdivision 3—Negotiation Activities, Ministerial Powers

58 Report to Minister where determination not made in specified time

- 30
- (1) If an application has been made to VCAT for a determination under Subdivision 2 and VCAT has not determined the matter within 6 months of the making of the application, the Minister may

request that the President of VCAT report to the Minister on the matter.

(2) A report of the President under subsection (1) must—

- (a) be in writing; and
- (b) set out reasons why the determination has not been made and when the determination is likely to be made.

59 Minister may request determination in urgent cases

(1) If an application has been made to VCAT for a determination under Subdivision 2 and where—

- (a) the Minister is satisfied that the matter is urgent; and
- (b) more than 4 months has elapsed since the application was made—

the Minister may request VCAT to determine the matter within a specified time that is not less than 6 months from the notice date.

(2) A request under subsection (1)—

- (a) must be in writing; and
- (b) addressed to the President; and
- (c) set out the time within which the matter should be determined.

60 Minister may make determination

(1) If VCAT does not determine a matter in respect of which a request has been given under section 59 within the time specified in the request, the Minister may determine the matter.

(2) The Minister must not make a determination under subsection (1) unless the Minister is satisfied that—

- (a) having regard to all the circumstances, VCAT is unlikely to determine the matter within a reasonable period; and
- (b) it is in the interests of the State for the Minister to make the determination.

(3) The Minister must not make a determination in the matter that VCAT would not be able to make under Subdivision 2.

61 Notice by Minister to VCAT

(1) Before making a determination under section 60, the Minister must, by written notice, require VCAT to give to the Minister and any party to the matter—

- (a) a copy of the land use activity agreement; and
- (b) a copy of all material relating to the matter that is in VCAT's possession; and
- (c) a summary of the material referred to in paragraph (b).

(2) A notice under subsection (1) must specify a date by which it is to be complied with.

62 Notification to parties

(1) Before making a determination under section 60, the Minister must notify each party to the matter that he or she is to determine the matter.

(2) A notice under subsection (1) must be in writing and must set out the procedure for determining the matter under section 63.

63 Procedure for determining matter

In making a determination under section 60, the Minister must—

- (a) allow each party a right to make written submissions to the Minister within the date specified in the notice under section 62; and
- (b) make any submissions made within the date specified in the notice available to each other party to the matter; and
- (c) allow each party a right to make written comments on any submission received by that party under paragraph (b) to the Minister within the time specified by the Minister when providing the submissions.

64 Matters to be taken into account

In making a determination under section 60 the Minister must take the following into account—

- (a) any submissions or comments received within the times specified in the notice under section 62 and within the time specified by the Minister under section 63(c);
- (b) any submissions made by the President of VCAT;
- (c) any other matters the Minister considers relevant.

65 Notice of Ministerial determination and stay of VCAT determination

- (1) A determination of VCAT under Subdivision 2 does not take effect until one week after the making of the determination.

5 (2) The Minister may within one week of the making of a determination of VCAT give notice to the traditional owner group entity, the responsible person and the decision maker that the Minister intends to make a determination under section 66.

(3) If the Minister—

10 (a) issues a notice under subsection (2), the determination of VCAT is stayed pending the determination of the Minister under section 66;

(b) does not issue a notice under subsection (2) the determination of VCAT takes effect in accordance with subsection (1).

66 Power of Minister to substitute determination

15 (1) If the Minister has issued a notice under section 65, the Minister may, within 2 months of VCAT making its determination, make a determination in substitution of the determination of VCAT.

20 (2) The Minister must not make a determination under subsection (1) unless the Minister is satisfied that it is in the interests of the State to do so.

25 (3) The Minister must not make a determination under subsection (1) that VCAT would not be able to make under Subdivision 2.

30 (4) If the Minister makes a determination under subsection (1) within 2 months of the making of the VCAT determination, the determination of the Minister is substituted for the determination of VCAT and takes effect on the making of the determination.

- 5 (5) If the Minister does not make a determination under subsection (1) within 2 months of the making of the VCAT determination, the VCAT determination takes effect at the end of the 2 month period.

Division 5—Register of Land Use Activity Agreements

67 Land use activity agreement register

The Minister must establish a register of land use activity agreements.

10 **68 Employment of registrar of land use activity agreements**

- 15 (1) A registrar of land use activity agreements must be employed under Part 3 of the **Public Administration Act 2004** for the purposes of this Act.

- (2) The functions of the registrar are—

(a) to maintain the land use activity agreement register; and

20 (b) to carry out any other function conferred on the registrar by or under this or any other Act.

69 Staff of the registrar

25 There may be employed under Part 3 of the **Public Administration Act 2004** the staff that the registrar considers necessary for the carrying out his or her functions.

70 Delegation

30 The registrar, by instrument, may delegate to a person employed under section 69 any of the registrar's powers under this Act other than this power of delegation.

71 Registrar to maintain register

The registrar must maintain the land use activity agreement register.

72 Registration of land use activity agreements

(1) On entering into a land use activity agreement, the Minister must lodge the agreement with the registrar for registration.

(2) On an agreement being lodged, the registrar must—

(a) register the agreement; and

(b) publish notice of the registration of the agreement in the Government Gazette; and

(c) give written notice of the agreement to—

(i) in the case of any public land authorisation or earth resource or infrastructure authorisation that is a land use activity specified in the agreement, the Minister administering the provision of the Act under which the authorisation may be granted; and

(ii) in the case of any land use activity, within the meaning of paragraph (c), (d), (e) or (f) of the definition of *land use activity*, that is specified in the agreement, the Minister administering the Act under which the land is managed; and

(iii) in the case of any land use activity, within the meaning of paragraph (g) of the definition of *land use activity*, that is specified in the agreement, the Minister administering Division 6 of Part I of the **Land Act 1958**.

73 Coming into effect of agreement

- 5 (1) A land use activity agreement comes into effect on the publication of the notice of the registration of the agreement in the Government Gazette or on any later date that is specified in the agreement.
- 10 (2) Despite the coming into effect of a land use activity agreement, the agreement is taken not to apply to—
- (a) any public land authorisation or earth resource or infrastructure authorisation in existence before the coming into effect of the agreement; and
- 15 (b) any other land use activity, that had commenced before the coming into effect of the agreement.
- 20 (3) Despite the coming into effect of a land use activity agreement, the agreement is taken not to apply to a land use activity within the meaning of paragraph (b) of the definition of *land use activity* if—
- 25 (a) in relation to the land that would be the subject of the activity, there was in force immediately before the coming into effect of the agreement an old earth resource approval granted on the basis that the activity to which the approval relates was valid or had been validated under the Native Title Act; and
- 30 (b) the land use activity is subsequent on the granting of the old earth resource approval to which paragraph (a) applies and the activity to be authorised is the same activity as that to which the old earth resource approval relates.
- 35 (4) In this section, *old earth resource approval* means any lease, licence, permit or other authority under the following—

- (a) the **Mineral Resources (Sustainable Development) Act 1990**;
- (b) the **Petroleum Act 1998**;
- (c) the **Pipelines Act 2005**;
- (d) the **Geothermal Energy Resources Act 2005**;
- (e) the **Petroleum (Submerged Lands) Act 1982**;
- (f) the **Greenhouse Gas Geological Sequestration Act 2008**.

74 Information that is recorded on the register

The registrar must ensure that the following details in relation to a land use activity agreement are recorded on the land use activity agreement register—

- (a) the area of land to which the agreement applies;
- (b) the date of initial registration of the agreement;
- (c) a copy of the initial registered agreement as at the initial registration;
- (d) the date of registration of any variation of the agreement;
- (e) a copy of any registered variation of the agreement.

75 Information that is available from the register

All information in the land use activity agreements register is publicly available.

76 Right to search the register

(1) Any person may, on application to the registrar, search the land use activity agreements register and inspect any information on the register.

5

(2) An application under subsection (1) must be in the form approved by the registrar.

77 Evidentiary provisions

(1) In any proceedings in a court or tribunal, a document that is purported to be certified by the registrar as a copy of a land use activity agreement or as a copy of an extract from a land use activity agreement is evidence of the contents of the agreement.

10

(2) In any proceedings in a court or tribunal, a certificate purporting to be signed by the registrar, that there is no land use activity agreement for an area of public land is evidence that there is no land use activity agreement in force for that area, and in the absence of evidence to the contrary is proof of that fact.

15

20

PART 5—FUNDING AGREEMENTS

78 Power to enter into funding agreement

- 5 (1) The Minister on behalf of the State, may enter into an agreement with a traditional owner group entity for an area of public land as to the provision of funding to the entity for the purpose of giving effect to the recognition and settlement agreement of which the funding agreement is a part.
- 10 (2) An agreement under subsection (1) may provide for money to be paid to a trust approved by the Minister.
-

PART 6—NATURAL RESOURCE AGREEMENTS

Division 1—Definitions

79 Definitions

In this Part—

authorisation order means an Order made by the Governor in Council under Division 3;

fauna has the same meaning as in the **Flora and Fauna Guarantee Act 1988**;

fish has the same meaning as in section 5 of the **Fisheries Act 1995**;

flora has the same meaning as in the **Flora and Fauna Guarantee Act 1988**;

forest produce has the same meaning as in the **Forests Act 1958**;

natural resources, in relation to an area of land, means the flora, fauna, fish, forest produce and wildlife on or depending on the land and the water on the land;

traditional purposes, in relation to a traditional owner group entity, means the purposes of providing for any personal, domestic or non-commercial communal needs of the members of the traditional owner group entity;

wildlife has the same meaning as in the **Wildlife Act 1975**.

Division 2—Natural Resource Agreements

80 Power to enter into natural resource agreements

- (1) The Minister, on behalf of the State, may enter into a natural resource agreement with a traditional owner group entity for the whole or

any part of the land that is the subject of the recognition and settlement agreement, which may provide for any of the following—

- 5 (a) strategies to enable members of the traditional owner group entity to participate in or obtain employment in the management of the natural resources of the land;
- 10 (b) the types of uses of and access to the natural resources of the land for traditional purposes that the traditional owner group entity would like its members to have (*access and use provisions*), including, in particular, the types of uses and access that may be provided for under this Part;
- 15 (c) the principles of sustainability that should apply when the giving of use and access in accordance with paragraph (b) is being considered (*principles of sustainability provisions*);
- 20 (d) facilitation of the exercise of traditional owner rights by members of traditional owner groups, whether in accordance with this Act or under any other law;
- (e) any other related matter.
- 25 (2) The Minister must not enter into a natural resource agreement unless the Minister has first consulted with—
- 30 (a) the Minister administering Part 2 of the **Conservation, Forests and Lands Act 1987**; and
- (b) the Minister administering the **Fisheries Act 1995**; and
- (c) the Minister administering the **Flora and Fauna Guarantee Act 1988**; and
-

(d) the Minister administering the **Forests Act 1958**; and

(e) the Minister administering the **Water Act 1989**; and

(f) the Minister administering the **Wildlife Act 1975**.

81 Evidence of membership

(1) A natural resource agreement must include an agreed means by which an authorised officer, who is acting in the course of his or her duties, is able to verify that a person, who is purporting to act under an authorisation order or exemption under this Part, is a member of the traditional owner group entity in respect of which the authorisation order or exemption is in force.

(2) In this section—

authorised officer has the same meaning—

(a) as in the **Flora and Fauna Guarantee Act 1988**, for a person performing duties under that Act;

(b) as in the **Fisheries Act 1995**, for a person performing duties under that Act;

(c) as in the **Wildlife Act 1975**, for a person performing duties under that Act;

(d) as in the **Forests Act 1958**, for a person performing duties under that Act;

(e) as *authorised water officer* has in the **Water Act 1989**.

Division 3—Natural Resource Authorisations

82 Natural resource flora and fauna authorisation

5 (1) The Governor in Council may, by Order and on the recommendation of the Minister administering the **Flora and Fauna Guarantee Act 1988**, authorise the members of a traditional owner group entity that has a natural resource agreement to do the following for traditional purposes—

10 (a) take (except for the purposes of controlling), keep, move or process protected flora (within the meaning of the **Flora and Fauna Guarantee Act 1988**);

15 (b) take or keep fish which are members of a listed taxon or community of fauna (within the meaning of the **Flora and Fauna Guarantee Act 1988**)—

in so far as is authorised by the Order.

20 (2) The Governor in Council may, on the recommendation of the Minister, impose terms and conditions on an authorisation order under subsection (1).

25 (3) In making a recommendation under subsection (1) or (2), the Minister administering the **Flora and Fauna Guarantee Act 1988** must have regard to any access and use provisions of the natural resource agreement and the principles of sustainability provisions of the agreement that are to apply to the access and use provisions.

83 Natural resource hunting authorisation

30 (1) The Governor in Council may, by Order, on the recommendation of the Minister administering the **Wildlife Act 1975**, authorise the members of a traditional owner group entity that has a natural resource agreement to hunt, take or destroy

wildlife for traditional purposes, in so far as is authorised by the Order.

- 5 (2) The Governor in Council may, on the recommendation of the Minister, impose terms and conditions on an authorisation order under subsection (1).
- 10 (3) In making a recommendation under subsection (1) or (2), the Minister administering the **Wildlife Act 1975** must have regard to any access and use provisions of the natural resource agreement and the principles of sustainability provisions of the agreement that are to apply to the access and use provisions.

84 Natural resource forest authorisation

- 15 (1) The Governor in Council may, by Order and on the recommendation of the Minister administering the **Forests Act 1958**, authorise the members of a traditional owner group entity that has a natural resource agreement to do any of the following, in reserved forest, in relation to forest produce for traditional purposes—

- 20 (a) thin, cut and remove timber;
- (b) cut forest produce;
- (c) dig forest produce;
- 25 (d) take away forest produce—

in so far as is authorised by the Order.

- 30 (2) The Governor in Council may, on the recommendation of the Minister, impose terms and conditions on an authorisation order under subsection (1).

- 5 (3) In making a recommendation under subsection (1) or (2), the Minister administering the **Forests Act 1958** must have regard to any access and use provisions of the natural resource agreement and the principles of sustainability provisions of the agreement that are to apply to the access and use provisions.

85 Natural resource water authorisation

- 10 (1) The Governor in Council may, by Order and on the recommendation of the Minister administering the **Water Act 1989**, authorise the members of a traditional owner group entity that has a natural resource agreement to take and use water from a waterway or bore, for traditional purposes in so far as is authorised by the Order.

- 15 (2) An authorisation under subsection (1) authorises the taking and use of water from a waterway or bore only where the member has access to the waterway or bore in the circumstances set out in section 8(1) of the **Water Act 1989**.

- 20 (3) The Governor in Council may, on the recommendation of the Minister, impose terms and conditions on an authorisation order under subsection (1).

- 25 (4) In making a recommendation under subsection (1) or (3), the Minister administering the **Water Act 1989** must have regard to any access and use provisions of the natural resource agreement and the principles of sustainability provisions of the agreement that are to apply to the access and use provisions.

86 Natural resource camping authorisation

- 30 (1) The Governor in Council may, by Order, authorise the members of a traditional owner group entity that has a natural resource agreement to camp, for traditional purposes, on any area of public land

that is the subject of the agreement and that is an area in which camping is permitted under a permit issued under the Act or the regulations under which the land is managed.

- 5 (2) The Governor in Council may make an authorisation order under subsection (1) on the joint recommendation of each relevant land Minister for land to which the authorisation order applies.
- 10 (3) The Governor in Council may, on the joint recommendation of each relevant land Minister for land to which the authorisation order applies, impose terms and conditions on an authorisation order under subsection (1).
- 15 (4) In making a recommendation under subsection (2) or (3), the relevant Minister must have regard to that part of the natural resource agreement that provides for the facilitation of the exercise of traditional owner rights.
- 20 (5) The Minister must not make a recommendation under subsection (2) or (3) in relation to—
- (a) an area of land that is managed by a committee of management without first consulting the committee of management;
 - 25 (b) land in an alpine resort without first consulting the Alpine Resort Management Board for the alpine resort.
- 30 (6) A right to camp on an area of land under an authorisation order under subsection (1) is subject to the right to camp of the holder of a permit issued or granted under the Act or regulations under which the land is managed that is being exercised by the holder of the permit.

5 (7) If a member of a traditional owner group entity is camping on an area of public land where it is an offence under the Act or regulations under which the land is managed to camp without a permit and that member is acting under and in accordance with an authorisation order under this section, he or she does not commit the offence.

10 (8) Subsection (7) does not apply where a permit is required to use or occupy any vehicle or other moveable accommodation.

15 (9) A member of a traditional owner group entity is exempt from any requirement to pay a fee to camp on an area of land in respect of which an authorisation order in force under this section, being a fee payable under any Act or regulations under which the land is managed.

20 (10) The exemption under subsection (9) does not apply if the fee is payable to a lessee or licensee of Crown land under and in accordance with the terms of a lease or licence over the land that is granted under the Act under which the land is managed.

25 **87 Variation of terms and conditions on authorisation orders**

(1) The Governor in Council may, vary the terms and conditions of an authorisation order.

30 (2) The Governor in Council must not vary the terms and conditions of an authorisation order under subsection (1) without the recommendation of the Minister who recommended the making of the order.

88 Land to which authorisation order does not apply

35 An authorisation order made in furtherance of a natural resource agreement with a traditional owner group entity does not apply to any area of land that is not subject to the agreement.

**89 Making, publication and commencement of
authorisation order**

- 5 (1) An authorisation order must be published in the
Government Gazette.
- (2) An authorisation order comes into operation on—
- (a) the day specified in the order, which must
not be before the day on which the order is
published in the Government Gazette; or
- 10 (b) if no day is specified in the order, the day
after the day on which the order is published
in the Government Gazette.

90 Period of authorisation order

An authorisation order remains in force for the
period specified in the order.

PART 7—GENERAL

91 Regulation making powers

(1) The Governor in Council may make regulations for or with respect to—

5 (a) the form and contents of the land use activity agreement register and processes to be followed with respect to the land use activity agreement register;

10 (b) generally any other matter or thing that is authorised or required to be prescribed or necessary to be prescribed to carry out this Act.

(2) The regulations—

15 (a) may be of general or of specially limited application; and

(b) may differ according to differences in time, place or circumstance; and

(c) may require a matter affected by the regulations to be—

20 (i) in accordance with a specified standard or specified requirement; or

(ii) approved by or to the satisfaction of a specified person or a specified class of person; or

25 (iii) as specified in both subparagraphs (i) and (ii); and

(d) may apply, adopt or incorporate any matter contained in any document whether—

30 (i) wholly or partially or as amended by the regulations; or

(ii) as in force at a particular time or as in force from time to time; and

5

10

-
- (e) may confer a discretionary authority or impose a duty on a specified person or a specified class of person; and
 - (f) may provide in a specified case or class of case for the exemption of activities or operations from all or any of the provisions of this Act, whether unconditionally or on specified conditions, and either wholly or to such an extent as is specified; and
 - (g) may be expressed as requiring the achievement of a specified object in relation to any particular subject matter.
-

**PART 8—AMENDMENT OF THE ABORIGINAL HERITAGE
ACT 2006**

92 Definitions

See:
Act No.
16/2006
and
amending
Act Nos
63/2006,
77/2008,
6/2009,
56/2009,
57/2009,
68/2009 and
10/2010.
LawToday:
www.
legislation.
vic.gov.au

In section 4(1) of the **Aboriginal Heritage Act 2006**, insert the following definitions—

"recognition and settlement agreement has the same meaning as in the **Traditional Owner Settlement Act 2010**;

traditional owner group entity has the same meaning as in the **Traditional Owner Settlement Act 2010**;"

93 Determination of application for registration

After section 151(2) of the **Aboriginal Heritage Act 2006** insert—

"(2A) If an applicant for registration is a traditional owner group entity who has entered into a recognition and settlement agreement in relation to the area—

(a) the Council must register the applicant as the registered Aboriginal party for that area; and

(b) no other applicant can be registered in respect of that area."

94 Revocation of registration

After section 156(3) of the **Aboriginal Heritage Act 2006** insert—

"(3A) The registration of a registered Aboriginal party in respect of an area or part of an area is revoked if a traditional owner group entity is subsequently registered under section

Traditional Owner Settlement Bill 2010

Part 8—Amendment of the Aboriginal Heritage Act 2006

s. 94

151(2A) as the registered Aboriginal party
for the area or that part of the area.".

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

**95 Power to enter into land management co-operative
agreements**

5 See:
Act No.
41/1987.
Reprint No. 7
as at
29 February
2008
and
10 amending
Act Nos
12/2008,
4/2009, 6/2009,
40/2009,
68/2009,
82/2009,
88/2009 and
15 6/2010.
LawToday:
www.
legislation.
vic.gov.au

After section 69(3) of the **Conservation, Forests
and Lands Act 1987** insert—

- "(4) If land is to be granted under Division 3 of
Part 3 of the **Traditional Owner Settlement
Act 2010** in accordance with a land
agreement under that Act, the Secretary may
enter into an agreement under subsection (1)
with a traditional owner group entity to
whom the land is to be granted before the
granting of the land, if the agreement
provides that it comes into effect on the grant
of the land.
- (5) In this section *traditional owner group
entity* has the same meaning as in Part 8A."

96 Amendment of definitions in Part 8A

20 In section 82A of the **Conservation, Forests and
Lands Act 1987**—

- (a) in the definition of *relevant land Minister*,
for "Crown land" substitute "public land";
- (b) for the definition of *public land* substitute—

25 "*public land* means the following—

- (a) land under the **Crown Land
(Reserves) Act 1978**, other than
land under the **Alpine Resorts
Act 1983**;
- 30 (b) land in any park within the
meaning of the **National Parks
Act 1975**;

(c) reserved forest within the meaning of the **Forests Act 1958**;

(d) unreserved Crown land under the **Land Act 1958**;

(e) land in any Nature Reserve or State Wildlife Reserve, within the meaning of the **Wildlife Act 1975**, other than land in a State Game Reserve (within the meaning of that Act);";

(c) for the definition of *traditional owner group substitute*—

"traditional owner group has the same meaning as in the **Traditional Owner Settlement Act 2010**";

(d) for the definition of *traditional owner group entity substitute*—

"traditional owner group entity has the same meaning as in the **Traditional Owner Settlement Act 2010**";

(e) **insert** the following definitions—

"aboriginal title has the same meaning as in the **Traditional Owner Settlement Act 2010**;

joint management plan, in relation to appointed land, means a management plan for that land that has come into effect under section 82PI, whether or not varied under section 82PJ;

recognition and settlement agreement has the same meaning as in the **Traditional Owner Settlement Act 2010**;

traditional owner land management agreement means an agreement under section 82P;".

97 Insertion of new section to follow section 82A

5 After the heading to Division 2 of Part 8A of the **Conservation, Forests and Lands Act 1987** insert—

10 **"82AB Role of Minister and Secretary where recognition and settlement agreement exists**

- 15 (1) If public land is land in respect of which there is in force a recognition and settlement agreement, the Minister in carrying out any function, duty or power under this Part must take all reasonable steps to give effect to any traditional owner land management agreement entered into in accordance with the recognition and settlement agreement.
- 20 (2) If public land is land in respect of which there is in force a recognition and settlement agreement, the Secretary in carrying out any function, duty or power under this Part must take all reasonable steps to give effect to any traditional owner land management agreement entered into in accordance with the recognition and settlement agreement."
- 25

98 Establishment of Traditional Owner Land Management Board

30 (1) After section 82B(1) of the **Conservation, Forests and Lands Act 1987** insert—

35 "(1A) If the Minister is establishing a Traditional Owner Land Management Board to give effect to a recognition and settlement agreement, the Minister must state this in the determination under subsection (1)."

(2) After section 82B(5)(b) of the **Conservation, Forests and Lands Act 1987** insert—

"(ba) for the purposes of section 82PA, specify the manner of the making of subsequent joint management plans and the timing of the making of the plans; and".

99 Insertion of new section 82BA

After section 82B of the **Conservation, Forests and Lands Act 1987** insert—

"82BA Revocation of appointment of committee of management

- (1) On the establishment of a Traditional Owner Land Management Board for any public land, if the land is land in respect of which a committee of management is appointed, the appointment of the committee of management is revoked, despite anything to contrary in the Act under which the committee of management has been appointed.
- (2) The revocation of the appointment of a committee of management under subsection (1) is not to be taken to affect any lease, licence, or agreement issued or granted by that committee over the land under the Act, that is in force immediately before the revocation of the appointment.
- (3) In the case of any lease, licence or agreement to which subsection (2) applies (other than a lease granted under section 17D of the **Crown Land (Reserves) Act 1978**), the Secretary is taken to be substituted for the committee of management as a party to the lease, licence or agreement.

- 5 (4) In the case of any lease under section 17D of the **Crown Land (Reserves) Act 1978** to which subsection (2) applies, the Minister is taken to be substituted for the committee of management as a party to the lease."

100 Variation of role etc. of Board

In section 82F(1) of the **Conservation, Forests and Lands Act 1987**—

- 10 (a) in paragraph (b) **omit** "the description of";
(b) in paragraph (c)—
(i) **omit** "the description of";
(ii) after "or any other Act" **insert** "whether by adding, amending or removing functions, powers or duties".

15 **101 New section inserted after section 82F**

After section 82F of the **Conservation, Forests and Lands Act 1987** insert—

20 **"82FA Requirements for variation where recognition and settlement agreement applies**

25 If a Traditional Owner Land Management Board has been appointed as part of giving effect to a recognition and settlement agreement, the Minister must not make a determination under—

- 30 (a) section 82F(1)(a) or (b), or, subject to paragraph (b), section 82F(1)(c), unless the Minister has first obtained the consent of the traditional owner group entity;
(b) section 82F(1)(c) to remove functions, powers or duties from the Board, unless the Minister has first consulted with the Board."

102 New section inserted after section 82G

After section 82G of the **Conservation, Forests and Lands Act 1987** insert—

"82GA Requirements for abolition where recognition and settlement agreement applies

- 5
- 10
- 15
- 20
- 25
- 30
- (1) If a Traditional Owner Land Management Board has been appointed as part of giving effect to a recognition and settlement agreement, the Minister must not make a determination under section 82G unless—
 - (a) the Minister is satisfied that the Board has substantially failed to perform the powers, duties and functions conferred on the Board by or under this or any other Act; or
 - (b) the Minister has the agreement of the traditional owner group entity to the abolition of the Board.
 - (2) Before making a decision under subsection (1), the Minister must—
 - (a) advise the Board that there is a proposal to abolish the Board and the reasons for that proposal; and
 - (b) allow the Board or its representative a reasonable opportunity to make written or oral submissions to the Minister.
 - (3) In making a decision under subsection (1) the Minister must have regard to any submissions made by the Board under section (2)(b)."

103 Functions of Traditional Owner Land Management Boards

In section 82H of the **Conservation, Forests and Lands Act 1987**—

(a) in paragraph (b), for "land of the Board." **substitute** "land of the Board;"

(b) after paragraph (b) **insert**—

"(c) those functions that are conferred on the Board under Division 5A."

104 Appointment and dismissal of members

(1) In section 82M(3) of the **Conservation, Forests and Lands Act 1987**—

(a) in paragraph (b), for "Board." **substitute** "Board; and";

(b) after paragraph (b) **insert**—

"(c) that at least one member of the Board is appointed on the nomination of the Secretary."

(2) After section 82M(4) of the **Conservation, Forests and Lands Act 1987** **insert**—

"(5) If a Traditional Owner Land Management Board has been appointed as part of giving effect to a recognition and settlement agreement, a member of that Board appointed on the nomination of the traditional owner group entity must not be dismissed under this section—

(a) unless the Minister is satisfied as to one or more of the following—

(i) that the member has failed to act in good faith;

(ii) that the member has improperly used his or her position to gain advantage for himself or herself or another person;

(iii) that the member has caused detriment to the Board; or

(b) unless the traditional owner group entity so requests."

105 Agreements as to the establishment of Traditional Owner Land Management Boards

In section 82P(1) of the **Conservation, Forests and Lands Act 1987**—

(a) after "for any public land" **insert** "including any traditional owner group entity to which aboriginal title is to be granted or transferred";

(b) in paragraph (a), for "an area of public land" **substitute** "the land that is the subject of the agreement".

106 Insertion of new Division to follow Division 5 of Part 8A

After Division 5 of Part 8A of the **Conservation, Forests and Lands Act 1987** insert—

"Division 5A—Joint Management Plans

82PA Joint preparation of management plans

(1) The Traditional Owner Land Management Board for appointed land must, with the reasonable assistance and guidance of the Secretary, prepare a draft management plan for the appointed land.

(2) Preparation of a plan under subsection (1) must be completed and agreement to the plan must take place—

(a) in the case of the first plan after the commencement of this provision, within 3 years of the appointment of the Board or any later date determined by the Minister; or

(b) in the case of any subsequent plan at the times and in the manner specified in the determination establishing the Board under section 82B(5).

82PB Requirements of specific Acts as to management to apply

(1) A management plan prepared under section 82PA must comply with the following subsections.

(2) If appointed land under the plan is reserved forest under the **Forests Act 1958**, the management plan for that land must be consistent with—

(a) the requirements of the **Forests Act 1958**; and

(b) the requirements of any regulations made under the **Forests Act 1958** in relation to the management of reserved forest; and

(c) the objectives of any Sustainability Charter in force in relation to the land under section 11 of the **Sustainable Forests (Timber) Act 2004**.

(3) If appointed land under the plan is land that is part of a park under the **National Parks Act 1975**, the management plan for that land must be consistent with—

- 5
- (a) the objects of the **National Parks Act 1975** and the requirements of the **National Parks Act 1975**; and
- (b) the requirements of any regulations made under the **National Parks Act 1975** in relation to the management of parks under that Act.
- 10 (4) If appointed land under the plan is land reserved under the **Crown Land (Reserves) Act 1978**, the management plan for that land must be consistent with—
- (a) the purposes for which the land is reserved under the **Crown Land (Reserves) Act 1978**; and
- 15 (b) the requirements of any regulations made under the **Crown Land (Reserves) Act 1978** in relation to the management of reserved land under that Act.
- 20 (5) If appointed land under the plan is part of a State Wildlife Reserve or Nature Reserve under the **Wildlife Act 1975**, the management plan for that land must be consistent with—
- 25 (a) the requirements of the **Wildlife Act 1975**; and
- (b) the requirements of any regulations made under the **Wildlife Act 1975** in relation to the management of any such
- 30 reserve.
- (6) If appointed land under the plan is land under the **Land Act 1958**, the management plan for that land must be consistent with—
- 35 (a) the requirements of the **Land Act 1958**; and

- (b) the requirements of any regulations made under the **Land Act 1958** in relation to the management of land under that Act.

5

82PC Other requirements for management plans

Subject to section 82PB, a management plan may deal with any other matters that are agreed in a traditional owner land management agreement for the appointed land and that are relevant to the management of the land.

10

82PD Completion of preparation of management plan

- (1) For the purposes of section 82PA(2), preparation of a management plan is completed when both the Traditional Owner Land Management Board and the Secretary agree that preparation is completed.
- (2) For the purposes of completing preparation of a management plan the Secretary and the Traditional Owner Land Management Board must take all reasonable steps to consult with each other and provide advice to each other, during the course of preparing the plan.

15

20

25

82PE Notice of completed management plan

- (1) As soon as possible after completion of preparation of a management plan, either the Secretary or the Traditional Owner Land Management Board must publish a notice in a newspaper circulating generally in the area in which the plan applies.

30

(2) A notice under subsection (1)—

(a) must state that a management plan has been prepared and set out where the plan may be inspected;

(b) must state that written submissions may be made on the plan to the Secretary or the Traditional Owner Land Management Board within the time specified in the notice.

82PF Making and consideration of submissions

(1) Any person may make written submissions on a completed management plan within the period specified in the notice of the plan under section 82PE.

(2) The period of time for making submissions that may be specified in a notice under section 82PE must not be less than 2 months from the date of publication of the notice.

(3) The Secretary and the Traditional Owner Land Management Board must consider any submission made on the completed management plan that were received by either person within the period specified in the notice under section 82PE.

82PG Agreement to management plan

(1) For the purposes of section 82PA(2), a management plan is taken to be agreed to when, after consideration of submissions under section 82PF, both the Traditional Owner Land Management Board and the Secretary agree to the plan.

(2) A plan agreed to under subsection (1) may contain variations to a completed plan made as a result of consideration of submissions under section 82PF.

82PH Approval of plan by Minister

(1) The Secretary and the Traditional Owner Land Management Board may submit to the Minister for approval—

- 5 (a) a management plan agreed to under section 82PG; or
- 10 (b) a management plan, that is substantially similar to a management plan already in force in relation to the appointed land, that has been adopted by both the Secretary and the Traditional Owner Land Management Board; or
- 15 (c) a management plan prepared by the Secretary and the Traditional Owner Management Board, where sections 82PD, 82PE, 82PF and 82PG have not been complied with, if the Minister is satisfied that it is not necessary to comply with those sections.
- 20 (2) On receiving an agreed management plan under subsection (1)(a) or (c), the Minister may approve the plan.
- 25 (3) On receiving an adopted management plan under subsection (1)(b), the Minister may approve the plan, if the Minister is satisfied—
- 30 (a) that a substantially similar management plan is in force in relation to the appointed land; and
- (b) that that plan has been the subject of a public consultation process, similar to that specified in this Division within the previous 3 years.

- 5 (4) Before approving a management plan under this section, if the Minister is not the relevant land Minister for the land that is the subject of the plan, the Minister must obtain the consent of the relevant land Minister.

82PI Effect of plan

- 10 (1) A management plan comes into effect on being approved by the Minister under section 82PH(2) or (3).

- (2) A management plan that has come into effect remains in effect—

15 (a) until the plan is replaced by another management plan; or

(b) the Minister, after consulting with the Traditional Owner Land Management Board and the Secretary, revokes his or her approval of the plan, given under section 82PH.

82PJ Variation of joint management plan

- 20 (1) The Secretary and the Traditional Owner Land Management Board may submit a variation of a joint management plan to the Minister for approval.

- 25 (2) The provisions of this Act applying to the preparation, completion, agreement to and approval of a joint management plan apply to a variation of a joint management plan as if a reference in those provisions to *management plan* were a reference to *variation of a management plan*.

- 30 (3) A variation of a joint management plan comes into effect on being approved by the Minister under subsection (1).

- 5 (4) Before approving a variation of a joint management plan under this section, if the Minister is not the relevant land Minister for the land that is the subject of the plan, the Minister must obtain the consent of the relevant land Minister."

107 Delegation powers

- 10 (1) In section 82Q(1) of the **Conservation, Forests and Lands Act 1987**, for "in managing the land" **substitute** "in the course of carrying out duties under any agreement or arrangement relating to the management of the appointed land by the Traditional Owner Land Management Board".

- 15 (2) In section 82Q(2) of the **Conservation, Forests and Lands Act 1987**, for "in managing the land" **substitute** "in the course of carrying out duties under any agreement or arrangement relating to the management of the appointed land by the Traditional Owner Land Management Board".

20 **108 New section inserted after section 122**

After section 122 of the **Conservation, Forests and Lands Act 1987** insert—

"123 Transitional provision—Traditional Owner Settlement Act 2010

- 25 (1) Division 5A does not apply to a Traditional Owner Land Management Board in existence before the commencement of section 106 of the **Traditional Owner Settlement Act 2010**, unless—
- 30 (a) the Minister makes a determination that the Division applies; and
- 35 (b) varies the determination under section 82B establishing the Board to specify the matters set out in section 82B(5)(ba).
-

Traditional Owner Settlement Bill 2010

Part 9—Amendment of the Conservation, Forests and Lands Act 1987

s. 108

- (2) For the purposes of subsection (1)(b) the Minister may vary a determination made under section 82B."
-

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

109 Definitions

5 See:
Act No.
9212.
Reprint No. 9
as at
15 January
2009
and
amending
Act Nos
10 64/2004,
6/2009,
40/2009,
68/2009,
82/2009,
90/2009,
6/2010 and
35/2010.
15 LawToday:
www.
legislation.
vic.gov.au

(1) In section 3 of the **Crown Land (Reserves) Act 1978** insert the following definitions—

"appointed land, in relation to a Traditional Owner Land Management Board, has the same meaning as in the **Conservation, Forests and Lands Act 1987**;

joint management plan has the same meaning as in the **Conservation, Forests and Lands Act 1987**;

traditional owner land management agreement has the same meaning as in the **Conservation, Forests and Lands Act 1987**;

Traditional Owner Land Management Board has the same meaning as in the **Conservation, Forests and Lands Act 1987**;"

(2) At the end of section 3 of the **Crown Land (Reserves) Act 1978** insert the following note—

"Note

Land under this Act may be the subject of a land use activity agreement within the meaning of Part 4 of the **Traditional Owner Settlement Act 2010**."

110 New sections inserted after section 11

After section 11 of the **Crown Land (Reserves) Act 1978** insert—

'11A Revocation and further reservation of land

(1) If a land agreement provides that land that is the subject of the agreement is to be reserved for the purpose specified in the agreement,

the Minister may recommend to the Governor in Council that the reservation of the land (whether temporary or permanent) be revoked and that the land be reserved for the purposes set out in the recommendation.

(2) On receiving a recommendation of the Minister under subsection (1), the Governor in Council may, by Order in Council, revoke the reservation of the land and reserve the land for the purposes set out in the Order in Council.

(3) The Minister must take all reasonable steps to make a recommendation under subsection (1), to give effect to the land agreement.

(4) This section has effect despite anything to the contrary in any other provision of this Act.

(5) In this section *land agreement* has the same meaning as in the **Traditional Owner Settlement Act 2010**.

11B Parliamentary scrutiny of Order in Council

(1) Any Order in Council under section 11A(2) may be disallowed by resolution of either House of Parliament.

(2) Sections 15, 22, 23 and 24 of the **Subordinate Legislation Act 1994** apply to an Order in Council and resolution referred to in subsection (1) as if—

(a) the Order were a statutory rule within the meaning of that Act, notice of which had been published in the Government Gazette on the day on which the Order was made; and

- 5
- (b) in section 23(2)(a) of that Act, for "18th" were **substituted** "5th"; and
- (c) in section 23(2)(b) of that Act, for "12th" were **substituted** "10th"; and
- (d) disallowance by either House of Parliament were disallowance by Parliament.
- 10
- (3) Despite anything to the contrary in any other Act, an Order referred to in subsection (1) comes into force, if it is not disallowed by either House of Parliament, on the day after the last day on which it could have been so disallowed.!

111 Section 18B substituted

15 For section 18B of the **Crown Land (Reserves) Act 1978 substitute—**

"18B Power of Secretary to enter into management agreements

- 20
- (1) The Secretary, with the approval of the Minister, may enter into a management agreement with any person with respect to—
- (a) the whole or part of land temporarily or permanently reserved under this Act; or
- 25
- (b) the carrying out of specified functions, powers or duties in relation to the management of the whole or any part of any land temporarily or permanently reserved under this Act.
- 30
- (2) An agreement under subsection (1) must not extend to any land that is vested in another person or body or to the carrying out of any function, power or duty in relation to the management of land that is conferred on another person or body.

(3) The Secretary may enter into a management agreement with a Traditional Owner Land Management Board for or relating to—

(a) the management of any land, that is reserved under this Act, that is appointed land of that Board; or

(b) the carrying out of specified functions, powers or duties in relation to the management of any land that is reserved under this Act, that is appointed land of that Board.

(4) An agreement under subsection (3) must not extend to the carrying out of any management duty of the Secretary that is conferred on another person or body.

(5) In entering into a management agreement under subsection (3), the Secretary must have regard to any traditional owner land management agreement in relation to the land."

112 New section inserted after section 20

After section 20 of the **Crown Land (Reserves) Act 1978** insert—

"20A Land to be managed consistently with joint management plan

If any appointed land of a Traditional Owner Land Management Board constitutes the whole or a part of land reserved under this Act, the person responsible for the management of that appointed land under this Act must ensure that the land is managed in a way that is not inconsistent with any joint management plan for the land."

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

113 New section 48A inserted

5 See:
Act No.
47/1988.
Reprint No. 3
as at
29 June 2000
and
amending
Act Nos
81/2004,
108/2004,
10
63/2006,
80/2006 and
6/2009.
LawToday:
www.
legislation.
vic.gov.au

After section 48 of the **Flora and Fauna
Guarantee Act 1988** insert—

**"48A Offences under section 47 not to apply for
authorised traditional owners**

Section 47 does not apply to a person who is
a member of a traditional owner group entity
when that person is acting under and in
accordance with an authorisation order given
under section 82 of the **Traditional Owner
Settlement Act 2010**."

114 New section 52A inserted

15 After section 52 of the **Flora and Fauna
Guarantee Act 1988** insert—

**"52A Offences under section 52 not to apply for
authorised traditional owners**

20 Section 52 does not apply to a person who is
a member of a traditional owner group entity
when that person is acting under and in
accordance with an authorisation order given
under section 82 of the **Traditional Owner
Settlement Act 2010**."

PART 12—AMENDMENT OF THE FORESTS ACT 1958

115 Definitions

- (1) In section 3(1) of the **Forests Act 1958** insert the following definitions—

"appointed land, in relation to a Traditional Owner Land Management Board, has the same meaning as in the **Conservation, Forests and Lands Act 1987**;

joint management plan has the same meaning as in the **Conservation, Forests and Lands Act 1987**;

traditional owner group entity has the same meaning as in the **Traditional Owner Settlement Act 2010**;

Traditional Owner Land Management Board has the same meaning as in the **Conservation, Forests and Lands Act 1987**;"

- (2) At the end of section 3 of the **Forests Act 1958** insert the following note—

"Note

Land under this Act may be the subject of a land use activity agreement within the meaning of Part 4 of the **Traditional Owner Settlement Act 2010**."

116 Consequential repeal of definitions

Section 28(3) of the **Forests Act 1958** is repealed.

See:
Act No.
6254.
Reprint No. 10
as at
8 July 2010
and
amending
Act No.
40/2009.
LawToday:
www.
legislation.
vic.gov.au

117 Insertion of new section after section 50

After section 50 of the **Forests Act 1958** insert—

"50AA Revocation and further setting aside and declaration of land

- 5 (1) If a land agreement provides that land that is the subject of the agreement is to be set aside and declared for the purpose specified in the agreement, the Minister may recommend to the Governor in Council that any
- 10 determination under section 50 in respect of the land be revoked and that the land be set aside and declared for the purposes set out in the recommendation.
- 15 (2) On receiving a recommendation of the Minister under subsection (1), the Governor in Council may, by Order in Council, revoke any determination under section 50 in respect of the land and set aside and declare the land for the purposes set out in the Order in Council.
- 20 (3) The Minister must take all reasonable steps to make a recommendation under subsection (1), to give effect to the land agreement.
- 25 (4) This section has effect despite anything to the contrary in any other provision of this Act.
- (5) In this section *land agreement* has the same meaning as in the **Traditional Owner Settlement Act 2010**."

118 Amendment of heading

For the heading "**Leases and licences**" which precedes section 51 of the **Forests Act 1958** substitute—

"Leases, licences and management responsibilities".

119 New section inserted after section 57

After section 57 of the **Forests Act 1958** insert—

"57A Land to be managed consistently with joint management plan

If any appointed land of a Traditional Owner Land Management Board constitutes the whole or a part of reserved forest, the person responsible for the management of that appointed land under this Act must ensure that the land is managed in a way that is not inconsistent with any joint management plan for the land."

120 New section 96C inserted

After section 96B of the **Forests Act 1958** insert—

"96C Offences not to apply for authorised traditional owners

Section 96 does not apply to a person who is a member of a traditional owner group entity when that person is acting under and in accordance with an authorisation order given under section 84 of the **Traditional Owner Settlement Act 2010**."

PART 13—AMENDMENT OF THE LAND ACT 1958

121 Definitions

See:
Act No.
6284.
Reprint No. 11
as at
5 19 August
2004
and
amending
Act Nos
63/2006,
85/2006,
10 12/2008,
4/2009,
40/2009,
68/2009,
82/2009,
1/2010 and
6/2010.
LawToday:
www.
15 legislation.
vic.gov.au

- (1) In section 2A of the **Land Act 1958**, insert the following definitions—

"appointed land, in relation to a Traditional Owner Land Management Board, has the same meaning as in the **Conservation, Forests and Lands Act 1987**;

joint management plan has the same meaning as in the **Conservation, Forests and Lands Act 1987**;

Traditional Owner Land Management Board has the same meaning as in the **Conservation, Forests and Lands Act 1987**;"

- (2) At the end of section 3 of the **Land Act 1958** insert the following note—

"Note

Land under this Act may be the subject of a land use activity agreement within the meaning of Part 4 of the **Traditional Owner Settlement Act 2010**."

122 Consequential repeal of definitions

Section 4B(3) of the **Land Act 1958** is repealed.

123 New section inserted after section 4B

After section 4B of the **Land Act 1958** insert—

"4C Land to be managed consistently with joint management plan

If any appointed land of a Traditional Owner Land Management Board constitutes land managed under this Act, the person responsible for the management of that appointed land under this Act must ensure that the land is managed in a way that is not

Traditional Owner Settlement Bill 2010

Part 13—Amendment of the Land Act 1958

s. 123

inconsistent with any joint management plan
for the land."

**PART 14—AMENDMENT OF THE NATIONAL PARKS
ACT 1975**

124 Definitions

5 See:
Act No.
8702.
Reprint No. 12
as at
14 February
2008
and
amending
Act Nos
10 38/1989,
54/2008,
61/2008,
6/2009,
40/2009,
48/2009,
82/2009,
90/2009,
15 6/2010,
10/2010 and
35/2010.
LawToday:
www.
legislation.
vic.gov.au

- (1) In section 3(1) of the **National Parks Act 1975** insert the following definitions—

"appointed land, in relation to a Traditional Owner Land Management Board, has the same meaning as in the **Conservation, Forests and Lands Act 1987**;

joint management plan has the same meaning as in the **Conservation, Forests and Lands Act 1987**;

Traditional Owner Land Management Board has the same meaning as in the **Conservation, Forests and Lands Act 1987**;"

- (2) At the end of section 3 of the **National Parks Act 1975** insert the following note—

"Note

Land under this Act may be the subject of a land use activity agreement within the meaning of Part 4 of the **Traditional Owner Settlement Act 2010**."

125 Secretary may enter into management agreements

- (1) After section 16A(1) of the **National Parks Act 1975** insert—

"(1A) An agreement under subsection (1) may specify the functions, powers or duties in relation to the management of the land that are to be carried out by Parks Victoria.

(1B) An agreement under subsection (1) must not extend to the carrying out of any function, power or duty in relation to the management of land that is conferred on a Traditional Owner Land Management Board."

(2) After section 16A(2) of the **National Parks Act 1975** insert—

"(2A) An agreement under subsection (2) must not extend to the carrying out of any function, power or duty in relation to the management of land that is conferred on Parks Victoria."

(3) Section 16A(4) of the **National Parks Act 1975** is repealed.

126 New section inserted after section 16A

After section 16A of the **National Parks Act 1975** insert—

"16B Land to be managed consistently with joint management plan

If any appointed land of a Traditional Owner Land Management Board constitutes the whole or any part of a park under this Act, the person responsible for the management of that appointed land under this Act must ensure that the land is managed in a way that is not inconsistent with any joint management plan for the land."

127 Management plans

(1) After section 17(2) of the **National Parks Act 1975** insert—

"(2AA) In the case of any appointed land of a Traditional Owner Land Management Board that constitutes the whole or a part of a national park or State park, a management plan prepared under subsection (2)(d) does not have effect in so far as a joint management plan is in effect for that land."

(2) At the end of section 17B of the **National Parks Act 1975 insert—**

"(2) In the case of any appointed land of a Traditional Owner Land Management Board that constitutes the whole or a part of a wilderness park, a management plan prepared under subsection (1) does not have effect in so far as a joint management plan is in effect for that land."

(3) After section 17D(3) of the **National Parks Act 1975 insert—**

"(4) In the case of any appointed land of a Traditional Owner Land Management Board that constitutes the whole or a part of a marine national park or a marine sanctuary, a management plan prepared under subsection (3)(c) does not have effect in so far as a joint management plan is in effect for that land."

(2) After section 18(2) of the **National Parks Act 1975 insert—**

"(3) In the case of any appointed land of a Traditional Owner Land Management Board that constitutes the whole or a part of a park to which this section applies, a management plan prepared under subsection (2)(d) does not have effect in so far as a joint management plan is in effect for that land."

128 Tabling of management plans

After section 47D(1) of the **National Parks Act 1975** insert—

"(1A) Subsection (1) applies whether or not the management plan is for the whole or a part of the park and whether or not the management plan is a joint management plan."

5

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

129 Insertion of new Part 19A in Schedule 1

5 See:
Act No.
53/1998.
Reprint No. 6
as at
1 January
2009
and
amending
Act Nos
46/2008,
76/2008,
10 78/2008,
6/2009,
14/2009,
21/2009,
68/2009,
69/2009,
6/2010,
11/2010,
13/2010,
15 16/2010,
23/2010,
36/2010 and
39/2010.
LawToday:
www.
legislation.
20 vic.gov.au

After Part 19 of Schedule 1 to the **Victorian Civil
and Administrative Tribunal Act 1998** insert—

**"PART 19A—TRADITIONAL OWNER
SETTLEMENT ACT 2010**

**91B Constitution of Tribunal for Traditional
Owner Settlement Matters**

The Tribunal is to be constituted for the
purposes of a proceeding under Part 4 of the
Traditional Owner Settlement Act 2010
by—

- (a) one member who has sound knowledge
of, and experience in, Aboriginal
culture and land use; or
 - (b) if it is constituted by 2 or more
members, at least one member who has
sound knowledge of, and experience in,
Aboriginal culture and land use."
-

PART 16—AMENDMENT OF THE WATER ACT 1989

130 Definitions

In section 3(1) of the **Water Act 1989** insert the following definition—

5 "*traditional owner group entity* has the same meaning as in the **Traditional Owner Settlement Act 2010**;"

See:
Act No.
80/1989.
Reprint No. 9
as at
24 April 2008
and
amending
Act Nos
4/2008,
12/2008,
46/2008,
61/2008,
75/2008,
4/2009,
54/2009,
68/2009,
69/2009,
1/2010, 6/2010
and 32/2010.
LawToday:
www.
legislation.
vic.gov.au

131 New section 8A inserted

After section 8 of the **Water Act 1989** insert—

10 "**8A Traditional owner rights**

- 15 (1) If a traditional owner group entity has a natural resource agreement under Part 6 of the **Traditional Owner Settlement Act 2010** in relation to an area of land any member of the entity has the right to take and use water under and in accordance with an authorisation order given under section 85 of the **Traditional Owner Settlement Act 2010**.

Traditional Owner Settlement Bill 2010

s. 131

Part 16—Amendment of the Water Act 1989

- (2) Nothing in subsection (1) is to be taken as derogating from any right a member of the traditional owner group entity has to take and use water under section 8."
-

5

PART 17—AMENDMENT OF THE WILDLIFE ACT 1975

132 Definitions

- (1) In section 3(1) of the **Wildlife Act 1975**, insert the following definitions—

"appointed land, in relation to a Traditional Owner Land Management Board, has the same meaning as in the **Conservation, Forests and Lands Act 1987**;

joint management plan has the same meaning as in the **Conservation, Forests and Lands Act 1987**;

traditional owner group entity has the same meaning as in the **Traditional Owner Settlement Act 2010**;

Traditional Owner Land Management Board has the same meaning as in the **Conservation, Forests and Lands Act 1987**;"

- (2) At the end of section 3 of the **Wildlife Act 1975** insert the following note—

"Note

Land under this Act may be the subject of a land use activity agreement within the meaning of Part 4 of the **Traditional Owner Settlement Act 2010**."

133 Management plans

After section 18(4) of the **Wildlife Act 1975** insert—

- "(5) In the case of any appointed land of a Traditional Owner Land Management Board, a plan of management under this section of any State Wildlife Reserve or Nature Reserve does not have effect if a joint management plan (within the meaning of the

See:
Act No.
8699.
Reprint No. 8
as at
29 February
2008
and
amending
Act Nos
16/2004,
45/2008,
40/2009,
68/2009,
82/2009,
6/2010 and
7/2010.
LawToday:
www.
legislation.
vic.gov.au

Conservation, Forests and Lands Act 1987) is in effect for that land."

134 Repeal of section 18A(3)

Section 18A(3) of the **Wildlife Act 1975** is repealed.

135 New section inserted after section 18A

After section 18A of the **Wildlife Act 1975** insert—

"18B Land to be managed consistently with joint management plan

If any appointed land of a Traditional Owner Land Management Board constitutes the whole or any part of a State Wildlife Reserve or Nature Reserve under this Act, the person responsible for the management of that appointed land under this Act must ensure that the land is managed in a way that is not inconsistent with any joint management plan for the land."

136 New section 47B inserted

After section 47A of the **Wildlife Act 1975** insert—

"47B Offences not to apply for authorised traditional owners

Sections 41, 43, 44, 45 and 47 do not apply to a person who is a member of a traditional owner group entity when that person is acting under and in accordance with an authorisation order given under section 83 of the **Traditional Owner Settlement Act 2010**."

PART 18—MISCELLANEOUS AMENDMENT OF OTHER ACTS

137 Amendment of the Alpine Resorts (Management) Act 1997, insertion of note

5 At the end of section 3 of the **Alpine Resorts (Management) Act 1997** insert—

 "**Note**

 Land under this Act may be the subject of a land use activity agreement within the meaning of Part 4 of the **Traditional Owner Settlement Act 2010**".

10 **138 Amendment of Geothermal Energy Resources Act 2005, insertion of note**

 At the end of section 80 of the **Geothermal Energy Resources Act 2005** insert—

15 "**Note**

 The giving of a consent under this section may be a land use activity under the **Traditional Owner Settlement Act 2010** if it relates to public land to which a land use activity agreement under that Act applies."

20 **139 Amendment of the Greenhouse Gas Geological Sequestration Act 2008, insertion of note**

 At the end of section 193 of the **Greenhouse Gas Geological Sequestration Act 2008** insert—

25 "**Note**

 The giving of an approval under this section may be a land use activity under the **Traditional Owner Settlement Act 2010** if it relates to public land to which a land use activity agreement under that Act applies."

140 Amendment of Mineral Resources (Sustainable Development) Act 1990, insertion of notes

- (1) At the end of section 25 of the **Mineral Resources (Sustainable Development) Act 1990** insert—

"Note

The grant of a licence under this section may be a land use activity under the **Traditional Owner Settlement Act 2010** if it relates to public land to which a land use activity agreement under that Act applies."

- (2) At the end of section 77I of the **Mineral Resources (Sustainable Development) Act 1990** insert—

"Note

The granting of an authority under this section may be a land use activity under the **Traditional Owner Settlement Act 2010** if it relates to public land to which a land use activity agreement under that Act applies."

141 Amendment of the Offshore Petroleum and Greenhouse Gas Storage Act 2010, insertion of note

At the end of section 797 of the **Offshore Petroleum and Greenhouse Gas Storage Act 2010** insert—

"Note

The giving of acceptance of an environment plan under regulations made under this Act may be a land use activity under the **Traditional Owner Settlement Act 2010** if it relates to public land to which a land use activity agreement under that Act applies."

142 Amendment of the Offshore Petroleum and Greenhouse Gas Storage Act 2010, insertion of consequential amendment

After item 12 in Schedule 6 to the **Offshore Petroleum and Greenhouse Gas Storage Act 2010** insert—

"13 Traditional Owner Settlement Act 2010

In section 27(1), for "**Petroleum (Submerged Lands) Act 1982**" substitute "**Offshore Petroleum and Greenhouse Gas Storage Act 2010**".

143 Amendment of the Petroleum (Submerged Lands) Act 1982, insertion of note

At the end of section 152 of the **Petroleum (Submerged Lands) Act 1982** insert—

"Note

The giving of acceptance of an environment plan under regulations made under this Act may be a land use activity under the **Traditional Owner Settlement Act 2010** if it relates to public land to which a land use activity agreement under that Act applies."

144 Amendment of the Petroleum Act 1998, insertion of note

At the end of section 138 of the **Petroleum Act 1998** insert—

"Note

The giving of consent for petroleum operation under this section may be a land use activity under the **Traditional Owner Settlement Act 2010** if it relates to public land to which a land use activity agreement under that Act applies."

145 Amendment of the Pipelines Act 2005, insertion of note

At the end of section 135 of the **Pipelines Act 2005** insert—

"Note

The giving of acceptance of an Environment Management Plan under this Division may be a land use activity under the **Traditional Owner Settlement Act 2010** if it relates to public land to which a land use activity agreement under that Act applies."

146 Amendment of the Sustainable Forests (Timber) Act 2004, insertion of notes

(1) At the end of section 40 of the **Sustainable Forests (Timber) Act 2004** insert—

"Note

The approval of a timber release plan under this section may be a land use activity under the **Traditional Owner Settlement Act 2010** if it relates to public land to which a land use activity agreement under that Act applies."

(2) At the end of section 43 of the **Sustainable Forests (Timber) Act 2004** insert—

"Note

The giving of agreement to a change to a timber release plan under this section may be a land use activity under the **Traditional Owner Settlement Act 2010** if it relates to public land to which a land use activity agreement under that Act applies."

PART 19—REPEAL OF AMENDING PARTS

147 Repeal of amending Parts

Parts 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18
and this Part are **repealed** on 1 July 2012.

5

Note

The repeal of the Parts specified in this section does not affect the continuing operations of the amendments made by those Parts (see section 15(1) of the **Interpretation of Legislation Act 1984**).

ENDNOTES

By Authority. Government Printer for the State of Victoria.
