



Department of Planning and Community Development

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OPEN LETTER TO HERITAGE ADVISORS – APPLICATIONS FOR CULTURAL HERITAGE PERMITS TO DISTURB OR EXCAVATE

The Secretary of the Department has the responsibility to consider an application for a cultural heritage permit under the *Aboriginal Heritage Act 2006* (the Act), including a permit to disturb or excavate any land for the purpose of uncovering or discovering Aboriginal cultural heritage under section 36(1)(a) of the Act (in this letter, a **permit to excavate**). In considering a permit application, Aboriginal Affairs Victoria (AAV) has identified a number of instances where a permit to excavate is not necessary.

I do not consider it is necessary for a person to obtain a permit to excavate if:

- the person is acting in accordance with an existing cultural heritage permit to carry out an activity that will, or is likely to, harm Aboriginal cultural heritage (section 36(1)(c)) and the excavation affects the heritage (or part of it) permitted to be harmed; or
- the person is acting in accordance with an existing consent under the former Part IIA of the Commonwealth *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (section 21U) and the excavation affects that part of the Aboriginal place permitted to be damaged.

The reasons I do not consider it necessary to obtain a permit to excavate are:

- (a) it is no offence to harm heritage under section 27 or 28 of the Act if a person acts in accordance with a cultural heritage permit or a consent (section 29; clause 6 schedule 1); and
- (b) it is no offence under section 34 of the Act if a person disturbs or excavates in accordance with a cultural heritage permit (and not specifically a permit to excavate).

In relation to a consent still in force under the former Part IIA of the Commonwealth *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, a condition of the consent requiring an excavation permit under the former *Archaeological and Aboriginal Relics Preservation Act 1972* only has application if that permit was obtained before the latter Act was repealed on 28 May 2007.

Further information on Aboriginal cultural heritage issues in Victoria can be obtained at AAV's web site (www1.dvc.vic.gov.au/aav). Any enquiries about this matter should be addressed to Mr Jamin Moon, Senior Heritage Policy Officer on (telephone) 03 9208 3281.

Yours faithfully

IAN HAMM
Deputy Director
Aboriginal Affairs Victoria

