

**Stop Order under section 87-95 of the *Aboriginal Heritage Act 2006***

Information sheet for Authorised Officers

**Stop Order**

Issuing a Stop Order is a serious enforcement action. If a decision is made to issue a Stop Order and the person who is issued it then engages in conduct that contravenes the order, immediate action will be required to be undertaken to identify and investigate the breach.

**Who may issue a Stop Order?**

Under section 87 of the *Aboriginal Heritage Act 2006* (the Act) the Minister for Treaty and First Peoples or an Authorised Officer may issue a Stop Order to a person if all of the following conditions are met—

* the person is carrying out, or proposes to carry out, any act; and
* the Minister or Authorised Officer is satisfied that there are reasonable grounds for believing that the carrying out of the act is harming, or is likely to harm, Aboriginal cultural heritage; and
* the Minister or Authorised Officer is satisfied that there are reasonable grounds for believing that the Aboriginal cultural heritage could not be properly protected unless a Stop Order is issued.

**When must a Stop Order not be issued?**

Under section 87(1A) of the Act a Stop Order must not be issued to a person in relation to an act that is being carried out or is proposed to be carried out in accordance with—

* a cultural heritage permit; or
* an approved cultural heritage management plan; or
* an Aboriginal cultural heritage land management agreement.

**Stop Order for a cultural heritage audit**

Under section 88 of the Act if the Minister orders a cultural heritage audit, the Minister must issue a Stop Order to the person carrying out the activity to which the audit relates requiring the person to stop the activity immediately.

This is to ensure that no further activity can be carried out until the audit is completed, both to facilitate the audit and to avoid any harm or further harm as a result of the activity.

**What can a Stop Order do?**

Under section 89 of the Act Stop Order issued to a person may—

* require the person to stop immediately the act specified in the order; or
* prohibit the person from doing the act specified in the order.

The Stop Order does not prevent actions being taken to give effect to the recommendations in the report of a cultural heritage audit conducted while the Stop Order is in force under section 89(2). This is to avoid a stop order having the unintended effect of obstructing any protective measures recommended by an audit report.

**Delivery of a Stop Order**

Under section 90 of the Act a Stop Order must be delivered to the person to whom it applies—

* in person; or
* if it is not reasonably practicable to deliver it in person, by affixing it to a prominent position at the place where the act is being carried out or is to be carried out; or
* if the person is a body corporate, by giving it to the person apparently supervising or in charge of the act to which the order relates.

The Minister (or a person authorised by the Minister) or Authorised Officer may enter any land or premises at any time for the purpose of delivering a Stop Order in accordance with these provisions.

**Duration of a Stop Order**

A Stop Order operates from the time it is issued until the end of the earlier of—

* 30 days; or
* the period specified in the order.

A Stop Order can be revoked earlier. A Stop Order issued in relation to a cultural heritage audit operates until the Minister revokes the order under section 93 of the Act.

**Extension of a Stop Order**

Under s 92 of the Act, before a Stop Order ceases to operate, the Minister may extend the Stop Order once only for a further period of up to 14 days.

**Revocation of a Stop Order**

Under section 93 of the Act a Stop Order may be revoked—

* if the Order was issued by the Minister—by the Minister; or
* if the Order was issued by an Authorised Officer —by the Minister or the Authorised Officer.

The Minister must revoke a Stop Order issued in relation to a cultural heritage audit after the report of the audit is approved under section 85 of the Act.

There is no approved form for a revocation of the Stop Order, however, a template is supplied which should be followed.

**Further Stop Order**

Under section 94 of the Act if a Stop Order has been issued in respect of an act, the Minister or an Authorised Officer may only issue a further Stop Order to a person in respect of that act if the circumstances relating to that act have substantially changed.

**Offence to fail to comply with a Stop Order**

Under s 95(1) it is an indictable offence for a person issued with a Stop Order to engage in any conduct that the person knows is conduct that contravenes the Stop Order.

Penalty: In the case of a natural person, 1800 penalty units

In the case of a corporation, 10 000 penalty units.

**Investigating a failure to comply with a Stop Order**

Where a failure to comply with the order is identified the authorised officer must ensure that any investigation is undertaken in accordance with the First Peoples – State Relations Policy, Investigations Manual and Enforcement Procedures.

**Approved form**

Under section 87(2) of the Act, a Stop Order must be in the approved form. The form must include the full name and address and company name, Australian Business Number (ABN) and registered address (if any) of person/party to whom the Stop Order is issued.

The Stop Order must include the property address of the place where the cultural heritage is located. It should also attach, where possible, a map or a plan to assist identifying the location and the Aboriginal cultural heritage.

The Stop Order must also describe in detail the act being carried out and the Aboriginal cultural heritage that is the subject of the Stop Order, referencing the Victorian Aboriginal Heritage Register numbers, if available.

The property address of place where the cultural heritage is located must be included and where possible a map or plan should be attached to assist in identifying the location and the Aboriginal cultural heritage. Where possible insert the land title, volume and folio numbers. Sufficient detail must be included in the order to describe both the act being carried out and the Aboriginal cultural heritage (with reference to Victorian Aboriginal Heritage Register numbers if available) that is the subject of the Order.

**Approved Form for the issue of a Stop Order under Part 6 of the *Aboriginal Heritage Act 2006* [Stop Order issued by the Minister or an Authorised Officer]**

Stop Order for the purposes of the *Aboriginal Heritage Act 2006*

**To:**

*[Insert full name and address and company name, ABN and registered address (if any) of person/party to whom the Stop Order is issued].*

**Property:**

*[Insert property address of place where the cultural heritage is located and attach a map or plan. Where possible insert the title, volume and folio numbers].*

You are carrying out, or propose to carry out, the following act (the **Act**):

* *[Insert details of the act being carried out and describe the Aboriginal cultural heritage (with reference to Victorian Aboriginal Heritage Register numbers if available) that is the subject of the order, in a manner sufficient to identify that heritage].*

I, *[insert name]* an Authorised Officer appointed under Part 11 of the *Aboriginal Heritage Act 2006*, **or1**

Minister for Aboriginal Affairs, am satisfied that there are reasonable grounds for believing that:

* the carrying out of the Act is harming, or is likely to harm, Aboriginal cultural heritage; and
* the Aboriginal cultural heritage could not be properly protected unless a Stop Order is issued.

Pursuant to Division 2 of Part 6 of the Act, **I HEREBY ISSUE** a Stop Order to you that:

* requires that you immediately stop the Act. ***or***1
* prohibits you from doing the Act.

Unless it is sooner revoked, this Stop Order operates from the time it is issued until the end of:

* 30 days from the date specified below ***or***1
* [*insert date*] 2.

Under section 95 of the *Aboriginal Heritage Act 2006* it is an indictable offence for you to engage in any conduct which you know is conduct which contravenes this Stop Order.

Signed: \_ \_ Date of issue: / /

[*Insert* *Name of Minister* ***or***1 *Authorised Officer*]Time of issue: AM / PM

[Minister for Aboriginal Affairs ***or***1

An authorised officer appointed under Part 11 of the Act]

1 Delete whichever is not applicable.

2 Such date must be less than 30 days from the date of issue.

**Approved Form for the issue of a Stop Order under Part 6 of the *Aboriginal Heritage Act 2006* [Stop Order issued by the Minister in connection with the ordering of a cultural heritage audit]**

Stop Order for the purposes of the *Aboriginal Heritage Act 2006*

**To:**

*[Insert full name and address and company name, ABN and registered address (if any) of person/party to whom the Stop Order is issued].*

**Property:**

*[Insert property address of place where the cultural heritage is located and attach a map or plan. Where possible insert the title, volume and folio numbers].*

I, *[insert name]*, Minister for Aboriginal Affairs, on the advice of the Secretary to the Department of Premier and Cabinet **or1** the Aboriginal Heritage Council **or1** an authorised officer appointed under Part 11 of the Act, reasonably believe that:

* you, as the sponsor of approved cultural heritage management plan [*insert number*], have contravened, or are likely to contravene, the conditions in that plan, **or1**
* you, as the holder of cultural heritage permit [*insert number*], have contravened, or are likely to contravene, a condition of that permit, **or1**
* the impact on Aboriginal cultural heritage of an activity to which approved cultural heritage management plan [*insert number*] or cultural heritage permit [*insert number*] applies will be greater than that determined at the time the plan was approved or the permit was granted.

Pursuant to section 81 of the Act I have ordered that a cultural heritage audit be carried out in relation to approved cultural heritage management plan [*insert number*] **or1** cultural heritage permit [*insert number*] in connection with the following activity (the **Activity**):

* *[Insert details of the activity being carried out and describe the Aboriginal cultural heritage (with reference to Victorian Aboriginal Heritage Register numbers if available) that is the subject of the order, in a manner sufficient to identify that heritage]*

Pursuant to Division 2 of Part 6 of the Act, I **HEREBY ISSUE** a Stop Order to you requiring that you immediately stop the Activity.

This Stop Order will remain in effect until revoked by me under section 93 of the Act.

Under section 95 of the Act it is an indictable offence for you to engage in any conduct which you know is conduct which contravenes this Stop Order.

Signed: \_ \_ Date of issue: / /

[*Name of Minister*]Time of issue:AM / PM

Minister for Aboriginal Affairs

1 Delete whichever is not applicable

**Suggested template**

Revocation of Stop Order

## Issued under section 93 of the *Aboriginal Heritage Act 2006*

Number 22/

**To:**

*[Insert full name and address and company name, ABN and registered address (if any) of person/party to whom the Stop Order is issued].*

**Property:**

*[Insert property address of place where the cultural heritage is located and attach a map or plan. Where possible insert the title, volume and folio numbers].*

You have been issued with a Stop Order which

* required that you immediately stop an act. ***or***1
* prohibited you from doing an act.

*[Insert details of the act carried out and describe the Aboriginal cultural heritage (with reference to Victorian Aboriginal Heritage Register numbers if available) that is the subject of the order, in a manner sufficient to identify that heritage*. *For consistency, it is recommended that the exact wording of the original stop order is used].*

I, *[insert name]* an Authorised Officer appointed under Part 11 of the *Aboriginal Heritage Act 2006*, am satisfied that the Stop Order can be revoked for the following reasons:

* *[provide a reason why the Stop Order is no longer needed]*
* *[Explain how the Aboriginal cultural heritage is now being properly protected]*

Pursuant to Division 2 of Part 6 of the Aboriginal Heritage Act, I **HEREBY REVOKE** the Stop Order issued to you on

* [date] and
* [time]

Signed: \_ \_ **Date of issue: / /**

[*Insert* *Name of Authorised Officer*

**Time of issue: [hour] : [min] AM / PM**

An Authorised Officer appointed under Part 11 of the Act

1 Delete whichever is inapplicable.