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| The *Aboriginal Heritage Act 2006*  Aboriginal Cultural Heritage Land Management Agreements:  Guide for Parties |

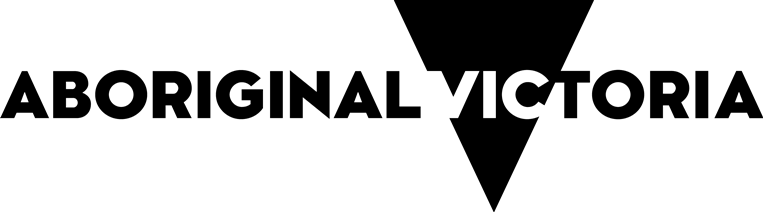


Table 1 Frequently Used Acronyms and Abbreviations

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| ACHLMA | Aboriginal cultural heritage land management agreement |
| The Act | The *Aboriginal Heritage Act 2006* |
| Approved Form | Approved Form for an Aboriginal cultural heritage land management agreement |
| AV | Aboriginal Victoria, Department of Premier and Cabinet |
| Guide | Aboriginal Cultural Heritage Land Management Agreements: Guide for Parties |
| Permit | A cultural heritage permit under Division 4 of the *Aboriginal Heritage Act 2006* |
| PLM | Public land manager, as defined in section 4 of the Act |
| RAP | Registered Aboriginal Party |
| The Regulations | Aboriginal Heritage Regulations 2018 |
| Secretary | The Secretary to the Department of Premier and Cabinet |
| VAHC | Victorian Aboriginal Heritage Council |
| VAHR | Victorian Aboriginal Heritage Register |

The purpose of this Guide is to assist **Registered Aboriginal Parties (RAPs)** and **public land managers** (**PLMs)** to prepare and negotiate an **Aboriginal Cultural Heritage Land Management Agreement (ACHLMA)** and **Schedules** in accordance with the requirements of the Act and the Aboriginal Heritage Regulations 2018 (the Regulations). This Guide provides an overview of ACHLMAs and their practical operation in Victoria.

This Guide should be read in conjunction with Division 1A of the Act, Part 5 of the Regulations and the **Approved Form for an Aboriginal Cultural Heritage Land Management Agreement** (the ‘**Approved Form’**). The information in this Guide is not intended be prescriptive. All references to sections and regulations in this document are to the Act and the Regulations.

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# 1. Introduction

## 1.1 The *Aboriginal Heritage Act 2006*

The *Aboriginal Heritage Act 2006* (the Act) is the legislation that provides for the protection and management of Aboriginal cultural heritage and Aboriginal intangible heritage in Victoria. The Act also promotes public awareness and understanding of Aboriginal cultural heritage.

### Traditional Owners and Registered Aboriginal Parties

The Act recognises Traditional Owners as the primary guardians, keepers and knowledge holders of their cultural heritage and empowers Traditional Owners to be the decision-makers in respect to their cultural heritage. Importantly, the Act serves to strengthen Traditional Owners’ ongoing right to maintain connection to Country. **Registered Aboriginal Parties (RAPs)** are the primary source of advice on matters relating to Aboriginal places and objects, and have responsibility under the Act for cultural heritage in their appointed area.

### Protecting Aboriginal cultural heritage

The Act provides tools and mechanisms for managing Aboriginal cultural heritage during development and land management activities. The Act has mechanisms that enable the recognition, protection and conservation of Aboriginal cultural heritage in ways that are based on respect for Aboriginal knowledge, culture and traditional practices. Managing Aboriginal cultural heritage is an integral part of land and natural resource management.

### Avoiding harm to Aboriginal cultural heritage

It is an offence under the Act to, whether by act or omission, knowingly, recklessly or negligently, **harm** or undertake an activity that will, or is likely to, harm Aboriginal cultural heritage. A person must not do an act that harms or is likely to harm Aboriginal cultural heritage without the appropriate authorisation. The Act contains provisions to avoid unlawful harm to Aboriginal cultural heritage.

## 1.2 Introducing Aboriginal Cultural Heritage Land Management Agreements (ACHLMAs)

### What is an ACHLMA?

An ACHLMA is a voluntary agreement between a RAP and a **‘public land manager’ (PLM)**. An ACHLMA provides a mutually agreed framework for protecting and managing Aboriginal cultural heritage during ongoing, routine **land management activities** within a RAP area. ACHLMAs document the approach taken to manage Aboriginal cultural heritage by setting out the results of a **cultural heritage assessment** and mutually agreed measures on how Aboriginal cultural heritage will be protected and managed during land management activities within a specified **Agreement Area**, over a specified period of time.

A fully executed ACHLMA is made up of a completed and signed **Approved Form** with accompanying **Schedules**. Details of what is required in each of the Schedules are provided in **Part 4** of this Guide**.**

### Strategic Aboriginal cultural heritage risk management

By allowing a PLM and a RAP to establish permissible activities and an agreed cultural heritage management approach, an ACHLMA can provide an effective, strategic and holistic Aboriginal cultural heritage management strategy suitable for broad-scale land management. By considering the varied and ongoing nature of land management activities alongside Aboriginal cultural heritage protection and management, an ACHLMA can ensure that Aboriginal cultural heritage is incorporated into strategic, long term land management planning

Parties preparing and acting in accordance with an ACHLMA do not commit an offence under the Act if harm to Aboriginal cultural heritage occurs during the course of the activity. In this way, an ACHLMA can effectively remove the requirement for a PLM to apply for multiple, specific and reactionary cultural heritage permits for activities that will, or are likely to, harm Aboriginal cultural heritage.

### Self-determination and caring for Country

The ACHLMA process supports self-determination for Traditional Owners by directly involving the RAP in decisions about the protection and management of their cultural heritage. An ACHLMA can also allow the RAP to nominate culturally sensitive areas of land where no or limited activities may occur.

ACHLMAs can incorporate knowledge of the land and cultural heritage into management activities and methodologies. An ACHLMA has the potential to involve the wider community in both its preparation and implementation, as well as promoting awareness and understanding of Aboriginal cultural heritage. An ACHLMA can also present opportunities for cultural learning and capacity building.

## 1.3 When can an ACHLMA be entered into?

An ACHLMA can be entered into to protect or manage Aboriginal cultural heritage during the conduct of land management activities within a RAP area. An ACHLMA cannot be entered into for activities that trigger a mandatory cultural heritage management plan (CHMP).

**Cultural Heritage Management Plans (CHMPs)**

A CHMP is a written report setting out the results of an assessment to determine the nature of any Aboriginal cultural heritage present in an area, and conditions to be complied with before, during and after an activity to manage identified Aboriginal cultural heritage. A CHMP is required if:

* all or part of the proposed works are a high impact activity and within all or part of an area of cultural heritage sensitivity (see the Regulations)
* the proposed works require an Environment Effects Statement, Impact Management Plan, or Comprehensive Impact Statement
* directed by the Minister for Aboriginal Affairs

In cases where a CHMP is not mandatory, a voluntary CHMP may be prepared.

### Protection and conservation of Aboriginal cultural heritage

An ACHLMA can include activities that are specifically dedicated to protecting and conserving Aboriginal cultural heritage and/or cultural landscapes. This means that an ACHLMA may include activities such as the installation of fencing or barricades around sensitive areas to restrict access, rock art conservation works, as well as pest plant and animal management.

Below are three examples of how an ACHLMA could be framed:

**1. Activity-based: covering specific management activities on land managed by the PLM.**

Example: An ACHLMA for road and track maintenance works.

Roads and tracks need to be maintained regularly for safety and accessibility. Road maintenance may include grading, re-sheeting, and the installation of drainage infrastructure and signage. A PLM and RAP may enter into an ACHLMA to manage Aboriginal cultural heritage throughout the course of specified road maintenance activities.

**2. Location-based: covering land management activities undertaken within a particular Park, reserve or area managed by the PLM.**

Example: an ACHLMA supporting the management of a State Park.

The ACHLMA might identify ongoing management activities undertaken in that area – rabbit management, for example; with specified Aboriginal cultural heritage management actions.

**3. Aboriginal place or landscape-based: covering activities occurring in relation to an Aboriginal place or cultural landscape.**

Example: A schedule of maintenance works such as fencing and revegetation in an Aboriginal place to protect and conserve it.

A list of example land management activities for which an ACHLMA may be appropriate is provided in **Appendix III**.

**QUICK QUESTIONS & ANSWERS**

**Can multiple ACHLMAs cover one area of land?**

Yes, where more than one PLM has land management responsibilities that cover all or part of the same area, multiple ACHLMAs can exist over all or part of the same area. Each PLM can have an ACHLMA with the RAP that covers the land management activities it is responsible for.

**Can parties make a new ACHLMA over an area of land where one already exists?**

Where a PLM and RAP have an ACHLMA over an area of land in a RAP area and later wish to enter into an ACHLMA over, say, a larger area that includes the original land, there are two options:

1. Amend the first ACHLMA so that it covers the larger area; or
2. Prepare a new ACHLMA that covers the areas not covered by the original ACHLMA.

There is no limit to how many ACHLMAS can be entered into for the same area. However, to avoid confusion and the potential for conflicting ACHLMAs, consolidation is recommended.

**Can new activities be added to an existing ACHLMA?**

Yes. An ACHLMA can be amended with the agreement of both parties (see **Part 6**).

**What if multiple PLMs undertake similar land management activities within all or part of the same area?**

There are three options that can be pursued in this situation:

1. Each PLM negotiates a separate ACHLMA with the RAP for the area over which they undertake land management activities, potentially including provision for:

* all parties to meet and discuss any crossover area/activities at particular times
* joint preparation, assessment and negotiation of Schedules
* joint consultation and reviews throughout the life of the ACHLMA.

1. One PLM negotiates an ACHLMA with a RAP that includes conditions to allow a second PLM to carry out certain land management activities. Parties must give fully informed consent.
2. Negotiation of an ACHLMA between a RAP and two PLMs, provided all parties give fully informed consent.

# 2. Glossary of Terms

This Glossary defines terms used throughout this Guide, the Approved Form, and those that are likely to be included in an ACHLMA.

**Aboriginal cultural heritage**: Aboriginal places, Aboriginal objects and Aboriginal Ancestral Remains. Aboriginal places and objects are the physical evidence of thousands of years of Aboriginal occupation and use of the land and its resources. Aboriginal places and objects can be found all over Victoria and are often near major food sources such as rivers, lakes, swamps or the coast. Fact sheets on Aboriginal cultural heritage are available on the [AV website](file:///C:\Users\vicu4mx\TRIM\TEMP\HPTRIM.7988\Attch.%20A%20-%20Aboriginal%20Cultural%20Heritage%20Land%20Management%20Agreements%20%20Information%20For%20Parties.DOCX).

**Aboriginal cultural heritage management approach**: The way in which Aboriginal cultural heritage will be protected and managed during specified land management activities. An ACHLMA allows a RAP and a PLM to agree on an approach to cultural heritage protection and management that suits the context. An approach may include, but is not limited to, the following:

* the nature, significance, location and extent of the Aboriginal cultural heritage present in the agreement area in light of the land management activities
* the location and impact / likely impact of the land management activities taking place on the Aboriginal cultural heritage and / or the land
* Aboriginal place ‘type’
* nature of the landscape, including the investigation of areas where Aboriginal cultural heritage has not yet been recorded
* avoidance of harm to Aboriginal places where possible (complete avoidance of a location or area)
* minimisation and / or mitigation of harm to Aboriginal places (e.g. establishing particular methodologies or actions for certain activities.

Parties can include a description of their Aboriginal cultural heritage approach in **Schedule 5 – Cultural Heritage Management Actions** of the ACHLMA.

**Agreement Area:** The area of land which the ACHLMA covers. The Agreement Area can be either public or private land, as long as it is within the RAP area and the public land manager is responsible for the subject land management activities.

**Approved Form:** the format in which an ACHLMA document must be prepared and lodged. The Approved Form for an ACHLMA can be found on the [AV website](https://www.vic.gov.au/aboriginalvictoria/heritage/heritage-tools-and-publications/guides-forms-and-practice-notes-for-aboriginal-heritage-management.html).

**Conditions:** cultural heritage management actions, activity methodologies, or any other processes written into the ACHLMA.These conditions must be complied with.

**Controlled excavation:** means an archaeological investigation to uncover deposits or features using accepted stratigraphic methods.

**Cultural heritage assessment**: an assessment of an area of land to determine the nature of any Aboriginal cultural heritage present. There are three different ‘levels’ of assessment: desktop, standard and complex. These assessments are described in **Part** **3.4 Aboriginal Cultural Heritage Assessment** and must be carried out in accordance with the Act (see **Appendix II**).

**Cultural heritage management action:** means an action described in Item 7 of the ACHLMA, and specified in **Part 4.7 Schedule 5 Cultural heritage management actions** to protect and/or manage Aboriginal cultural heritage in the course of the land management activities. Cultural heritage management actions should reflect the *‘Aboriginal cultural heritage approach’*.

**Cultural landscape:** An area of land that is significant to the RAP, but may not necessarily be recorded on the Victorian Aboriginal Heritage Register. Management conditions may be included in the ACHLMA to protect cultural landscapes and other values.

**Harm**: in relation to Aboriginal cultural heritage, includes – damage, deface, desecrate, destroy, disturb, injure or interfere with.

**High Impact Activities:** areactivities that cause significant ground disturbance and are listed in Division 5 of the Regulations as one of the triggers for a mandatory CHMP. An ACHLMA should not generally include High Impact Activities.

**Land management activities:** low to medium impact activities undertaken in an area of land, for the purpose of managing that land, that are the responsibility of the public land manager. All aspects of each activity are considered to be land management activities.

**Prescribed Standards**: minimum requirements that must be met in an ACHLMA in order to comply with the Act and the Regulations.

**Public land managers:** for the purposes of the Act (section 4), are those parties that can enter into an ACHLMA with a RAP, and mean any of the following:

* a committee of management
* the Secretary to Department of Environment, Land, Water and Planning
* a municipal council
* Parks Victoria
* VicRoads
* VicTrack
* a water authority (including a Catchment Management Authority).

**Registered Aboriginal Party (RAP):** an organisation that holds decision-making responsibilities under the Act for protecting Aboriginal cultural heritage in a specified geographic area.

**Schedules:** An appendix to the Approved Form for parties to detail the content required by the Regulations. The Schedules are:

* Schedule 1: Agreement Area
* Schedule 2: Aboriginal cultural heritage assessment
* Schedule 3: Land management activity / activities
* Schedule 4: Payments
* Schedule 5: Cultural heritage management actions
* Schedule 6: Consultation
* Schedule 7: Other matters.

**Victorian Aboriginal Heritage Register (VAHR):** is an access-restricted register of all recorded Aboriginal cultural heritage in Victoria. The VAHR also includes the appointed area of each RAP, approved CHMPs, ACHLMAs, preliminary Aboriginal heritage tests, stop orders, interim protection declarations, ongoing protection declarations, preliminary reports of the discovery of Aboriginal cultural heritage, historical references, reports and information from surveys and intangible heritage.

# 3. Development of an ACHLMA

3.1 The ACHLMA process

The ACHLMA negotiation and agreement process encourages the active involvement of both parties, ensuring the ACHLMA reflects their mutual aspirations and intentions for the protection and management of Aboriginal cultural heritage. This process is based on open discussion and negotiation of what will be included in the ACHLMA. This section provides guidance for conducting effective negotiation in preparing the content for an ACHLMA and a suggested process for developing an ACHLMA.

### Timeline for an ACHLMA

An estimated timeline for the preparation of an ACHLMA cannot be applied universally. The timing and costing of the preparation of each ACHLMA will depend on the outcomes of the negotiation process. As ACHLMAs are agreements, they should not be used as a last minute tool.

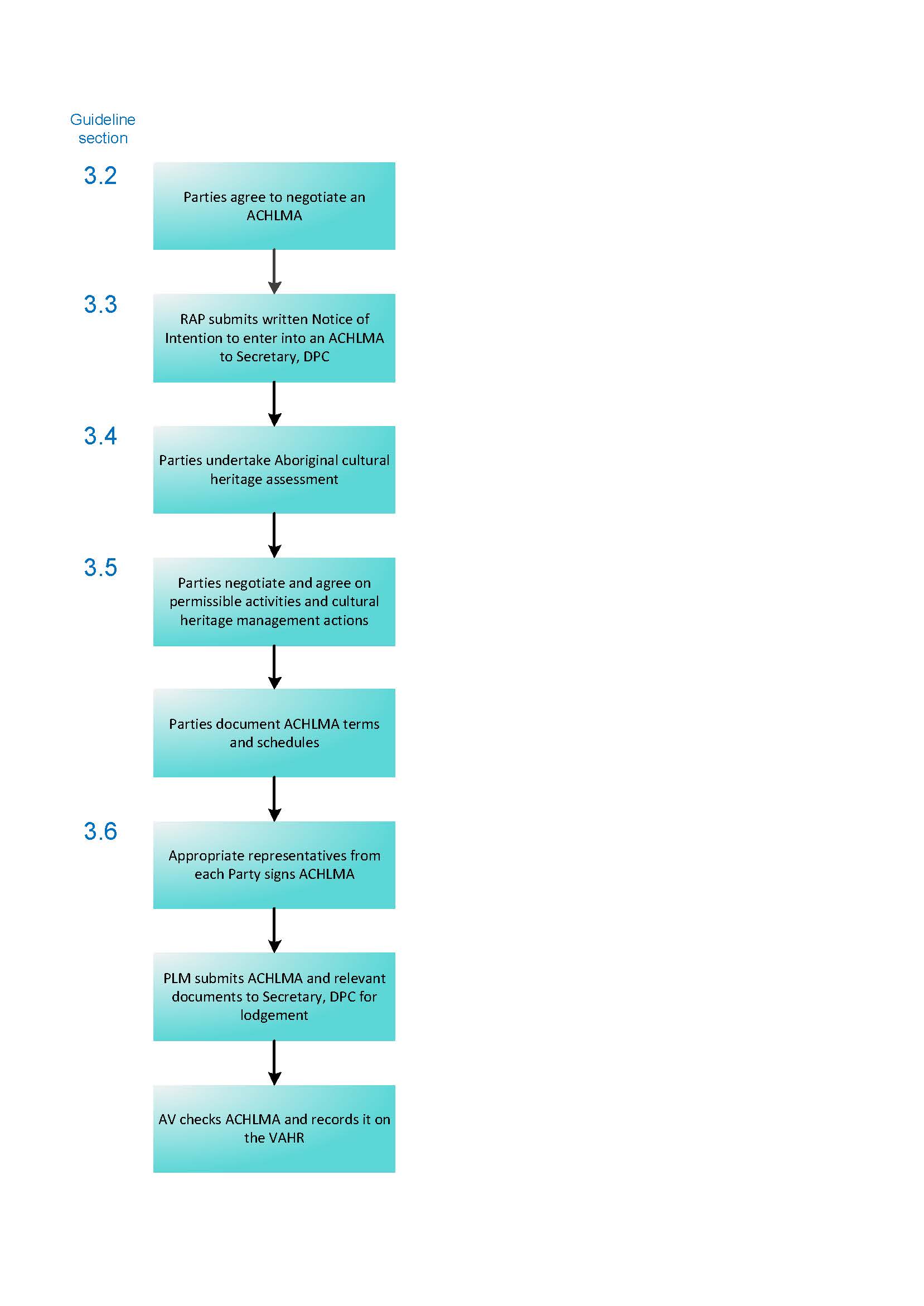


Figure 1 The ACHLMA process

## 3.2 Preliminary Discussions

The decision to enter into an ACHLMA is jointly made between a RAP and a PLM. Either the RAP or the PLM may approach the other party to discuss the potential for an ACHLMA.

For the Aboriginal cultural heritage assessment and negotiation processes to be efficient and effective, parties should understand the intended objectives of having an ACHLMA. Preliminary discussions might consider:

|  |  |  |
| --- | --- | --- |
| 1. | Agreement Area | Extent and boundaries of the land to be included in the agreement. |
| 2. | Land management activities | Type, nature and methodology; whether the activities will be once-off or ongoing. |
| 3. | Desktop Aboriginal cultural heritage assessment | Who will undertake the required research and documentation, and whether it will be a joint exercise. |
| 4. | Further Aboriginal cultural heritage assessment | What is important to know about the Aboriginal cultural heritage to inform an agreement, and whether a **standard** or **complex assessment**, or any other assessment, is used to obtain this information. |
| 5. | Other matters | Potential opportunities (e.g. inclusion of contemporary cultural practices, consultation schedules, fees for service, secondment opportunities, etc.). |
| 6. | Existence of other agreements or understandings | See below. |

Table 2 Examples of topics for preliminary discussions

**QUICK QUESTIONS & ANSWERS**

**If I have an ACHLMA that covers multiple land management activities, do I still need to apply for a permit?**

No, provided the ACHLMA covers the activity that you are undertaking, a permit is not required. An ACHLMA can permit harm and other controlled activities to occur in accordance with the agreement.

If additional land management activities arise that need to be added to the ACHLMA, the ACHLMA can be amended to include it. Amendments to an ACHLMA must be agreed upon by both Parties.

### Existence of other agreements, understandings or permits

Other agreements, understandings or permits between the PLM and the RAP, that cover all or part of the Agreement Area, need to be considered when entering into an ACHLMA (clause 19 of the Approved Form). An ACHLMA may supersede agreements, understandings or cultural heritage permits that relate to the ACHLMA subject matter. Where there are existing agreements or memoranda of understanding, the content and intention of these agreements can be incorporated into the ACHLMA. If the existing agreements do not relate to the subject matter of the ACHLMA, the intention and content may still be factored into the ACHLMA to avoid duplication and encourage consistency.

An ACHLMA *does not* supersede a Land Use Activity Agreement under the *Traditional Owner Settlement Act 2010*. Where another agreement exists, such as a memorandum of understanding, it may inform the content of an ACHLMA. The following examples may be useful:

**Land Use Activity Agreements (LUAAs)**

ACHLMAs are designed to exist alongside LUAAs and other procedures and instruments of the *Traditional Owner Settlement Act 2010*; as these apply to different activities. Given the different subject matter, there should not be any clause or condition in an ACHLMA that contradicts one within a LUAA. An ACHLMA can not supersede or replace a LUAA.

**Management Plans**

Where an overarching management plan for a park or reserve exists, an ACHLMA can be entered into for protecting and managing Aboriginal cultural heritage during required land management activities. The ACHLMA can form part of the cultural heritage management component of the management plan.

**Cultural Heritage Permits**

An ACHLMA can incorporate an existing cultural heritage permit in the following ways:

* honour the existing activities and conditions within the permit until its expiration
* include the activities and conditions of the permit in the ACHLMA so that all requirements are incorporated into a single document
* void the existing permit and include activities and conditions of the permit into the ACHLMA.



## 3.3 Notice of Intention

Prior to entering into an ACHLMA, the RAP must submit a Notice of Intention (NOI) to the Secretary, DPC. This can be done by emailing or posting the NOI to the Victorian Aboriginal Heritage Register (VAHR) at the following address:

**Aboriginal Victoria**

**Level 3, 1 Treasury Place**

**East Melbourne, 3002**

**Email:** [**VAHR@dpc.vic.gov.au**](mailto:VAHR@dpc.vic.gov.au)

A NOI must include:

* the date by which the agreement is to be prepared
* the parties to the agreement
* any assessment, especially cultural heritage assessment to be undertaken.

A NOI should also include:

* a map that clearly identifies the proposed Agreement Area and boundaries
* key contacts for both parties.

The NOI should be reflective of the **preliminary discussion(s)** referred to above in **Part 3.2**.

A template for providing this information is available on the [AV website](http://www.vic.gov.au/aboriginalvictoria/heritage/heritage-tools-and-publications/guides-forms-and-practice-notes-for-aboriginal-heritage-management.html).

A NOI can be amended prior to the submission of the ACHLMA by emailing VAHR@dpc.vic.gov.au and informing the Secretary, DPC of the relevant changes. Changes to the NOI might include:

* the date of preparation of agreement
* the proposed Agreement Area
* the cultural heritage assessment that will be undertaken.

There is no fee associated with submitting a NOI to the Secretary, DPC.

**Using maps for the planning and preparation of ACHLMA**

Providing a map at the NOI stage will assist throughout the preparation of the ACHLMA by:

* locating the area and boundaries of the Agreement Area within the geographical context
* planning the cultural heritage assessment
* locating the extent of known Aboriginal cultural heritage in the Agreement Area
* identifying the location of land management activities and management actions
* supporting applications for other permit requirements (e.g. vegetation clearance or roadside vegetation maintenance).

## 3.4 Aboriginal cultural heritage assessment

An Aboriginal cultural heritage assessment is a study of an area of land to determine the nature and extent of any Aboriginal cultural heritage present. Identifying the Aboriginal cultural heritage in an Agreement Area can inform its protection and management. A cultural heritage assessment should include:

* updating existing Aboriginal place records on the VAHR and registering previously unrecorded Aboriginal places
* informing the cultural heritage management approach for the ACHLMA and conditions for the management and protection of Aboriginal cultural heritage
* cultural mapping of Country, contributing to strategic planning decisions that enable cultural heritage to be considered more readily.

The effectiveness of the ACHLMA in enabling the protection and management of Aboriginal cultural heritage will depend strongly on the quality of the cultural heritage assessment. There are three different ‘levels’ of assessment: desktop, standard and complex. An ACHLMA must contain a desktop assessment as a minimum.

**Desktop Assessment**

Research into the Aboriginal cultural heritage in the Agreement Area, including:

* a search of the VAHR for details of known Aboriginal cultural heritage within the Agreement Area and geographic region
* a review of reports and published works about Aboriginal cultural heritage within the geographic region
* a review of historical and ethno historical accounts of Aboriginal occupation of the geographic region
* a review of the land use history of the Agreement Area
* a review of the landforms or geomorphology of the Agreement Area.

A desktop assessment may also include the collection of oral history for the area; or gathering information about intangible values associated with the Agreement Area.

**Standard Assessment**

A ground survey of all or part of the Agreement Area to detect the presence of Aboriginal cultural heritage in, or associated with, the Agreement Area – including walk over examination of:

* the surface of an area, undertaken by traversing the area in a systematic manner
* any mature indigenous trees, caves, rock shelters or cave entrances in the area.

**Complex Assessment**

Assessment involving the disturbance or excavation of an area to uncover or discover Aboriginal cultural heritage. Disturbance or excavation for a complex assessment must be:

* supervised by a person appropriately qualified in archaeology
* carried out in accordance with proper archaeological practice.

### Interpretation and analysis of the assessment

The results of the Aboriginal cultural heritage assessment should be analysed and interpreted to inform the planning of land management activities, and help determine the cultural heritage management actions. The results of the assessment are important for the development of the ACHLMA.

Further assistance on standards for conducting Aboriginal cultural heritage assessments can be found in the [*Guide to preparing a Cultural Heritage Management Plan* and the *Guidelines for Conducting and Reporting on Aboriginal Heritage Investigations*.](https://www.vic.gov.au/aboriginalvictoria/heritage/heritage-tools-and-publications/guides-forms-and-practice-notes-for-aboriginal-heritage-management.html)

### Minimum Requirements of Assessment for an ACHLMA

For each ACHLMA, a **desktop assessment** of the Agreement Area and surrounding geographic region **must be undertaken**. The desktop assessment might be undertaken by either or both parties.

Where further investigation is planned, the desktop assessment must be undertaken prior to a standard or complex investigation. Further investigation, including **standard** and **complex assessment**, may:

* target specific areas where certain land management activities will be carried out
* target areas that have not previously been surveyed.

**Engaging the broader community**

Community groups who work within the proposed Agreement Area, such as Landcare or ‘Friends Groups’ can be consulted during the assessment. This consultation can provide historical and contemporary perspectives on how the Agreement Area is understood, used, and is an opportunity to engage the perspectives of those with an active interest in the Agreement Area.

## 3.5 Negotiation and documentation of Schedules

**Part 4** of this Guide outlines the minimum requirements for the Schedules of an ACHLMA. Negotiating the Schedules can include any or all of the following:

* a series of meetings between parties
* site visits
* walk overs of the proposed Agreement Area.

Below is a list of what could be negotiated for an ACHLMA:

* land management activities that will be allowed under the agreement
* cultural heritage management actions
* payments
* consultation, review and processes for amendment.

## 3.6 Signing and lodgement of an ACHLMA

Appropriate representatives from both parties must sign the Approved Form.The PLM must lodge the signed ACHLMA and Schedules in the Approved Form, together with the relevant documentation to VAHR@dpc.vic.gov.au.

The ACHLMA must be lodged within 14 days of its execution. The form [*Lodgement of Relevant Documentation for an ACHLMA*](https://www.vic.gov.au/aboriginalvictoria/heritage/heritage-tools-and-publications/guides-forms-and-practice-notes-for-aboriginal-heritage-management.html) on the AV website lists the relevant documentation to be lodged with the ACHLMA.

**QUICK QUESTIONS & ANSWERS**

**Can third parties undertake certain land management activities within the ACHLMA?**

Yes. Third parties such as Landcare, Coastcare, ‘Friends Groups’, contractors and/or sub-contractors can undertake specified activities within the ACHLMA. Their involvement must be agreed upon by the parties and provided for in the activity description in Schedule 3, or ‘Other Matters’, or by signing a deed under Clause 17 of the **Approved Form** in order to be included under the ACHLMA.

By undertaking the land management activity in accordance with the methodology set out by the ACHLMA and in line with any Aboriginal cultural heritage management actions, the third party is acting in accordance with the ACHLMA and therefore avoids liability under section 29(a)(ia).

It is important that third parties are aware of and understand the land management activities and methodologies included in, and conditions of, the ACHLMA. If harm to Aboriginal cultural heritage occurs outside of what is provided for in the ACHLMA, then the party may be liable.

**What if there are two RAPs appointed over the same area?**

Where there are two RAPs appointed over one area it is up to the parties to decide the best course of action. Below are two suggestions:

1. The PLM negotiates two separate ACHLMAs with each RAP for their respective RAP areas.
2. When negotiating the terms over the management actions for an area over which there are two RAPs, consultations could occur that involve both RAPs to ensure the management actions are agreed on by all parties.

Where a second RAP is appointed over part or all of an area for which an ACHLMA already exists between a RAP and a PLM, the Victorian Aboriginal Heritage Council may impose a condition on the RAP(s) upon the appointment of the newly-appointed RAP concerning the existing ACHLMA. The parties to the ACHLMA can amend the ACHLMA to include the newly-appointed RAP.

# 4. Content of an ACHLMA

## 4.1 Summary

The Approved Form and accompanying **Schedules** are formatted to ensure that an ACHLMA is prepared in accordance with the standards prescribed by the Act. Below is a summary of the terms of the Approved Form and the clauses that must be included in an ACHLMA as **Schedules 1-7**. The contents of the Schedules are negotiable and allow conditions, obligations and accountabilities for both parties to be identified.

### Approved Form for an ACHLMA

An ACHLMA must be prepared in accordance with the **Prescribed Standards**. The [*Approved Form for an Aboriginal Cultural Heritage Land Management Agreement*](https://www.vic.gov.au/aboriginalvictoria/heritage/heritage-tools-and-publications/guides-forms-and-practice-notes-for-aboriginal-heritage-management.html)ensures that parties:

* follow the correct process for preparation of an agreement
* properly outline the requirements of an agreement, ensuring parties are protected from the harm provisions of the Act (where relevant), and by the contractual agreement
* include the required information necessary for an Agreement.

The Approved Form contains the following components:

* **Executive Summary**: the nature and extent of the land management activities allowed under the ACHLMA, location of the Agreement Area, Aboriginal cultural heritage in the Agreement Area, and the cultural heritage management approach.
* **Information Table**: specifies the commencement date and parties to the ACHLMA .
* **Items**: lists in short form the following information:
  + Agreement Area
  + commencement date
  + termination date
  + review timeline
  + Aboriginal cultural heritage assessment method
  + land management activities
  + Aboriginal cultural heritage management actions.
* **Agreed Terms**: standard contractual clauses, including:
  + parties, commencement and cessation dates, review and amendment dates and the Agreement Area
  + obligations, warranties and confidentiality
  + interaction with the *Native Title Act 1993* and the *Traditional Owner Settlement Act 2010*
  + communication and notices
  + dispute resolution
  + assignment, severance and waiver
  + Definitions and interpretation.
* **Schedules** must contain the following information:
  + a description of the Agreement Area
  + details of the cultural heritage assessment undertaken
  + details of the Aboriginal cultural heritage found during the assessment
  + a list and description of land management activities and ancillary activities to be permissible under the ACHLMA
  + any fees and payment details for the life of the ACHLMA
  + cultural heritage management actions to be undertaken
  + consultation to be undertaken throughout the life of the ACHLMA
  + any other matters, including any further conditions.

The content of these Schedules is detailed in this part.

* **References:** any reports, articles, primary sources, oral history, maps or books referenced in the ACHLMA.
* **Appendices**:
  + the Notice of Intention to enter into an ACHLMA
  + a glossary of technical terms used in the ACHLMA
  + a Gazetteer of all Aboriginal cultural heritage found, discovered or subject to investigation in the Agreement Area
  + catalogues of data recorded about Aboriginal cultural heritage.

Should negotiating parties require an alternative form for their ACHLMA, this form must be agreed by both parties and have written approval from the Secretary. Any amended format must still comply with the Prescribed Standards. Please refer to the [Approved Form](https://www.vic.gov.au/aboriginalvictoria/heritage/heritage-tools-and-publications/guides-forms-and-practice-notes-for-aboriginal-heritage-management.html) on the AV website.

## 4.2 Parties to the ACHLMA

The names of the PLM and RAP that are parties to the ACHLMA must be documented on the first page and in the Information Table of the Approved Form (see Figure 3 over the page). Appropriate contact names and details must be documented in the Information Table.



Figure 2 Information Table of the Approved Form

## 4.3 Schedule 1: Agreement Area

### Description of the agreement area

The Agreement Area is the area or areas of land within a RAP area that the ACHLMA will cover, and within which certain land management activities undertaken in accordance with specified cultural heritage management actions are permitted. Schedule 1 requires a description and map(s) of the Agreement Area.

**Map(s)** of the Agreement Area must display the following:

* the boundaries of the Agreement Area
* the Agreement Area in its geographical context.

The **description** of the Agreement Area and its boundaries should include the following:

* the location of the Agreement Area within its geographical context
* cadastral information for the Agreement Area
* a list of prominent structures, natural features (such as waterways or mountain ranges) and infrastructure (such as roads, tracks or recreation areas).

The Agreement Area does not have to be continuous or connected. An ACHLMA can cover discrete land parcels. Where a PLM does not undertake any land management activities in an area, it can be excluded from the Agreement Area.

**Quality of maps**

It is recommended that maps and spatial information are submitted as geographically referenced electronic data files (e.g. Polygon or Shape files). All maps in the ACHLMA should generally conform to the following standards:

* be of sufficient quality to clearly identify the Agreement Area and the Aboriginal cultural heritage within the area
* include a prominent North arrow
* include a scale bar using standard cartographic formats
* geo-reference at least three readily identifiable features, e.g. road intersections, river crossings, or prominent features, within the Agreement Area
* include any other noticeable prominent natural features and structures
* include cadastral information
* identify the local government area/s.

### Restricted access areas and areas of exclusion

There may be locations within the Agreement Area that the RAP identifies as highly culturally significant. These may be specified in an ACHLMA as locations where no or limited works are allowed, or where particular methodologies for undertaking certain activities must be used. These locations might be specified in the maps and described in the ACHLMA as:

* exclusion zones (no activity allowed)
* restricted access zones (only certain activities allowed)
* RAP access only areas.

## 4.4 Schedule 2: Aboriginal cultural heritage assessment and details of the Aboriginal cultural heritage

### Aboriginal cultural heritage assessment

A written report detailing the method and results of the Aboriginal cultural heritage assessment, including subsurface testing (if any), must be included in this Schedule. The level of assessment to be undertaken in the preparation of the ACHLMA is indicated in the NOI.

**Details of the Aboriginal cultural heritage assessment**

The following should be included in the description of the assessment:

* the method of assessment (desktop, standard and/or complex)
* the names of the persons involved in the assessment
* maps of the Agreement Area, showing areas of any standard and / or complex assessment
* a summary of any information provided by the RAP or other person, about the Aboriginal cultural heritage in the Agreement Area
* a summary of any oral information provided by members of the wider community over the local history and contemporary use of the Agreement Area
* details of any obstacles encountered in completing the assessment (e.g. the availability of mapping).

**Details of the standard assessment**

Where a standard assessment has been undertaken, the following information should be included:

* the area/s surveyed
* the method used to undertake the survey (e.g. transect width, spacing of individuals)
* the names of persons taking part in the survey
* details of any obstacles encountered in completing the assessment (e.g. poor ground visibility due to vegetation cover)
* the results of the survey.

**Details of the complex assessment**

Where subsurface testing or excavation has been undertaken, the following information should be included:

* the method used for undertaking the excavation
* the location of test pits or excavation areas
* the names of persons taking part in the excavation
* details of any obstacles encountered in completing the assessment
* the results, including the results of any radiometric dating.

### Details of the Aboriginal cultural heritage in the Agreement Area

Aboriginal cultural heritage is defined in the Act as Aboriginal places, Aboriginal objects and Aboriginal Ancestral Remains. For any Aboriginal cultural heritage found in the Agreement Area, the following must be detailed:

* a detailed description of the Aboriginal cultural heritage. This description should be consistent with the VAHR registration and include (if relevant):
  + - the VAHR number and name
    - the components and material
    - any other information the RAP would like to include (including oral history).
* geographical location
* a statement of its cultural heritage significance
* a concise map(s), showing the location of the Aboriginal cultural heritage within the Agreement Area.

**Aboriginal Places**

An Aboriginal Place is an area in Victoria or the coastal waters of Victoria that is of significance to the Aboriginal people of Victoria (s.5 *Aboriginal Heritage Act 2006*)

This can include:

* an area of land
* an expanse of water
* a natural feature, formation or landscape
* an archaeological site, feature or deposit
* a building or structure.

Further information on Aboriginal cultural heritage can be found on the AV website.

### Registered and previously unrecorded Aboriginal cultural heritage

Where previously unrecorded Aboriginal cultural heritage is discovered during an assessment, that Aboriginal cultural heritage must be registered on the VAHR prior to the lodgement and commencement of the ACHLMA.

The description of Aboriginal cultural heritage in an ACHLMA must be consistent with the VAHR. This may require registration of Aboriginal places identified during the assessment, or the submission of updated records in a place inspection form.

**Registering Aboriginal cultural heritage**

Parties are required to register any previously unrecorded Aboriginal places, Aboriginal objects or Low Density Artefact Distributions (LDADs) by completing a **Victorian Aboriginal Heritage Register Form,** together with the relevant **Victorian Aboriginal Place Component Form/s**, available on the AV website.

If the conditions of a registered Aboriginal place has changed, or the place cannot be re-located during the assessment, parties must update the existing site record(s) by completing a **Place Inspection Form**. If new information is available about a place, the appropriate component forms should also be submitted.

Completed forms must be submitted to the Aboriginal Heritage Registrar:

The Registrar, Aboriginal Victoria

Level 3, 1 Treasury Place

East Melbourne, 3002

Email: [VAHR@dpc.vic.gov.au](mailto:VAHR@dpc.vic.gov.au)

Visit [Aboriginal Victoria's website](http://www.vic.gov.au/aboriginalvictoria/heritage/heritage-tools-and-publications/guides-forms-and-practice-notes-for-aboriginal-heritage-management.html.) for more information on registering Aboriginal cultural heritage.

## 4.4 Schedule 3: Land Management Activities

All land management activities permitted by an ACHLMA must be specified in the document. Land management activities agreed in this Schedule will allow these activities to be undertaken for the term of the ACHLMA, unless otherwise specified.

Parties should establish agreed methodologies for the land management activities. Indevising the land management activities, parties may also consider how land management activities could be used as tools for engagement. For example, the RAP may have a natural resource management team or similar who could undertake certain land management activities. Land management activities permissible under an ACHLMA may be subject to **conditions**. The description of each land management activity listed in Schedule 3 should be in plain English and must include the following:

##### Description of activity

* the name of the land management activity and all of its component actions
* how the activity will be undertaken including clear details of the methodology(ies) (where there is more than one possible methodology, each agreed methodology should be included in the description – where activity methodologies / program are governed by policy or legislation, these can be attached as an appendix)
* where known, the location of the activity within the Agreement Area.

##### Description of any ancillary works

Details of **any other works** to be undertaken in order to carry out the specified land management activity. For example:

* the use of vehicle and access tracks
* parking, turning circles, off road use of vehicles and machinery
* loading areas, storage, stockpiles and set down areas for equipment and/or gravel / fill / spoil
* soil and/or water monitoring and testing.

##### Description of likely impact on the land

Where necessary, an indication of the likely impact (with reference to the depth and area of ground disturbance) on the land and the Aboriginal cultural heritage.

### What types of land management activities can be included?

Any land management activity can be included in an ACHLMA, although it should not normally include a High Impact Activity listed in the Regulations. Land management activities that might be included in an ACHLMA are:

* activities related to bushfire prevention (including planned burning and recovery)
* road and track maintenance (including vehicle, walking and cycling tracks)
* general parkland maintenance (including erection of signage, fencing, etc.)
* erosion control works
* pest plant and animal management (e.g. blackberry removal and rabbit control works)
* planting and revegetation.

**Appendix III** lists example descriptors of land management activities.

**Land Use Activity Agreements (LUAAs) and ACHLMAs**

Where a LUAA exists under the *Traditional Owner Settlement Act 2010*, Parties may detail land use activities in an ACHLMA and include any appropriate cultural heritage management actions necessary in the Schedules.

Some activities identified in a LUAA may trigger the requirement for a CHMP, such as the construction of facilities for major events, power installation, car parking, trail construction and creation of sports and recreation facilities. An ACHLMA cannot include activities that require a CHMP.

### Machinery and hand-held tools

Where land management activities require the use of machinery, it may be useful to determine how, what type and when certain machinery is able to be used for particular activities in the ACHLMA. The following examples might be relevant:

* motorised auger for planting tubestock
* post hole driver for fencing or bollard installation
* ride-on or push mowers for cutting grass
* small bobcat with rubber wheels for cleaning road culverts
* chainsaw for lopping branches on a tree.

Refer to **Appendix III** for more examples.

### Protecting Aboriginal Places

Land management activities may be undertaken solely for the protection and conservation of Aboriginal cultural heritage, cultural landscapes and areas of cultural heritage (and other) significance. These activities may be focused on specific Aboriginal places or on broader landscapes. Such land management activities may include:

* installation of protective fencing around an Aboriginal place
* cleaning / protective sealing of rock art
* stabilisation / caring for a scarred tree
* weed and pest control within a specified cultural landscape
* planting within an Aboriginal place extent.

**What if there is no funding for an activity?**

If all possible or likely land management activities are included in the ACHLMA, activities can be undertaken when funding is available, providing it is within the life of the ACHLMA.

### Who will undertake the land management activities?

Where possible, the description should detail who will undertake the land management activities. An additional column specifying who will undertake the activity might be added to a table of permissible land management activities. While those stipulated in this column are not party to the ACHLMA, they must undertake the land management activities in accordance with any specified cultural heritage management actions, in order to be acting in accordance with the Agreement.

## 4.6 Schedule 4: Payments

Outline details of any payments required to be made by the PLM to the RAP. Payments made to the RAP may be as fees for service throughout the ACHLMA including, but not limited to:

* Undertaking desktop assessments
* Undertaking and participating in site inspections
* Undertaking cultural heritage management actions
* Scheduled consultation regarding a works program
* Time taken for the submission of relevant forms to the VAHR.

Payments may be scheduled or one-off throughout the life of the ACHLMA.

### Tracking payments and outcomes

It may be useful to table the payments alongside an activity or works plan, detailing the obligations of both parties and ensuring obligations are carried out for payments made, or in accordance with an agreed payment schedule.

## 4.7 Schedule 5: Cultural heritage management actions (conditions)

Cultural heritage management actions form the conditional component of the ACHLMA, as land management activities are undertaken in compliance with these conditions. Cultural heritage management actions required to be undertaken by the PLM, RAP or any other person before, during or after land management activities must be specified.

### Aboriginal Cultural Heritage Management Approach

Cultural heritage management actions should reflect the cultural heritage management approach. The following should be considered when incorporating this approach into cultural heritage management actions:

* the nature, significance, location and extent of the Aboriginal cultural heritage present in the agreement area in light of the land management activities
* the location and impact / likely impact of the land management activities taking place on the Aboriginal cultural heritage and / or the land
* Aboriginal place ‘type’
* nature of the landscape, including the investigation of areas where Aboriginal cultural heritage has not yet been recorded
* avoidance of harm to Aboriginal Places where possible
* minimisation and / or mitigation of harm to Aboriginal Places.

These considerations are explored in detail below.

### Developing Cultural Heritage Management Actions

When developing cultural heritage management actions, priority should be given to avoiding harm to Aboriginal places and / or areas where Aboriginal cultural heritage is likely to occur. If avoidance is not possible, consider measures that minimise harm.

Cultural heritage management actions can be: general; concerned with protection and management of a specific Aboriginal place, landscape or area where Aboriginal cultural heritage is likely to occur; concerned with methodologies used for an activity; and / or concerned with areas that have not been investigated for Aboriginal cultural heritage. Below are some possible considerations for developing cultural heritage management actions that avoid or minimise harm.

#### General Conditions

Incorporating general conditions into an ACHLMA can ensure that parties and contractors are clear about relevant information in the ACHLMA. This information may include specifying: the roles and responsibilities of each of the parties; the conditions to be carried out before, during and after an activity; and contingency plans for where Aboriginal cultural heritage is unexpectedly encountered during the activity. General conditions could include, for example:

##### Before Activity

* Aboriginal cultural heritage induction
* communication of the contents, conditions and contingencies of the ACHLMA
* definition of key terms used in the ACHLMA (e.g. ‘footprint’).

##### During Activity

* contingency plans for the unexpected discovery of Aboriginal cultural heritage (see below)
* contingency plans for the unexpected discovery of Aboriginal Ancestral Remains (see Appendix IV).

##### After Activity

* remove all pegs, flagging tape and barriers used to mark the presence / extent of an Aboriginal Place (if any)
* submission of relevant documents (e.g. VAHR forms).

**What if Aboriginal cultural heritage is unexpectedly identified during the activity?**

Including **contingency plans** in the ACHLMA will allow for parties to determine how Aboriginal cultural heritage will be managed if it is discovered during the course of the activity.

As an example, if Aboriginal cultural heritage is identified works should first stop within the specified area. Secondly, the nature, extent and significance of the Aboriginal place needs to be understood. This may include a focused ground survey, surface and / or subsurface salvage with the supervision of someone suitably qualified in the relevant expertise. Once the Aboriginal place is understood and appropriate documentation such as a place inspection form or site registration form is submitted to the VAHR, parties may wish to establish cultural heritage management actions to be undertaken in progressing the ACHLMA. In drafting contingency plans, parties should consider the following:

* contact people / person for each of the parties
* timeframes on notification and development of cultural heritage management actions
* documentation of what is found / submission of documentation to the VAHR.

#### Conditions for protection and management

Conditions for protection and management can avoid harm to Aboriginal cultural heritage by setting out actions with the exclusive purpose of avoiding and / or minimising harm to Aboriginal cultural heritage, or areas where Aboriginal cultural heritage is likely to occur.

Conditions can be included to protect and manage an area where Aboriginal cultural heritage is likely to occur.These conditions could be employed to protect Aboriginal cultural heritage where an activity might be in close proximity to a known Aboriginal place, and / or where an activity may have an impact on an area where Aboriginal cultural heritage is likely to occur. It is important that the nature and extent of Aboriginal places is understood before works commence. Conditions may identify actions that must be undertaken before, during or after activities commence, for example:

##### Before Activity

Avoiding harm

* actions to ensure no activities take place within the extent of an Aboriginal place and / or an area where Aboriginal cultural heritage is likely to occur (e.g. installation of protective fencing / clear boundary markers, within which no activities are permitted to take place).

Minimising harm

* actions that reduce impact to an Aboriginal place by covering the area with a protective layer prior to commencing the activity (e.g. geofrabric or equivalent).

##### After Activity

* actions to ensure all Aboriginal cultural heritage is appropriately recorded and documented (e.g. where Aboriginal cultural heritage has been relocated)
* ensure all VAHR forms are submitted to the VAHR.

#### Methodological Conditions

Adjusting the methodology of an activity can reduce the risk of harm to Aboriginal cultural heritage by minimising impact to the ground surface, and keeping to areas that have previously been disturbed. Adjustments to methodology may relate to the type of vehicle, machinery or tools used; consideration of the location of new infrastructure (e.g. culverts); establishment of equipment set down areas. For example:

Avoiding Harm

* ensuring all vehicles use existing road / tracks / parking areas
* ensuring materials and equipment are brought to and from the works area, with designated set-down areas.

Minimising Harm

* altering the activity methodology / equipment used for all / part of activity:
  + using hand tools where possible (e.g. pedestrian weed spraying; Hamilton planters)
  + adjust location of a component of activity (e.g. alignment of a section of track).

#### Areas where no Aboriginal places are recorded or limited excavation has taken place

There may be discrete areas of land within the Agreement Area where no or limited Aboriginal cultural heritage investigation has taken place, the Aboriginal cultural heritage record is limited and therefore harm avoidance and minimisation options are not clear. Where activities are undertaken in these areas, conditions could be employed to identify Aboriginal cultural heritage prior to activities taking place, following which harm avoidance / minimisation actions can be undertaken. For example:

##### During Activity:

* walking along a track prior to an activity (e.g. road grading) to identify Aboriginal cultural heritage
* where Aboriginal cultural heritage is found, carry out specified management actions.

##### After Activity:

* ensure relevant forms and information are submitted to the VAHR
* maintain a log of Aboriginal cultural heritage actions and outcomes for review purposes.

### Accountability

Cultural heritage management actions can vary in content, nature and accountability requirements. For each component of an activity, it may be useful to detail specific cultural heritage management actions. These arrangements should detail: what needs to be done; when it needs to be done; by whom; and how.

## 4.8 Schedule 6: Consultation and Review

This Schedule ensures parties document continued discussion of the implementation, progress and operation of the ACHLMA. Scheduled consultation can be undertaken at certain points throughout the term of the ACHLMA.

Consultation and review may relate to:

* current and upcoming plans for land management activities:
  + especially in situations where activities may be undertaken as a revolving program, such as seasonal plans or funding for particular activities
* types of land management activities and the effectiveness of the Aboriginal cultural heritage management actions
* proposed amendments to the terms and content of the ACHLMA.

It may be useful to include a table that specifies the frequency, expected attendees and intended outcomes of the consultation.

## 4.9 Schedule 7: Other Matters

Other matters are details of any other matters agreed between the parties, and can reflect the intention and objectives of the ACHLMA as agreed to by the parties. ‘Other Matters’ offers potential for wide-scale community involvement, establishing long term relationship prospects and educational opportunities. Not undertaking these actions may not necessarily constitute a breach of the ACHLMA.



**‘Other Matters’ may relate to the following:**

**Contemporary cultural practices and Aboriginal Intangible Heritage**

Contemporary cultural practices can be integrated into land management activities and other use of Aboriginal intangible heritage, including interaction facilitated by an Intangible Heritage Agreement.

**Provision to engage RAP Natural Resource Management / Green Teams**

Where one exists, parties can agree to engage the RAP Natural Resource Management or Green Team to undertake particular land management activities.

**Protecting and managing other values**

Where native or rare fauna or flora, or other natural or environmental values are present within the Agreement Area, conditions can be written to avoid harm to these areas.

**Communicating the content and conditions of the ACHLMA**

Development of a booklet, or incorporating into operational guides or handbooks, compiling information that explains what activities are permissible under the ACHLMA and the required conditions. This can be distributed to the RAP, PLM or any other person.

**Interpretation and information (signage, advertising, internet)**

Agreeing to information that can be published on signage and in other mediums, and how information will be presented.

**Implementation of Reconciliation Action Plans and Aboriginal Inclusion Plans**

Providing for Traditional Owner involvement and a joint approach to the long term planning and implementing of land management activities and plans.

**Whole of community approach and educational opportunities**

ACHLMAs have the potential to provide educational opportunities to the wider community, especially where Aboriginal cultural heritage is present.

*Example: Inviting Elders and community members out on site where Aboriginal cultural heritage is present, providing an opportunity for people to share knowledge on Country, as well as involving the broader community.*

**Community use of Agreement Area**

Consider how the community use and experience the Agreement Area. Community consultation for use of areas of public land can be a practical way of obtaining feedback, for example: *conduct a community opinion survey or meeting.*

**Other legislative requirements**

Ensuring compliance with other legislation, including permits from other regulatory bodies where needed.

*Where work is being undertaken along waterways, for example a ‘Works on Waterway permit’ might be required from the Catchment Management Authority to undertake the activity.*

**Demonstration of an activity or action**

ACHLMAs provide the opportunity for the representatives from the RAP, PLM or any other person to demonstrate certain activities or actions to others, including the wider community.

# 5. Term of an ACHLMA

## 5.1 Commencement of an ACHLMA

An ACHLMA comes into effect on the **commencement date**, which may be one of the following:

* on the execution of the ACHLMA
* on the happening of a specified event
* at a specified time.

Item 2 and clause 2.1 of the Approved Form requires parties to specify the commencement date.

***Examples:***

1. *This ACHLMA will commence following the completion of all jobs detailed in the Activities Plan for the 2016-2017 season.*
2. *This ACHLMA will commence on the date it is signed by both parties.*
3. *This ACHLMA will commence on the 1st of July, 2017.*

## 5.2 Termination of an ACHLMA

ACHLMAs come to an end on the **termination date**, which may be one of the following:

* on the happening of a specified or defined event
* at a specified time
* by agreement between the parties.
* if the registration of the RAP which is party to the ACHLMA is revoked by the VAHC under Part 10 of the Act, the ACHLMA is terminated on the date of the revocation
* clause 2.2 allows for staggered termination of an ACHLMA, where whole, part or for a particular part of the Agreement Area of the ACHLMA can be terminated at a given date or time.

Item 3 and clause 2.2 of the Approved Form requires parties to specify the termination date.

***Examples:***

*This ACHLMA will end at the conclusion of the Activity Plan for the 2016-2020 Fire Operations Plan.*

*or*

*This ACHLMA will end on the 1st of July, 2027.*

**Outstanding liability and obligations accrued at the date of termination of the ACHLMA survive that termination and must be carried out (clause 2.4 of the Approved Form).**

# 

# 6. Amending an ACHLMA

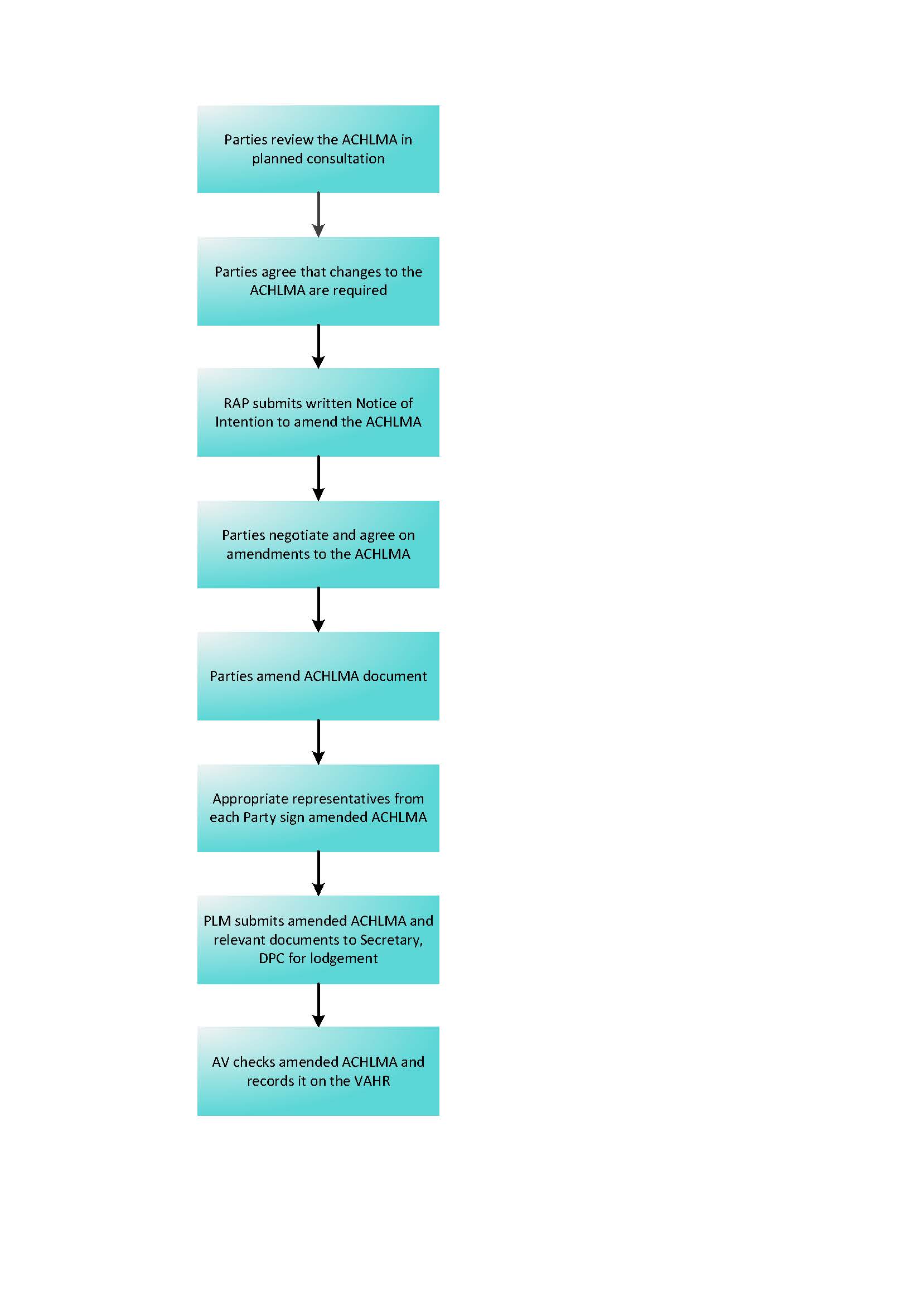


Figure 4 Process of amending an ACHLMA

An ACHLMA can be amended at any time, provided both parties agree to the amendment. Land management activities that are not going to be amended within the current Agreement Area can continue while the amendments are being drafted. Those land management activities under amendment should cease while the amendment negotiations are taking place. Figure 7 shows the process to amend an ACHLMA. Amendments to an ACHLMA may relate to:

* the boundaries of the Agreement Area
* restricted access and areas of exclusion within the Agreement Area
* the termination date of the ACHLMA
* the content of the Schedules, including changes to:
  + land management activities
  + cultural heritage management actions
  + planned consultation.

To amend an ACHLMA, the following must be undertaken:

* the RAP must submit a NOI to amend the ACHLMA
* the PLM must lodge the amended ACHLMA to the Secretary within 14 days of amending the ACHLMA.

The regularity of reviews and ongoing consultation need to be specified at three points in the Approved Form:

* Item 4
* Clause 16
* Schedule 6 (detailed in **Part 4** of this Guide).

***Examples of Review Clauses:***

*For an ACHLMA that commenced on 1 July 2017: Commencing on or before the 30 September 2017 and continuing every three months thereafter, the parties shall meet to determine the need for a review of the agreement… The purpose of the review will be to ascertain whether the ACHLMA needs to be amended.*

* *the third month from the commencement date of the ACHLMA, and continuing three monthly thereafter.*
* *Commencing on or before the first / second anniversary of this Agreement*
* *Commencing on or before the conclusion of the District Action Plan for the first season of operation of the ACHLMA.*

***Example of Amending the Termination Date:***

*For an ACHLMA commencing on 1 July 2017, the original termination date might have been for 30 June 2022. An amendment to that ACHLMA might see the termination date extended to 30 June 2027.*

*For an ACHLMA that commences with a new ‘fire operations plan’ (FOP) / ‘district action plan’ (DAP) season, the ACHLMA might then terminate at the conclusion of seventh DAP/FOP season, rather than third.*

# Appendices

## Appendix I – Forms for the purposes of the *Aboriginal Heritage Act 2006* and Aboriginal Heritage Regulations 2018

**The following forms can be found on the** [**Aboriginal Victoria website**](http://www.vic.gov.au/aboriginalvictoria/heritage/heritage-tools-and-publications/guides-forms-and-practice-notes-for-aboriginal-heritage-management.html)**:**

* Approved Form: Aboriginal Cultural Heritage Land Management Agreement
* Notice of Intention to enter into an Aboriginal cultural heritage land management agreement
* Aboriginal cultural heritage land management agreement: Lodgement of relevant documentation for the purposes of the *Aboriginal Heritage Act 2006*
* Notice of Intention to amend an Aboriginal cultural heritage land management agreement
* Standards for recording Victorian Aboriginal Heritage Places and Objects
* Practice Note - Subsurface Testing
* Preliminary Report Form
* Place Inspection Form
* Victorian Aboriginal Heritage Registration Form
* Victorian Aboriginal Place Component Forms

## Appendix II – Example Descriptors of Land Management Activities

Below is a table of example descriptors of land management activities, methodologies and impact on land with reference to ground disturbance. Additional activities not listed in this table may also be included in an ACHLMA.

|  |  |  |  |
| --- | --- | --- | --- |
| 1. **Fire Prevention, Preparedness, Rehabilitation** | | | |
| **Activity class** | **Tasks** | **Methodology & equipment** | **Ground Disturbance** |
| **Fire prevention / planned burning** | Fuel reduction or ecological burns | Manual ignition  Manual drip torch lighting patterns | No |
|  | Fuel break construction | Clear vegetation by mechanical means (slashing or mowing) generally within a 15-20m strip. | Possible (passage of vehicle) |
|  |  | Clear vegetation by chemical application generally within a 15-20m strip. |  |
|  |  | 1. Using an excavator, scrape earth and remove biofuel to create firebreak  2. Using hand tools (rakehoes) scrape earth and remove biofuel to create firebreak  3. Using a tractor with attachment, slash / cut grass to create firebreak | Yes- up to 20cm |
|  | Closure and rehabilitation of temporary fire control lines | Cut cross drains at intervals across the control line  Restore natural slope and land profile with topsoil (spoil) as much as possible  Drag back vegetation over restored slope  Cross drains spaced according to grade and soil erodibility | Yes- depth will depend on degree of slope |
|  | Post burn survey | Pedestrian survey | No |
| **Stockpile burn** | 1. Create stockpile  2. Stoke to burn  3. Extinguish fire  4a. Remove remaining material; or  4b. Bury burnt material | 1-4a. Excavator to create stockpile and stoke burn, remove burnt material with bucket to load material onto truck.  1-4b. Excavator to create stockpile and stoke burn, excavator to dig holes and bury. | Yes- during stockpiling and digging of hole |
| 1. **Road and Track Maintenance: Sealed, Unsealed, Vehicle, Cycling and Walking** | | | |
| **Activity Class** | **Tasks** | **Methodology & equipment** | **Ground disturbance** |
| **Drainage maintenance** | Restore crossfall (Road/track surface shaping to maintain profile) | Crown or slope road/track surface to enable water to flow freely from the road surface, using a bulldozer or grader. | Yes  Up to 100mm , within existing footprint of road/track |
|  | Drainage infrastructure maintenance | Includes:  • clearing existing culvert pipes under roads.  • removal of soil build-up in roll over drains.  • removal of soil build-up in drainage run-offs.  • removal of soil build-up and surface debris in table drains.  With a bulldozer, grader, backhoe, or using hand tools  Clean either by grader or using handtools.  Cut / recut if required to ensure an adequate outlet velocity and prevent the pooling of water within the drain.  Installation of erosion and sediment control measures such as rock beaching and other such products by hand or machinery. | Yes |
|  | New culvert installation | Dig trench across road, place culvert pipe in trench, back fill with soil from trench. | Yes  Depth of trench dependent on culvert size. |
|  | Culvert replacement | Dig trench across road, remove redundant pipe, place new culvert pipe in trench, back fill with soil from trench. | Yes  Existing footprint used |
|  | Alpine Drain | Using hand tools or grader, use soil to build up large ‘speed hump’ and drainage channels that will divert water off track. | Yes  Existing footprint used |
| **Road/Track Maintenance/Repair** | Rolling of road/track surface  Water crossing/ford maintenance and replacement | Compaction of road surface (after grading) using a rubber or steel drum roller (type 10 tonne or equivalent) (which may be vibrating) – minimum of 4 passes.  Grade road to depth required to repair road surface and surface defects, including: rutting, corrugations, drainage scours, rough surface, potholes, excessive loose surface material, restore crossfall, remove trees/other debris from road. | Yes, existing footprint used (minimum initial cut of 50mm), grader with ripper, roller 10-12 tonne. |
|  | Repair road surface defects including rutting, corrugations, drainage scours, rough surface, potholes and excessive loose surface materials. | Grade road to a depth required to suitably repair road surface, and remove corrugations or other surface imperfections using a Caterpillar 12H or equivalent grader . Potholes are ripped and the road reformed  Rolling of road surface immediately after grading using a 10 tonne roller or equivalent .  Spread gravel where required for patch gravelling  The main focus of works is the full width of the road from the top of the cut batter/s to the top of the fill batter/s. The top batter is only to be treated where safe and practicable to do so. | Yes |
|  | Gravelling of road surface | Dump load of gravel and spread onto existing road surface using a grader or bulldozer.  Re-shaping of road pavement depending on road condition; and  Patch gravelling, repair to sections of the road surface | Likely  Passage of vehicle – up to 20mm, within existing footprint of road/track. |
|  | Rolling of road surface | Compaction of road surface (after grading) using a rubber or steel drum roller (type 10 tonne or equivalent) (which may be vibrating) – minimum of 4 passes. |  |
|  |  | Includes: using spill from grading and/or surrounding fallen vegetation to block off unofficial tracks |  |
|  | Closure of track/road | Includes: using spill from grading and/or surrounding fallen vegetation to block off unofficial tracks | Possible |
| **Walking / Cycling** | Installation and maintenance of safety barriers and hand rails | Generally occurs within existing constructed footprint of a pathway / track. | Generally within existing constructed footprint of pathway / track |
|  | Repair/replacement of boardwalk  Slashing and mowing where necessary |  |  |
|  | Road/Track Realignment / widening (less than 100m)  Clearing of track |  |  |
|  | Closure of track/road (unofficial and official) | Includes: using spill from grading and/or surrounding fallen vegetation to block off unofficial tracks |  |
| 1. **General Maintenance** | | | |
| **Activity Class** | **Task** | **Methodology & equipment** | **Ground disturbance** |
| **Erection of signage, fences and gates** | Sign installation  Installation of gate  Installation of bollards  Reconstruction/repair of platforms | 1. excavate hole/s  2. place signpost/s in hole/s  3. secure sign by replacing removed soil or using concrete  Manual or mechanical excavation of hole (auger attachment on a machine or by post-hole shovel) | Yes  Hole ~30cm x 30cm diameter, ~50cm deep |
|  | Fence erection/pile fields/survey marker installation | 1. Excavate post holes  2. Install posts and gates  3. Secure posts  Manual or mechanical excavation of holes (auger attachment on a machine or by post hole shovel), install posts and secure using concrete | Yes |
|  | Ground preparation - hole excavation | Hole excavation – shovel | Yes  (Depending on how far the shovel is pushed into the ground) |
| **Litter removal** | Removal of rubbish and debris (1)  Removal of rubbish and debris (2) | Excavator to pick up material and place in truck, may involve scraping of topsoil (use of bucket to load material onto truck).  Manual pick up | Possible  No |
| **Pest Animal control** | Spraying of wasp/bee nests | Hose and rigs on utes/trailers/small trucks; handheld tools | Possible (passage of vehicle- up to 20mm) |
|  | Baiting | Plough baiting trail lines with a tractor, lay bait | Yes (passage of vehicle. Bait trail width-up to 20cm depth- 5-10cm) |
|  | Habitat removal- warren ripping | Ripping ground hollows with a tractor + ripping tines  Twice ripping the earth in which a warren is located and the earth 4m beyond each warren entrance, where the individual rip lines are not more than 50cm apart and not less than 50cm deep and where the second rip is made at right angles to the first rip | Yes |
|  | Habitat removal- warren fumigation | Apply fumigation product to a warren and make the warren inaccessible to rabbits by block and seal all entrances to the warren  Hose and rigs on utes/trailers/small trucks; handheld tools | Possible |
|  | Habitat removal- harbour removal, warren exposure and blockage | 1. Using forestry groomer or similar with low ground pressure, groom ground surface no deeper than 60cm to remove harbour.  2. Using hand tools, cover warrens and track marks with spoil to assist with minimising re-entry into warrens.  3. warrens can be assessed for in situ Aboriginal cultural heritage prior to covering of entrances. | Yes (passage of vehicle and grooming- up to 60 cm) |
| 1. **Erosion Control** | | | |
| **Activity Class** | **Tasks** | **Methodology & equipment** | **Ground Disturbance** |
| **Erosion control (mechanical)** | Re-shape area by removing / adding soil to improve drainage or stabilise soil | Excavator and/or bobcat to remove/fill soil  Bank battering- decrease steepness. | Yes |
|  | Install erosion matting | Pin down jute mat or weed matting over an area of ground  Tent pegs or similar used | Yes – depending on peg size |
|  | Construct retaining wall using rock, timber, concrete or sandbags. | 1. Dig out embankment  2. Dig two post holes  3. Install metal supports  4. Install concrete sleepers | Yes |
|  | Installation of rock beaching and geofabric material and similar geotechnical treatments. | Earthmoving equipment (excavators, bobcats etc.) to shape area and install rock beaching material. | Yes |
| 1. **Revegetation and vegetation maintenance** | | | |
| **Activity Class** | **Tasks** | **Methodology & equipment** | **Ground disturbance** |
| **Planting / Revegetation** | Ground preparation – rip lines | Rip lines with tractor-mounted ripping tines/plough  (Tines under 60cm) | Yes |
|  | Ground preparation – scalping topsoil | Excavator / bulldozer scraping soil from the surface | Yes (15+ cm topsoil removed) |
|  | Ground preparation - hole excavation (1) | Hole excavation – Hamilton planter | Yes (Planting depth is determined by how far the planter is pushed into the ground- 125-180mm) |
|  | Ground preparation - hole excavation (2) | Hole excavation - mattock | Yes  (depending on blade length) |
|  | Ground preparation - hole excavation (3) | Hole excavation – shovel (aquatic planting) | Yes  (Depth determined by how far the shovel is pushed into the ground) |
|  | Install weed suppression matting | Pinning down jute mat  (Tent pegs or similar used) | Yes |
|  | Install bamboo / hardwood stakes | Hammer in stakes | Yes  (Depth determined by how far the stake is pushed into the ground) |
|  | Watering | Using a hose to water vegetation from water truck/cart/pump/creek | No |
| **Vegetation maintenance** | Weed spraying (1) | By vehicle - spray using a hose and rig on a ute trailer/quad bike | Possible  (Passage of vehicle) |
|  | Weed spraying (2) | On foot – using a backpack, spot spray to avoid native grasses/plants | No |
|  | Cut and paint at stump | Cut and paint at stump (root ball left in situ). On foot – using a backpack and hand tools | No |
|  | Soil solarisation | Pin down jute mat or weed matting, black polythene over an area of ground  (Tent pegs or similar used) | Yes |
|  | Brush-cutting | On foot - using a hand-held brush cutter | No |
|  | Grass cutting - Mechanical (1) | Using a ride-on mower  Using a tractor with attachment – e.g. flail mower, tractor slashing | Possible  (Passage of vehicle) |
|  | Road edge vegetation slashing | Slashing vegetation using tractor and slasher or mower | Possible  Passage of vehicle – up to 20mm, within existing footprint of road/track (including drains and edges etc |
|  | Road edge scrub removal  Clearing of vegetation in general | Remove vegetation from both sides of the road margins.  Methodology and equipment used determined within the limitations of safety, machine capabilities and scrub density.  Removal of vegetation (including root ball) – using a bulldozer or grader (grader of type Caterpillar 12H or equivalent – minimum size) | Yes  Up to 100mm , within existing footprint of road/track |
|  | Hazardous tree management | Pruning and lopping of hazardous tree limbs for public safety. Equipment often includes cherry picker / elevated work platform, chainsaws, pole saws, and chipper truck. | Possible, from machinery |
|  | Install weed suppression matting | Pinning down jute mat  (Tent pegs or similar used) | Minimal |
| **Tree removal (mechanical)** | Cut and remove trees at base (1) | Felling/ripping out branches and trunks with machinery such as an excavator, skid steer or crane. | Yes |
|  | Cut and remove trees at base (2) | Chainsaw  Drilling / frilling  (Root ball left in situ) | No |
|  | Remove fallen trees | Using excavator, grinder and chains/ropes to lift and drag trees along creek bank to a chipper/tub grinder or stockpile to burn  Dozer tree pushing | Yes  (Passage of vehicle) |
|  | Push / pull tree | Remove tree by pushing or pulling it with a bulldozer or excavator, chainsaw, roping – ripping out roots  Methodologies for assisting include ripping/digging roots; constructing an earth ramp to provide greater leverage in the push, or constructing an earth platform to assist an excavator push | Yes  (Passage of vehicle. Root ball removed) |
|  | 1. Groom  2. Spray | Grooming of material down to the stump, using an excavator or skid steer with grooming attachment, followed by spraying.  Hand/mechanical removal of willows for bank stability and ensure water flow | Possible  (Passage of vehicle. Root ball left in situ) |
|  | Forest inspections, fauna and flora biodiversity activities/fieldwork |  | No |
| **Mulching** | 1. Bring mulch in  2. Unload mulch  3a. Spread mulch using machinery  3b. Spread mulch by hand | Trailer or tray truck  3a. Excavator or skid steer to distribute and spread stockpiled mulch  3b. Using hand tools (rakes), distribute and spread stockpiled mulch | Minimal |
| 1. **Waterway Management** | | | |
| **Activity Class** | **Tasks** | **Methodology &equipment** | **Ground Disturbance** |
| **Environmental habitat logs** | Install logs in waterways to provide habitat | In-stream and bank holes machine dug, pinning logs to the soil surface | Yes |
| **Sediment fences** | 1a. Install sediment fences/booms across waterway mechanically  1b. Install sediment fences/booms across waterway manually  2. secure sediment fences/booms  Sediment extraction from catchment/waterways. | 1a. Install stakes or pickets to secure. Excavation to ‘key’ in logs using an excavator, or pickets.  1b. Install stakes or pickets using hand tools. | Yes |
| **Water point maintenance** | Clear existing dams.  Sediment extraction of sediment ‘slugs’ within catchment | Remove soil and debris using an excavator or backhoe | Yes  Passage of vehicle |
|  |  | Clearing of debris using hand tools or machinery | Yes. Passage of vehicle and debris. |

## Appendix III – Compliance and Enforcement of an ACHLMA

**Where there is dispute over the implementation or interpretation of the ACHLMA**

* The party claiming dispute must give a notice to the other party setting out the full details of the dispute. This is known as **the first dispute notice**
* As soon as practicable after the first dispute notice, parties to the dispute can meet and hold good faith discussion
* The parties must attempt to resolve the dispute within 28 days of the first dispute notice being served
* If the dispute is not resolved through good faith discussion, any party may serve a second dispute notice, requiring that the dispute will be resolved with a **mediator**
* If the dispute is not resolved within 14 days of the mediator issuing a report, any party may serve a third dispute notice, requiring that the dispute be resolved by an **arbitrator.**

**Breaching the conditions of an ACHLMA**

* Where either party suspects or becomes aware of a breach of the ACHLMA through knowingly, recklessly or negligently acting or omitting to act in a way that fails to comply with the conditions of the ACHLMA, that party may:
  + approach the other party and hold good faith discussion
  + contact an Aboriginal Heritage Officer to monitor compliance of that ACHLMA, with the potential to issue a 24 hour stop order
  + refer the breach to an Authorised Officer, who may issue an improvement notice, conduct a cultural heritage audit and/or investigate the breach further.

**Penalties for failure to comply with an ACHLMA**

* Where a breach is found to have occurred and prosecution brought against the offending party, that party may be liable to penalties not exceeding:
* For knowingly (by act or omission) failing to comply with an ACHLMA:
  + Natural Person: 600 penalty units
  + Body corporate: 3000 penalty units
* For recklessly (by act or omission) failing to comply with an ACHLMA:
  + Natural Person: 300 penalty units
  + Body corporate: 1500 penalty units
* For negligently (by act or omission) failing to comply with an ACHLMA:
  + Natural Person: 60 penalty units
  + Body corporate: 300 penalty units

Please note that fees are indexed.