## 24-hour Stop Order

**24-Hour Stop Order under section**

**95A-95C of the *Aboriginal Heritage Act 2006***

Information sheet for Authorised Officers and

Aboriginal Heritage Officers

It is intended that a 24-hour stop order be used by an Authorised Officer or Aboriginal Heritage Officer to stop an action which is harming, or likely to cause harm, to Aboriginal cultural heritage for 24 hours. Issuing a 24-hour 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.

## When may a 24-hour Stop Order be issued?

Under section 95A of the Aboriginal Heritage Act (the Act) an Authorised Officer or Aboriginal Heritage Officer may issue a 24-hour Stop Order to a person if—

* the person is carrying out, or proposes to carry out, an act; and
* the 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 officer is satisfied that there are reasonable grounds for believing that the Aboriginal cultural heritage could not be properly protected unless a 24-hour Stop Order is issued.

## When must a 24-hour Stop Order not be issued?

Under section 95A(2) of the Act a 24-hour 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.

## What can a 24-hour Stop Order do?

Under section 95A(4) of the Act a 24-hour 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.

## Delivery of the 24-hour Stop Order

Under section 95A(5) of the Act a 24-hour 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.

Under section 95A(6) of the Act an Authorised Officer or Aboriginal Heritage Officer may enter any land or premises at any time for the purpose of delivering a 24-hour Stop Order in accordance with these provisions.

## 24 hours

Under section 95A(7) of the Act a 24-hour Stop Order operates from the time it is issued for a period of 24 hours.

Under section 95A(8) an authorised officer or an Aboriginal heritage officer must not issue consecutive 24-hour Stop Orders to a person in relation to the same act.

## Cancellation of the 24-hour Stop Order

Under section 95B of the Act an Authorised Officer or Aboriginal Heritage Officer who issues a 24-hour Stop Order may cancel the order by serving a notice on the person affected.

There is no approved form for a cancellation notice, however a template is supplied which should be followed.

Under section 95B(3) of the Act a 24-hour stop order is cancelled if the Minister or an authorised officer issues a stop order under section 87 of the Act in relation to the same act.

## Identifying and investigating a failure to comply with 24-hour Stop Order

Under section 95C of the Act it is an indictable offence for a person issued with a 24-hour 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.

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.

Aboriginal Heritage Officers must comply with the Policy, Investigations Manual and Enforcement Procedures adopted by the Registered Aboriginal Party that employs them.

## Approved form

Under section 95A(3) of the Act a 24-hour Stop Order must be in the ‘approved form’. The form must include the full name and address of a person, and the company name, Australian Business Number (ABN) and registered address (if any) of a 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, the form must include 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.

## Stop Order (other than a 24-hour Stop Order)

Where there are reasonable grounds for believing the harmful act, for which the 24-hour Stop Order was issued will be ongoing, the Minister or an authorised officer may issue a Stop Order. Unless it is sooner revoked, a Stop Order operated from the time it is issued until the end of the earlier of:

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

For further information about Stop Orders see the relevant information sheet and the First Peoples – State Relations’ Investigations Manual.

**Approved Form for the issue of a 24-hour Stop Order under Part 6 of the *Aboriginal Heritage Act 2006* [24-hour Stop Order issued by an Authorised Officer or an Aboriginal Heritage Officer]**

24-Hour Stop Order for the purposes 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 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 **or1** Aboriginal Heritage Officer appointed under Part 11 of the *Aboriginal Heritage Act 2006*, 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 24-hour Stop Order is issued.

Pursuant to Division 3 of Part 6 of the Aboriginal Heritage Act, I **HEREBY ISSUE** a 24-hour Stop Order to you that:

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

Unless it is sooner cancelled, this 24-hour Stop Order operates from the time it is issued for a period of 24 hours.

Under section 95C 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 24-hour Stop Order.

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

[*Insert* *Name of Authorised Officer*

***or***1 *Aboriginal Heritage Officer*] **Time of issue: [hour] : [min] AM / PM**

An Authorised Officer ***or***1 Aboriginal Heritage Officer appointed under Part 11 of the Act

1 Delete whichever is not applicable.

Suggested template

Notice of cancellation of 24-hour Stop Order

## Issued under section 95B of the *Aboriginal Heritage Act 2006*

Number 16/

**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 24-hour 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. The details of the act must match the exact wording of the original order].*

I, *[insert name]* an Authorised Officer **or1** Aboriginal Heritage Officer appointed under Part 11 of the *Aboriginal Heritage Act 2006*, am satisfied that the 24-hour Stop Order can be cancelled for the following reasons:

* *[provide a reason why the 24-hour Stop Order is no longer needed]*
* *[Explain how the Aboriginal cultural heritage is now being properly protected]*

Pursuant to Division 3 of Part 6 of the *Aboriginal Heritage Act 2006*, I **HEREBY CANCEL** the 24-hour Stop Order issued to you on

* [date] and
* [time]

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

[*Insert* *Name of Authorised Officer*

***or***1 *Aboriginal Heritage Officer*] **Time of issue: [hour] : [min] AM / PM**

An Authorised Officer ***or***1 Aboriginal Heritage Officer appointed under Part 11 of the Act

1 Delete whichever is inapplicable.