

Review of the *Aboriginal Lands Act 1991*

Discussion Paper

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Glossary

Aboriginal Lands Act 1991 (Vic) – The Victorian law that is the subject of this paper. The law transferred ownership of the cemeteries of the former missions at Coranderrk, Ebenezer and Ramahyuck to certain Aboriginal organisations.

Aboriginal Heritage Act 2006 (Vic) – The Victorian law that provides for the protection of Aboriginal cultural heritage in Victoria.

Aboriginal Victoria (AV) – The branch within the Department of Premier and Cabinet that drafted this Paper and is leading the review of the *Aboriginal Lands Act 1991 (Vic)*.

Amendment – A change or addition designed to a piece of legislation (or a text, legal document, contract, regulations, etc).

Department of Treasury and Finance's (DTF) Land & Property Group (LP Group) - The group within the Department of Treasury and Finance, which provides advice to government agencies on the future use or disposal of surplus government land.

Enact legislation – the passing of new legislation by parliament.

Encumbrance – A burden or charge (i.e., a mortgage) over a piece of land.

Fee simple – Another word for freehold. The fullest, most permanent ownership of land or property, with freedom to deal with it at will (subject to usual planning and building laws).

Freehold – The fullest, most permanent ownership of land, freedom to deal with it at will (subject to usual planning and building laws).

Governor in Council (GIC) - The 'Governor in Council' refers to the Governor of Victoria, acting on the advice of the Executive Council. The role of the Executive Council is provided for in the *Constitution Act 1975 (Vic)*. The GIC is not a deliberative body but one that acts on the advice of the relevant ministers.

Land Act 1958 (Vic) – The Victorian law that regulates the sale and occupation of Crown lands.

Legislation – Acts of parliament and subordinate (or delegated) legislation made under acts of parliament.

Registrar of Titles – the manager of Victoria's land title system.

Repeal – An act of parliament to remove a piece of legislation.

Title - The legal ownership and rights in relation to a piece of land, usually documented in a certificate of title.

Titleholder – A person who officially owns a title (see above).

Valuer-General Victoria (VGV) - Oversees valuations for Victorian government property transactions and the making and return of council rating valuations.

Executive Summary

In line with the Victorian Government's commitment to Aboriginal self-determination, the review of the *Aboriginal Lands Act 1991* (Vic) (the Act) is a priority to progress and resolve.

This paper is designed to assist those interested in, or affected by the Act have their say on the future operation of the Act, and to assist them in having a say on the proposed legislative changes, or comment on any of the reforms proposed in this paper.

The intended audience for this Discussion Paper (paper) are the titleholders under the Act – Wurundjeri, Goolum Goolum and GEGAC – and the Traditional Owner groups of the land on which the three cemeteries are located - Barengi Gadjin Land Council Aboriginal Corporation (BGLC) and Gunaikurnai Land and Waters Aboriginal Corporation (GLaWAC), noting that Wurundjeri is both the titleholder and Traditional Owner group for the Coranderrk Mission cemetery. Each of these stakeholders is invited to use this paper to consult with their respective communities in whichever way they deem appropriate.

The Act was passed in 1991 as a vehicle to facilitate the transfer of three Aboriginal burial sites or cemeteries at the former missions at Coranderrk, Ebenezer and Ramahyuck to Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation (Wurundjeri), Goolum Goolum Aboriginal Cooperative (Goolum Goolum) and Gippsland and East Gippsland Aboriginal Co-operative (GEGAC) respectively.

This paper outlines the background and context of the Act and explains why reform is being considered. It then proposes options for reform and offers questions to assist stakeholders have their say by preparing a written response or submission to the government for its consideration.

Notably, the paper explains that because of the Act, titleholders are subjected to two main restrictions on their use of the land. First, they are prohibited from selling or transferring their respective interests in the land (the '**transfer restriction**'). Secondly, the lands can only be used for Aboriginal cultural and burial purposes (the '**use restriction**').

Preliminary discussions with the current titleholders have indicated that there may be a desire to retain the current requirement for titleholders to only use the lands for Aboriginal cultural and burial purposes.

Accordingly, this paper focuses primarily on reviewing the transfer restriction. However, it also includes options for removing the use restriction, so that stakeholders are aware of all options for reforming the Act, and can make fully informed decisions about its future.

The paper outlines proposals for legislative change into 'options'. Each option has its own section which explains the key purpose of the proposed change and invites submissions and questions.

The various options for reform presented in the paper are:

1. Amend the Act to remove one or both restrictions for all three cemeteries;
2. Amend the Act to remove one or both restrictions for only specific cemeteries, as requested by titleholders;
3. Enact new legislation which removes the use restriction on the title, and repeals the current Act to remove the transfer restriction;
4. Remove only the transfer restriction by repealing the current Act entirely, but leave the use restriction (which will remain on the title);
5. Amend the Act to allow the Governor in Council to remove one or both restrictions;

6. Amend the Act to allow the titleholders to surrender their titles back to the Crown for them to be re-issued without either of the restrictions; or
7. Do nothing.

These options are explained in further detail at Chapter 4, and some of the associated risks are laid out for consideration.

How to make a submission

Please send any written responses or submissions to aboriginalaffairs@dpc.vic.gov.au by 13 November 2020.

Alternatively, if you would prefer to meet with AV to discuss your views, please email the above email address and we will contact you to arrange a suitable time to meet with you virtually, or over the phone (noting current restrictions in relation to COVID-19).

Please note:

- Submissions do not have to address the whole Act. You can write about the parts of the Act or the themes which most interest you.
- The questions and proposed legislative changes in this discussion paper are suggested as a starting point and are not intended to limit responses.
- Multiple suggestions or changes can be submitted on the same topic.

What is the timing of the consultation and review?

The schedule below explains the proposed timing of the consultation and review:

Please note that the timeline is indicative only, and AV is happy to work with stakeholders to expediate the process to deliver the final report with recommendations as efficiently as possible.

Table 1. Consultation schedule

Approximate timing	Action	Lead
Mid-September for 6 - 8 weeks	Seek input from titleholders and key stakeholders on Discussion Paper	AV
Early October 2020	AV to touch base with stakeholders to confirm if any additional assistance or support is required	AV
End of October 2020	Consultations end - input from all stakeholders is received and incorporated into final report with recommendations	AV
December 2020	Seek input from titleholders and other stakeholders on final report with recommendations	AV
February 2021	Consultations end – input from all stakeholders on final report with recommendations is received and incorporated	AV
March 2021	Brief Minister on final report with recommendations and Legislative Proposal	AV
April 2021	Commence legislative amendment process	AV/DJCS

1. Background

What is the Aboriginal Lands Act 1991?

The Act was passed in 1991 to facilitate the transfer of three Aboriginal burial sites or cemeteries at the former missions at Coranderrk, Ebenezer and Ramahyuck to local Aboriginal organisations. The Act authorised the Governor in Council to grant an estate in fee simple (or freehold title) to the following Aboriginal organisations:

- Coranderrk Mission Cemetery – to Wurundjeri Tribe Land and Compensation Cultural Heritage Council (now Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation).
- Ebenezer Mission Cemetery – to Goolum Goolum Aboriginal Co-operative; and
- Ramahyuck Mission Cemetery – to Gippsland and East Gippsland Aboriginal Co-operative.

These three titles were granted as freehold, but are subject to two restrictions under the Act:

1. The use restriction: a condition in each of the Crown grants that the land must be used for Aboriginal cultural and burial purposes (as required under section 6(5)); and
2. The transfer restriction: a condition in the Act that the organisations must not sell or transfer their ownership of the land (section 7).

It is understood that the three cemeteries are highly culturally significant for the respective local Aboriginal communities, who hold deep cultural connections because many of their ancestors are buried at those burial sites. This connection was acknowledged in parliamentary debates when the Act was being debated in the Victorian Parliament in May 1991. In debate, the then Minister for Police and Emergency Services, Mr Sandon, stated:

The government is committed to recognising and supporting the cultural heritage of Victoria's Aboriginal people. Cultural heritage is important to all Victorians and is a unique part of our community. It should be recognised and promoted.

Aboriginal people have lived in Australia for more than 40,000 years and through oral traditions have passed on their cultural heritage from generation to generation. A part of that rich oral tradition, supported by official records, describes the life and times of the Aboriginal people on the many Aboriginal missions and stations that were established last century throughout Victoria. A significant part of that oral tradition describes the misery and despair wrought upon the Aboriginal people from the time of the arrival of Europeans. Victoria's Aboriginal people today have many memories, sometimes very painful ones, of life and death on many of the missions.

Among those missions were Ebenezer Mission, Ramahyuk Mission and Coranderrk Mission. Due to continuing family associations and the fact that Aboriginal descendants have relatives buried in the cemeteries proposed to be granted in this Bill, it is understandable that those sites are important to the Aboriginal community, being emotional and historical links with the past.

Although Victoria's Aboriginal missions originally consisted of many thousands of acres of land there is little left today that is owned by Aboriginal people. The Ebenezer, Ramahyuk, and Coranderrk cemeteries are remaining parcels of former Previous Aboriginal land, as Crown land, for which there is no general public interest or use.

This extract reflects the Act's purpose in returning to Aboriginal communities the lands to which they have deep cultural ties and connection. However, the age of the Act and the restrictions on use of the land contained in it means that it does not reflect current policies which seek to promote Aboriginal self-determination, including in relation to property rights and interests.

Why is the Government reviewing the Act?

The need for a review of the Act was identified when the circumstances outlined below revealed that the Act limits the self-determination of the titleholders.

The below timeline briefly outlines key milestones in this process:

- **December 2013** – A Traditional Owner group began advocating for the return of a cemetery title under the Act, after the title to the remainder of the mission was returned to them.
- **January 2015** – The titleholder of the cemetery in question enquired with Aboriginal Victoria (AV) about transferring it to the relevant Traditional Owner group.
- **May 2016** – AV determined that transferring the cemetery title would require legislative amendments to the Act.
- **June 2018** – The former Minister for Aboriginal Affairs, the Hon. Natalie Hutchins MP sent letters to titleholders under the Act - Wurundjeri, Goolum Goolum and GEGAC to advise the Act would be reviewed.
- **Mid 2019** – AV staff met individually with Wurundjeri, Goolum Goolum and GEGAC to discuss the Review and invite initial feedback on the goals and aspirations of each titleholder in relation to the cemetery titles.

2. Places and stakeholders

Please note that the historical context and background of each place and stakeholder was derived from history and information found on their respective websites. As titleholders, Traditional Owners and knowledge keepers, AV welcomes feedback on this section, which will be adjusted in the final report.

Coranderrk Mission Cemetery and stakeholders

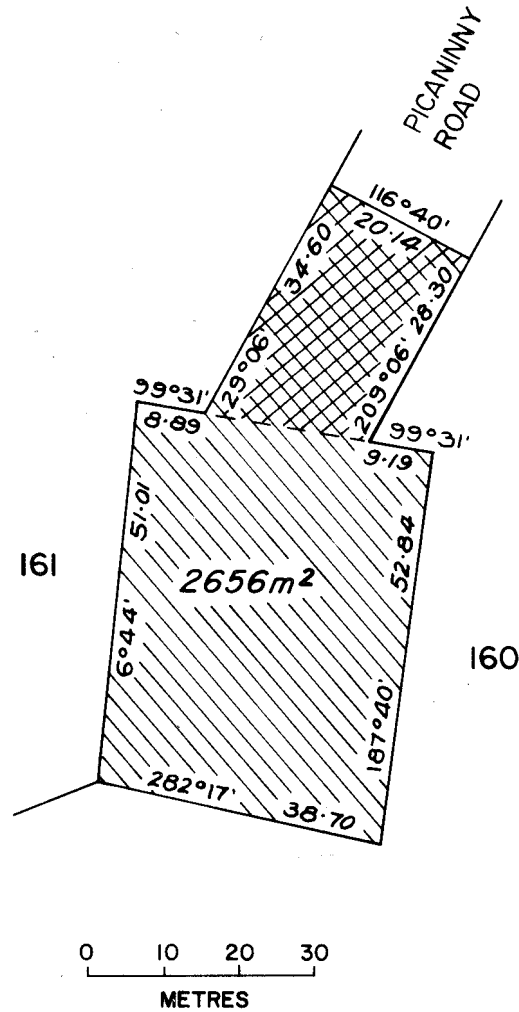
The Coranderrk Mission Cemetery is a registered Aboriginal historical place protected under *the Aboriginal Heritage Act 2006* (Vic) and the *Heritage Act 2017* (Vic). It is located on Wurundjeri Country, at a traditional camping spot for clans of the Kulin nation, just outside of the place now known as Healesville, close to Badger Creek, the Yarra River, Watts River and Mount Riddle. The cemetery was originally part of the Coranderrk Mission, an Aboriginal historical place that holds great significance for Aboriginal resilience and resistance to colonial settlers, exemplified in Uncle Simon Wonga and Uncle William Barak's petition for Aboriginal ownership of Coranderrk.

The Coranderrk Mission operated from 1861 to 1924, and in June 1863, 2300 acres were gazetted for use as an Aboriginal reserve. Since 1998, Wurundjeri has owned the Coranderrk Mission (although a much smaller area than the original 2300 acres), as well as the cemetery

title since 1991, under the Act. Wurundjeri is also the Registered Aboriginal Party for the area in which the cemetery is located. The Yarra Ranges Planning scheme also has a heritage overlay provision over the property.

Figure 1. Schedule 2, *Aboriginal Lands Act 1991*

PLAN OF CORANDERRK MISSION CEMETERY AND ACCESS ROAD



Ebenezer Mission Cemetery and stakeholders

The Ebenezer Mission Cemetery is a registered Aboriginal historical place that is also protected under the *Aboriginal Heritage Act 2006* (Vic) and the *Heritage Act 2017* (Vic). It is located on Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Country, north of the place now known as Dimboola, just east of the Wimmera River. The land was a meeting place and ceremonial ground for Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Traditional Owners prior to colonisation. In 1859 Moravian missionaries established the Lake Hindmarsh Aboriginal Reserve, which operated as the Ebenezer Mission until its closure in 1900.

It is understood the Ebenezer Mission Cemetery holds many marked and unmarked burial sites. The mission and the cemetery are spatially the same place, however two separate land titles exist – one for the cemetery and one for the mission itself. Ownership of the mission title

was handed between several owners between 1900 and 1968, when the title was transferred to the National Trust of Australia Victoria (NTAV). The Crown land reservation over the cemetery title was revoked in 1991 under the Act and given to Goolum Goolum, as no Recognised Aboriginal Party or Traditional Owner corporation for the area existed at this time.

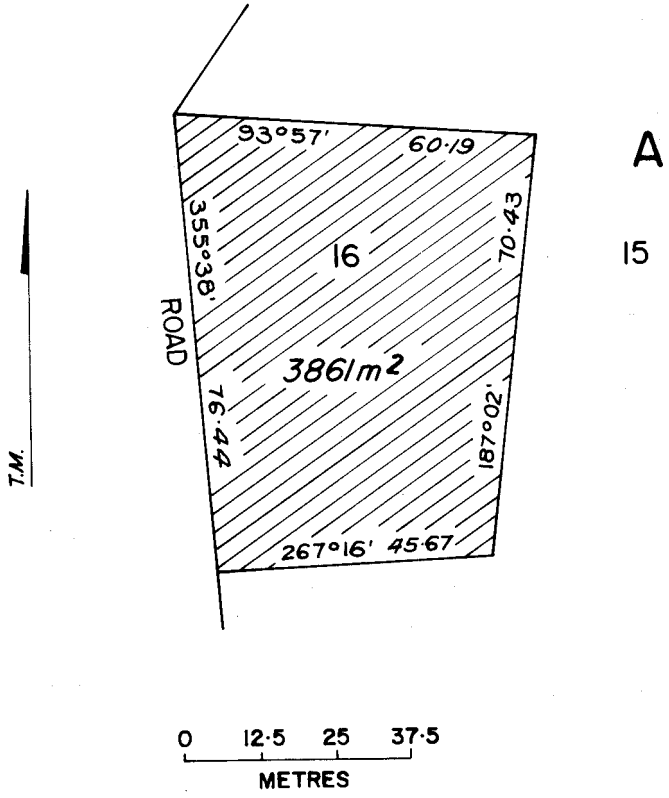
Goolum Goolum is an Aboriginal Co-operative that provides a holistic model that responds to the physical, social, emotional, Cultural and spiritual needs for the Aboriginal communities it services. Goolum Goolum’s core business is understood to provide health, wellbeing and family services to Aboriginal communities in the Wimmera.

In 2013 NTAV handed the mission title to BGLC. BGLC is the Registered Aboriginal Party for the area in which the cemetery is located, and the Prescribed Body Corporate that holds and manages native title rights under the *Native Title Act 1993* (Cth) on behalf of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk native title holders.

BGLC holds the title for the remainder of the mission and has a Memorandum of Understanding with Goolum Goolum to manage the cemetery title and matters of cultural significance more broadly. There is no fence or boundary between the cemetery and the mission titles; the area appears as one.

Figure 2. Schedule 3, *Aboriginal Lands Act 1991*

PLAN OF EBENEZER MISSION CEMETERY



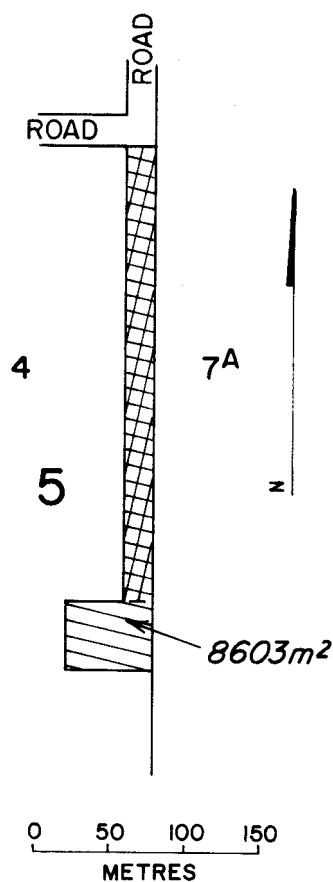
Ramahyuck Mission Cemetery and stakeholders

The Ramahyuck Mission Cemetery is also a registered Aboriginal historical place protected under the *Aboriginal Heritage Act 2006* (Vic) and the *Heritage Act 2017* (Vic). It is located on Gunaikurnai Country, on the shores of Lake Wellington near the mouth of the Avon River in the region now known as East Gippsland. The cemetery is part of the former Ramahyuck Mission, which was established in 1863 by Moravian Missionaries. The mission closed in 1908, and many of the remaining residents were transferred to Lake Tyers, leaving the cemetery and some remnants of the original buildings. It is understood there are many unmarked burial sites at the cemetery.

Under the Act, GEGAC is the titleholder of the cemetery. Like Ebenezer Mission Cemetery, GEGAC was the known Aboriginal organisation of the time, as there was not yet a Registered Aboriginal Party or a Traditional Owner corporation in the area. In 2010, Gunaikurnai Land and Waters Aboriginal Corporation (GLaWAC) was recognised as the Prescribed Body Corporate that holds and manages native title rights under the *Native Title Act 1993* (Cth) on behalf of the Gunaikurnai people, the Brabralung, Brataualung, Brayakaulung, Krauatungalung and Tatungalung clans. GLaWAC is also the Registered Aboriginal Party for the area in which the cemetery is located.

Figure 3. Schedule 4, *Aboriginal Lands Act 1991*

PLAN OF RAMAHYUCK MISSION CEMETERY AND ACCESS ROAD



3. Legal context

The places specified in the above section are expressly governed by the Act, meaning that they may only be dealt with as provided for in the Act, unless the legislation is changed.

To enable the Governor in Council to grant the original Crown land to the Wurundjeri, Goolum Goolum and GEGAC in 1991, the Act required:

- the revocation of existing reservations and Crown grants over the titles (sections 3 and 5) to essentially free up the land;
- the closure of specified roads, and the grant of reasonable rights of access to adjacent land (section 4); and
- the grant of each title in fee simple to Wurundjeri, Goolum Goolum and GEGAC respectively, subject to the two restrictions noted throughout this paper.

The two restrictions on the use and transfer of the land still affect the way titleholders can use their land today.

One of the restrictions, the requirement that the land must be used for Aboriginal cultural and burial purposes, is set out in the certificate of title itself, as well as required by the Act (section 6(5)). By contrast, the other restriction relating to transfer of land (section 7) is only contained in the Act. It is not mentioned on the title. This distinction is important, because it affects the options for how to remove the restrictions.

As mentioned in the Executive Summary, preliminary discussions with titleholders indicated that there may be a desire to retain the section 6(5) condition that the land must only be used for Aboriginal cultural and burial purposes. Accordingly, this paper focuses primarily on reviewing the restriction on the transfer of land in section 7. However, it also includes options for removing the requirement under section 6(5), to ensure stakeholders are aware of all options for reforming the Act and enable fully informed decision-making.

Accordingly, and in line with the Victorian Government's commitment to self-determination, the Act can be amended to remove both restrictions, one restriction, or neither. Stakeholders can also decide not to do anything with respect to the Act. The section below sets out all the different options in more detail.

4. Options for reform

Important points to note before considering the options

1) Regulation of land by other legislation

It is important to note at the outset that should the relevant stakeholders wish to remove both the use restriction and the transfer restriction, this will only change the way the land is regulated under the Act. However, the land is also regulated and protected under other legislation, as noted above. Therefore, although it is possible to remove the use restriction, and lift the requirement for the land to only be used for Aboriginal cultural and burial purposes, the use of the land for other purposes may continue to be impacted by other legislation which governs it. These other Acts, and their impact on the cemeteries, are not the subject of the current review.

This is described below in Table 2.

Table 2. Legislative and statutory protections over the Cemetery titles

	Coranderrk Mission Cemetery	Ebenezer Mission Cemetery	Ramahyuck Mission Cemetery
<i>Aboriginal Heritage Act 2006 (Vic)</i>	Yes	Yes	Yes
<i>Heritage Act 2017 (Vic)</i>	Yes	Yes	Yes
<i>Local Planning Scheme Heritage overlay</i>	Yes	Yes	Yes

2) Impact of keeping use restriction on market value

It is also important to note that if organisations chose to remove only the transfer restriction, but keep in place the requirement relating to use, this would mean that any future transfer or sale of the land would take place subject to the use restriction remaining on the title. This may affect the ability to sell the land, the sale price and the market value.

Option 1 – Amend the Act to remove one or both restrictions for all three cemeteries

Removal of both restrictions

This would involve amending the Act to repeal both sections 6(5) and 7, with effect from a specified date. This would then allow Wurundjeri, Goolum Goolum and GEGAC to sell, subdivide, lease, or otherwise dispose of their respective cemetery titles from that date. It would also lift the restriction on the use of the land for Aboriginal cultural and burial purposes only. However, other heritage protections applying to the land under other legislative schemes would remain, which may restrict the land's use.

Because the requirement relating to the use of the land for Aboriginal cultural and burial purposes is restricted on the title as well as under the Act, this option would also require some technical amendments to allow the Registrar of Titles to amend the titles to remove the restriction.

Removal of the transfer restriction only

Alternatively, the Act could be amended to simply repeal section 7, again with effect from a specified date. This would then allow the organisations above all of the rights above (sale, transfer, subdivision etc), but would retain the use restriction, which is attached to the title. This would mean that any sale or transfer of the land would need to take effect with that restriction remaining on it. This may affect the sale price or market value of the land.

However, the benefit of retaining the restriction on use would mean that the sites would be protected as cemeteries under the Act, as well as the additional protections under other legislation and statutes, as discussed in Chapter 3 and in Table 2 on page 15 of this paper. Also, changes to the titles would not be required.

Risks

An issue with this option is that this would apply to all three cemeteries, so if one titleholder wanted the restriction over the transfer of land to remain in place, this option would not meet the needs of all three titleholders. It would mean that all three titleholders would need to agree on a single approach, and that input from other key stakeholders such as BGLC and GLaWAC would need to align with these priorities.

Option 2 – Amend the Act to remove one or both restrictions for only specific cemeteries, as requested by titleholders

This option is essentially the same as option 1, but is more flexible, as it would allow the removal of the transfer restriction for certain titles, or the removal of the use restriction for certain titles, or a combination of these, depending on what each individual titleholder prefers. This would mean that, for example, if one of the three titleholders did not want to remove the restriction on the transfer of land, then the Act could be amended to refer to only the other two titleholders being allowed to transfer their land. Similarly, the third titleholder may wish to remove the restriction on use only, but leave the restriction on transfer.

Risks

If this option is chosen and specific titleholder/s prefer to retain one or both restrictions, then the Act would be unchanged for those titleholder/s, to the extent they chose to adopt one or both restrictions.

If the same titleholder/s decide at a later point that they wish to change their decision, the Act would need to be reviewed again, which is a lengthy process. Further, there is a risk that the government of the day may not wish to review the Act again for some time. Currently there is a commitment from the current government to review this Act, which cannot be guaranteed if there are changes to the Victorian government at any future State election.

However, if the titleholder/s are certain that they would prefer one or both restrictions to remain for their particular title, this risk is up to each titleholder to assess for their own organisation and AV will fully support each titleholder in their right to self-determination.

Option 3 – Enact new legislation which removes the use restriction on the title, and repeals the current Act to remove the transfer restriction

This is the most streamlined option if both restrictions are sought to be removed. This option would see new legislation being created, which would include a provision to remove the use restriction, and a further provision to repeal the Act entirely. Because the use restriction is also on the title, it would also need to include technical provisions allowing the Registrar of Titles to remove the use restriction on the title.

As noted throughout this paper, the use restriction is on the title of the lands. This means that, even if the Act was repealed, the use restriction would still be on the titles. So, if there is a desire to remove the use restriction too, enacting new legislation which provides for this, and gives the Registrar the power to change the titles to reflect it, will be required.

The new legislation could then also repeal the entire Act, because the transfer restriction in section 7 is the only remaining clause in the Act which currently has an active impact on the way the land is managed. In other words, repealing the rest of the Act will have no practical effect on the titles, apart from in relation to removing the transfer restriction.

It should be noted again that if both restrictions were sought to be removed through this option, all three cemeteries would remain governed by other legislation (as discussed in Chapter 3 and Table 2 above), which may mean that the use of the land might continue to be impacted through other laws.

New legislation could also accommodate the individual wishes of each organisation and be tailored respectively, as with Option 2 above.

Risks

The main risk with passing new legislation (and also amending legislation) is that parliament may choose not to pass it. This risk is present with all legislative processes, but AV will work with stakeholders and Ministers to ensure that the strongest case possible is put forward for parliament to consider. An approach to managing this risk includes consulting with Ministers and other government departments ahead of parliament to bolster support and buy-in for the legislative process. If the new legislation doesn't pass, the current Act will remain in place.

Option 4 – Remove only the transfer restriction by repealing the current Act entirely, but leave the use restriction (which will remain on the title)

This option would suit a desire to only remove the transfer restriction, but leave the use restriction on the titles. This would apply to all three cemetery titles.

Repealing the entire Act would remove the transfer restriction, but leave in place the use restriction, which would remain on the titles. As noted above, this would mean that any sale or transfer of the land would take place subject to that restriction remaining on the titles, which may impact on the sale price or market value.

As noted elsewhere, all three cemeteries would remain protected under the legislation shown in Table 2 at the start of this chapter.

Risks

Similar to Option 1, a straight repeal of the entire Act, without any new legislation, would affect all three cemeteries. So, if one titleholder wanted to keep both the restrictions in place, this option would not meet the needs of all three titleholders. Moreover, there would no longer be an Act applying specifically to these three cemeteries, which might not be desirable given the historic and cultural significance of these Aboriginal burial sites.

Option 5 – Amend the Act to allow the Governor in Council (GIC) to remove one or both restrictions

As noted above, the Act gave the GIC the powers to make the original Crown grants, subject to the current restrictions, to the relevant Aboriginal organisations. This option involves changing the restrictions by changing the powers given to the GIC in relation to the land under the Act. It can be carried out in two separate ways:

- 1) amend the Act to give the GIC the power to amend or revoke one or both restrictions; or
- 2) amend the Act to give the GIC the power to amend or revoke the use restriction only, and then repeal section 7 (the transfer restriction).

As with Option 2, the amendments could be tailored according to the individual wishes of the different titleholders.

As with all the options, all three cemeteries would remain protected under the legislation shown in Table 2 at the start of this chapter.

However, under this option the Act could remain in place, which is how this option differs from Option 4.

Risks

The main risk with this option is that it puts the ultimate decision about whether to remove one or both restrictions in the hands of the GIC, after it passes through parliament. Ultimately, it is

aimed at changing the GIC's powers to give it more options in relation to the land, rather than removing the restrictions themselves. However, as noted above, the GIC usually acts on the advice of the Minister, who has indicated her support for the Act's review.

Option 6 – Amend the Act to allow the titleholders to surrender their titles back to the Crown for them to be re-issued without either of the restrictions

This option might be suitable if the preference is for the titleholders to themselves determine when to remove the restrictions. This option would involve amending the Act to allow the titleholders to surrender their respective ownership of each place to the Crown (which could occur whenever they chose), and then allow the Crown to reissue the grants of land under the *Land Act 1958* (Vic), as freehold title without the restrictions.

This process can attract a fee, because Victorian Government agencies must not grant any land for a price which is less than current market value as determined by the Valuer-General Victoria. This means that the titles would have to be valued, and if the land is higher in value than when the titles were originally granted in 1991, the titleholders may be liable to pay the difference in exchange for the fresh Crown grants. An alternate approach would be to include an exemption in the amended Act, although relevant Ministerial approvals would first need to be obtained.

Risks

This option may not be desirable for a number of reasons, most notably because it would require Wurundjeri, Goolum Goolum and GEGAC to surrender their titles back to the Crown so that the titles can be reissued by the GIC without the restrictions. The legislation cannot direct the Crown to re-issue the titles – rather, it would be at the GIC's discretion.

The process of surrender and re-issue may also take some time, during which the Crown would technically own the titles to the cemeteries. Further, the inter-departmental liaison and exemptions required in relation to seeking to avoid payment of any fees may cause further delays. There is a risk that if the fee exemption is not granted, the organisations may owe money to the Valuer-General.

Option 7 – Do nothing

This option would see no change in the legislation and would be a continuation of current arrangements.

Risks

If this option was chosen, the restrictions on the transfer of land would remain in place, so no titleholders would be able to transfer their land to any other organisation. The use restriction would also remain in place.

This option would equally apply to all titleholders, meaning that the individual aspirations of the titleholders may not be realised. For example, if one of the titleholders wished to transfer but the other two didn't, this option would not allow for the first titleholder's self-determination to be fulfilled. There is also a risk that the Victorian Government might not agree to review the Act again for some time.

5. Discussion questions

These questions have been included to prompt discussions that may support your organisation's submission or response to the review of the Act. You are not obligated to respond to these questions, but they are simply offered as a prompt for discussion. AV welcomes all feedback, comments, and questions that may arise in response.

- How does your community use and access the land currently?
 - Do you want to be able to sell or transfer the land?
 - Do you want to be able to use the land for other purposes?
- In what ways has the Act inhibited or blocked aspirations or works planned for the land?
- In what ways has the Act protected the land?
 - If the Act was repealed, should this land be managed in another way, or at all?
 - Should the Victorian Government continue to have a role?
- What are your aspirations for the land – what does the future look like?
- Do any of the proposed options suit your aspirations for the land, or is there another way forward?
- Is there anyone else who should have a say in this review?
- Is there any general feedback you have on this process?

Please send any written responses or submissions to aboriginalaffairs@dpc.vic.gov.au by 13 November 2020.