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INTRODUCTION

About the review process

On 22 June 2015 the Minister for Planning, the Hon. Richard Wynne MP, released Review of the Heritage Act 1995 Discussion Paper as the first step in reviewing the 20-year-old Heritage Act 1995. The discussion paper marked the beginning of a two-month consultation period in which Heritage Victoria delivered two Melbourne workshops, held five regional forums (in Warrnambool, Traralgon, Ballarat, Bendigo and Wangaratta) and met with more than 50 stakeholder groups.

Public consultation on the review of the Heritage Act occurred between June and August 2015. Submissions were invited in response to the discussion paper by 30 August 2015. A survey was also available on the Department of Environment, Land, Water and Planning (DELWP) website to allow for input into the review of the Act without having to make a submission.

Heritage Victoria thanks all those who have contributed their time and expertise to the review process to date.

About this summary of submissions

This document summarises the input to the review process. Heritage Victoria received 115 submissions and 12 responses to the online survey. Of the submissions, 28 were from local governments, 40 from individuals, 16 from community organisations and 31 from other organisations including peak bodies, professional organisations, heritage consultancies and state government corporations and authorities.

Where the respondent agreed to it doing so, Heritage Victoria has made submissions available online, at http://www.dtpli.vic.gov.au/heritage/about-heritage-in-victoria/heritage-act-review-2015/submissions

This summary does not evaluate the merits of any of the submissions or alternative proposals. Noting a submission topic or alternative proposal does not mean that Heritage Victoria supports the topic or alternative proposal. It will evaluate all responses and, where appropriate, incorporate them in the final proposed changes to the Heritage Act. Many of the other ideas submitted will continue to inform the development of government policy.
The table below shows the four labels on each doughnut chart and explains what they mean.

<table>
<thead>
<tr>
<th>Label</th>
<th>Meaning the proportion of submissions that...</th>
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<tbody>
<tr>
<td>Full support</td>
<td>offered unqualified support for the proposal</td>
</tr>
<tr>
<td>In-principle support</td>
<td>offered in-principle support for the proposal, including where the respondent attached conditions to their support or made comments that qualified their support</td>
</tr>
<tr>
<td>Extent of support not stated / alternative proposal</td>
<td>did not state whether they supported the proposal or not, some of which offered alternatives to the proposal</td>
</tr>
<tr>
<td>No support in full or part</td>
<td>stated they did not support the whole proposal, or part of it</td>
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Of the total number of responses made to individual proposals in the entire discussion paper, 77.5% of responses can be categorised as Full support or In-principle support.

It is clear from the consultations, submissions and responses that there is strong support for the proposed changes to the Heritage Act explained in the discussion paper. The number of submissions, the comments and the alternative proposals demonstrate that Victorians are well-informed and engaged with their cultural heritage.
1. IMPROVING HERITAGE REGISTRATION PROCESSES

The discussion paper contained nine proposals to improve heritage registration processes. There was strong support for proposals to reduce the regulatory burden by simplifying registration processes and providing certainty and clarity to users of the Heritage Act. The submissions supported measures to strengthen heritage protection and improve the transparency of processes. Some concerns were raised about allowing for one-member Heritage Council committees and enabling the removal of items from the Victorian Heritage Inventory.

Figure 2: Chinese grave, Pennyweight Flat Cemetery, Castlemaine. Image Allison Pouliott
1.1 Streamline heritage registration processes

There are currently four separate registration processes under the Heritage Act 1995. The discussion paper proposed to provide a single heritage registration process that involves:

a) a recommendation from the Executive Director of Heritage Victoria to the Heritage Council

b) public submissions invited on the recommendation, with submitters invited to be heard by the Heritage Council before it makes a decision

c) a Heritage Council hearing, if required, and a decision about whether to include the place or object in the Victorian Heritage Register

d) timeframes to be applied to steps in the registration process.

Submissions that addressed this proposal: 38

Most submissions supported the proposal. There were comments that the proposal would result in simpler and more transparent practices.

Some respondents made comments about the importance of retaining the integrity of objective decision-making by the Heritage Council.

Figure 3: Heatherlie (Mount Difficult) Quarry, Grampians National Park
1.2. Reform the heritage nomination process

Heritage Victoria receives many nominations for places and objects that are unlikely to be of sufficient heritage significance to warrant inclusion in the register. The discussion paper proposed that:

a) the Executive Director have discretion to reject a nomination for which there is no reasonable case for inclusion in the register;
b) a nomination lapse after 30 days if the nominator does not provide any requested additional information;
c) the nominator be able to appeal against a decision of the Executive Director to reject a nomination;
d) a nomination appeal be heard by a committee of the Heritage Council consisting of one or more members;
e) places and objects cannot be renominated for five years if the nomination has been rejected or if the Heritage Council determines not to register a place or object; an exception will apply if significant new information is presented that was not available at the time the decision was made;
f) timeframes apply to all steps in the nomination process.

Submissions that addressed this proposal: 43

Most respondents supported the proposal. They supported point a)—the Executive Director’s discretion to reject a nomination without a reasonable case for inclusion in the register—for its potential to reduce ambit claims for heritage listings and to provide greater certainty for owners of heritage places. Many local governments also said they want to be advised of rejected nominations.

Some submissions supported the proposal as long as the new processes are transparent.

Many respondents also commented on the need to allow a nominator to ask for additional time if the nominator cannot provide any requested additional information within the 30 days.

Some respondents did not support point d)—nomination appeals heard by a committee with one or more members—because of concerns about having one-member committees. This point had been put forward to provide the Heritage Council with more flexibility when addressing minor matters. The Heritage Council’s submission supported the point but stated that it would be used sparingly.

Some submissions addressed point e)—the changed renomination period—with all comments based on the need for the period to be variable if significant new information became available.
1.3. Develop a consistent approach to heritage registrations

There are inconsistencies in the Heritage Act about the registration process for shipwrecks. The discussion paper proposed to:

a) provide a single process for registering places, objects, shipwrecks and protected zones

b) provide appropriate exemptions from notice for the registration of shipwrecks and protected zones

c) expand the existing interim protection order provisions to cover shipwrecks.

Submissions that addressed this proposal: 23

Most submissions supported these proposals. Some respondents misunderstood the intent of this proposal about historic shipwrecks and believed that the change would remove the existing 75 year protection provisions.

While shipwreck protection will be more closely aligned with that of places and objects under the Heritage Act, it is proposed that the blanket protection provisions for shipwrecks 75 years or older will remain.

There was some criticism of the proposal to apply interim protection order mechanisms to shipwrecks, due to the technicalities of serving notice. It was submitted that the existing provisional declaration mechanisms be retained.

Some respondents also referred to the UNESCO Convention on the Protection of the Underwater Cultural Heritage and submitted that the process under the Heritage Act be consistent with the convention, and not limit the Commonwealth’s capacity to ratify the convention.

Figure 5: J-7 submarine, Hampton
1.4. Provide for heritage area designation (cultural landscapes and urban precincts)

The Heritage Act does not adequately provide for the recognition of large-scale heritage areas and cultural landscapes. The discussion paper proposed that:

a) the term heritage area be defined

b) the Heritage Council develop, revise and publish from time to time the criteria it will use when considering if a heritage area is of state significance

c) submissions be invited on an accepted nomination for a heritage area

d) the Executive Director consider submissions and make a recommendation to the Heritage Council

e) the Heritage Council decide whether or not to designate a heritage area as being of state significance

f) the decision of the Heritage Council be referred to the relevant planning authority or authorities to consider an amendment to the planning scheme.

Submissions that addressed this proposal: 50

While most respondents supported the recognition of cultural landscapes and urban precincts, many questioned the merit of a landscape designation if it does not result in any protection under the Heritage Act.

Many local governments also submitted that the proposal could compromise their implementation of local heritage policy and be out of line with, and/or duplicate, requirements of the planning scheme and existing controls.

Some submissions stated that heritage landscapes and urban precincts have already been included in the Victorian Heritage Register and that no further change is required to the Heritage Act. Alternative proposals included adopting the UNESCO Recommendation on Historic Urban Landscapes which provides a framework to recognise heritage values.

Some respondents objected to the proposal on the basis that it would increase the regulatory burden for property owners and regulators.
1.5. Ensure the Heritage Inventory is effective and transparent

At present, the Heritage Act provides little rigour about the operation of the Heritage Inventory. Sites cannot be removed from the inventory and every known site older than 50 years, regardless of its heritage value, is included. The discussion paper proposed to:

a) introduce a significance threshold for archaeological sites or change the age threshold for automatic inclusion of archaeological sites in the inventory from 50 to 75 years (consistent with the historic shipwreck age threshold)

b) provide for archaeological sites and shipwrecks which are less than 75 years old but of cultural heritage significance to be included in the inventory at the direction of the Heritage Council

c) enable the Executive Director to remove from the inventory archaeological sites, regardless of age, that are considered to be of low or no heritage significance

d) require notification to the owner and the relevant local government when an archaeological site is included or removed from the inventory

e) only require owners to obtain consent for works and activities affecting archaeological sites in the inventory.

The proposal aims to ensure that these blanket protection provisions apply to sites with sufficient archaeological value to warrant management under the Act. It also aligns the automatic protection provisions of terrestrial archaeological sites with those of shipwrecks.

Point b)—including archaeological sites less than 75 years old but of cultural heritage significance in the Heritage Inventory—means that sites that are below the age threshold but have archaeological value (such as World War Two sites) can still be managed within the Heritage Inventory provisions. Alternatively, archaeological sites that are determined to have state cultural heritage significance can be included in the Heritage Register regardless of age.

Submissions that addressed this proposal: 35

Some submissions did not support point c)—that the Executive Director have the power to remove particular archaeological sites from the Heritage Inventory.

Some respondents also objected to point a)—to change the age threshold for the protection of archaeological sites from 50 to 75 years.

Conditional support for the proposal included submissions stating that any sites removed from the Heritage Inventory still be retained in a database, that the significance threshold be tailored for historical archaeological sites that fall below the state threshold, and that the relevant local government be advised of any recommendation to include or remove a site from the inventory. Some respondents also advocated further archaeological survey work to ensure knowledge about the state’s archaeology is comprehensive.
1.6. Provide for the protection of objects that contribute to the significance of a place

Currently, objects and collections can only be included in the register in their own right. The discussion paper proposed to provide for specified movable objects associated with a place to be registered as part of the place, where they contribute to its heritage significance.

Submissions that addressed this proposal: 31

There was strong support for including objects in the registration of a heritage place where the objects are integral to the significance of the place.

Respondents advised that this proposal is consistent with the *Australia ICOMOS Charter for Places of Cultural Significance, The Burra Charter, 2013*. The Heritage Council submitted that the wording of any amendment must be clear to ensure that such objects are not required to individually meet the threshold for state cultural heritage significance.

Some submissions noted that there should be flexibility to enable the movement of registered objects, and that objects associated with a state-significant object should also be eligible for registration.

The one objection to this proposal was on the basis of increased regulatory burden and potential reductions in productivity if objects were to include obsolete machinery and equipment.

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Figure 7: Marianne Gibson Quilt, Wangaratta
1.7. Specify a significance threshold for the Heritage Register

The Heritage Act does not specifically identify a level of significance that a place or object must reach to warrant inclusion in the register. The discussion paper proposed to define a state-level threshold, to provide clarity about the types of places and objects that should be included in the register.

This proposal aims to codify the existing practice of the Heritage Council to include places and objects in the register where they meet the council’s assessment criteria at the state level.

**Submissions that addressed this proposal: 32**

The majority of respondents supported this proposal, although some believe that it would entail legislating a method for determining state heritage significance and cautioned against doing so.

Some respondents were unaware of the established practice of only registering places and objects of state significance and objected (or provided an alternative) to the proposal on the basis that locally significant heritage places would no longer be eligible for inclusion in the register.

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Figure 8: Royal Exhibition Building and Carlton Gardens, Melbourne
1.8. Streamline the amendment or removal of a place or object from the Heritage Register

The Heritage Act currently allows a place or object to be amended or removed from the register in the same manner as it was registered. The discussion paper proposed a streamlined process for the Heritage Council—on the recommendation of the Executive Director—to:

a) remove a registration as part of a permit issued under the Act for the total demolition of a place, once that permit has been executed and all conditions satisfied

b) amend a registration in accordance with a subdivision permit issued for the place once that permit has been executed and all conditions satisfied, and where (1) no heritage fabric remains within the land proposed to be removed from the register and (2) development of the land proposed to be removed from the register is unlikely to negatively affect the heritage values of the remaining registered place

c) remove a registration where a place or object has been totally destroyed—accidentally or by a natural event—and where the identified heritage values of the lost place can no longer be appreciated.

Submissions that addressed this proposal: 36

Most respondents supported the need to expedite the removal of a registered place or object if it has been subjected to a thorough and transparent heritage permit process resulting in a loss of state heritage significance.

Most submissions also supported removing from the register a place or object that has been destroyed by accident or by nature, if no significant heritage fabric remains.

Some submissions supported the proposal in principle, but raised concerns about the proposal inadvertently creating opportunities for deliberate neglect that could result in removal from the register.

Some submissions also raised the importance of advising the relevant local government of a decision to remove a place from the register, as there may still be remaining fabric that could be of local significance and should be considered for heritage overlay controls.

Respondents who objected to the proposal were primarily concerned about allowing a registration to be removed after unauthorised demolition, or after destruction that a proponent has conveyed as accidental but which has in fact been engineered.

Some respondents thought that destruction does not necessarily remove heritage values and that decisions to remove places and objects from the register on this basis may negate future opportunities for reinstatement and renewal.
1.9. Clarify exemptions in new registrations

Currently, permit exemptions for works or activities to a place or object can be granted at the time of registration. The discussion paper proposed to only allow permit exemptions that occur, as part of a registration process, to be for activities or works that do not negatively affect the identified cultural heritage significance of a place or object.

Submissions that addressed this proposal: 28

The intent of this proposal is to ensure that permit exemptions issued under the Heritage Act be limited to works that have no negative impact on the cultural heritage significance of a place or object.

The proposal was strongly supported by most respondents, who emphasised the need for clear exemptions that enable conservation and works that do not adversely affect registered places and objects.

Some respondents who did not support this proposal were unaware of the existing provisions for permit exemptions under the Act.
2. SIMPLIFYING HERITAGE PERMIT AND CONSENT PROCESSES

The discussion paper contained 15 proposals to simplify heritage permit and consent processes. Submissions strongly supported proposals that would allow for greater input into heritage permit matters and improve the fairness and transparency of decision-making. Some submissions advocated for third-party appeal rights and some raised concerns about community organisations having to pay permit appeal and amendments fees.


### 2.1 Provide a greater role for local governments in permit processes

The capacity for local governments to be involved in the permit process is currently limited. The discussion paper proposed to:

1. **a)** require the Executive Director of Heritage Victoria to provide a copy of a permit application and any further information requested of the applicant to the relevant local government within a prescribed time
2. **b)** provide an opportunity for the relevant local government to comment on the application
3. **c)** provide for the permit clock to be stopped when the permit information is sent to the relevant local government and reactivated when it receives comments or when the prescribed time expires
4. **d)** require that the Executive Director consider comments made by the relevant local government when determining a permit application
5. **e)** allow the relevant local government to be heard in any permit appeal hearing.

**Submissions that addressed this proposal: 62**

There was wide-ranging support for these proposals, which aim to ensure that decisions by the Executive Director and Heritage Council are cognisant of local heritage policies.

Some support was qualified, including submissions that proposed that local governments also be required to develop their own heritage strategies and lodge these with the Executive Director. Some submissions also argued that the permit clock should not be stopped for local government responses, to ensure that applicants do not experience unnecessary delays.

Some respondents stated a preference for a one-stop-shop for all heritage permits, whereby the permit application would be made to the responsible authority and the Executive Director would be a determining referral authority. Several submissions also argued for third-party appeal rights on permit decisions made by the Executive Director.
2.2 Provide for a one-stop-shop for subdivision applications

An application for the subdivision of a place included in the register requires a permit from both Heritage Victoria and the relevant planning authority. The discussion paper proposed to make the Executive Director a determining referral authority under the Planning and Environment Act 1987 for subdivision applications for places in the register.

Subdivision of registered land under the Heritage Act requires a heritage permit, but most subdivisions also require a permit for use and development under section 47 of the Planning and Environment Act 1987. These two distinct permit processes operate independently and can result in inconsistent approvals being granted. This proposal aims to ensure consistent decision-making and would still provide for heritage issues to be a determining consideration in any subdivision application for a registered place.

Submissions that addressed this proposal: 43

The majority of respondents supported this proposal. However, the current dual process does not seem to be well-understood as some respondents expressed concerns that the proposal was being driven by cost-shifting to local governments. Other submissions that did not support the proposal were concerned that the process would be less transparent than the current heritage permit process.

Comments in support of the proposal suggested that it would be a good pilot for testing the one-stop-shop model for heritage permits.

2.3 Remove undue financial hardship considerations in permit determinations

The undue financial hardship provision in respect to permit determinations is inconsistent with other legislation and problematic in its application. The financial circumstances of an owner of a heritage place can improve over time or the owner can on-sell a place with the development permit, both of which would render the consideration of undue financial hardship redundant.

The discussion paper proposed to remove the undue financial hardship provision in permit decisions. However, it proposed to retain the provision for consideration of reasonable or economic use.

Submissions that addressed this proposal: 42

Submissions were strongly in favour of removing the undue financial hardship provision.

Many respondents asked that guidance be provided about the retention of the existing reasonable or economic use provision. One respondent proposed that any use of these provisions in an application should be accompanied by appropriate expert advice.

The single objection to the proposal was on the basis that people should be able to expect reasonable outcomes from their property ownership if they are in financial difficulty, especially as there are currently no public funds available to private owners to offset the public benefits of heritage listing.
2.4 Ensure a clear role for the National Trust in permit matters

The National Trust has a long-standing and important role in advocating for the protection and management of Victoria’s heritage. The Heritage Act currently requires the Heritage Council to conduct a hearing into a permit appeal if a hearing is requested by the National Trust. However, the National Trust has no ability to lodge an appeal.

The discussion paper proposed that the National Trust be heard in any permit appeal activated by the owner or applicant where the National Trust lodged a submission during advertising of the permit application.

Submissions that addressed this proposal: 30

Individuals and community organisations strongly supported the National Trust’s role in statutory permit matters under the Heritage Act.

This support was not as strong from some member organisations and heritage consultancies. These submissions stated that there are a range of organisations that have a similar capacity to the National Trust to speak for Victoria’s heritage and which should be given similar rights.

Some submissions also raised the issue of other parties having appeal rights and local governments consistently said that the same rights proposed for the National Trust should apply to responsible authorities. The Heritage Council’s submission confirmed that its current practice is to allow parties to be heard in support of their written submission where the Heritage Council must determine an appeal. On this basis, the Heritage Council did not believe that individual organisations should be identified.
2.5 Introduce appeal rights for archaeological consents

The Heritage Act does not provide an opportunity for an owner to appeal against a decision by the Executive Director about archaeological consents. The discussion paper proposed to provide applicants with a right to appeal to the Heritage Council on a decision by the Executive Director to refuse to issue a consent, or to put a condition on a consent.

Submissions that addressed this proposal: 26

Submissions strongly supported this proposal, viewing it as consistent with other provisions of the Act. Some respondents also sought third-party appeal rights as part of their submission on this proposal. The need for Heritage Inventory threshold guidelines was also raised in relation to this proposal.

2.6. Clarify issues arising from registered places in multiple ownership

There are issues about permits when a registered place (such as a block of flats) has multiple owners. The discussion paper argued that it is necessary to clarify that the owner of a registered place means the owner of the portion of the place for which the permit is needed, and that in some circumstances this may be an owners corporation.

Submissions that addressed this proposal: 21

Respondents supported this proposal strongly. Some offered conditional support on the basis that the principles of natural justice should require potentially affected parties to be notified of any significant change to a registered place or object.
2.7. Remove the capacity for the Heritage Council to determine permit applications

Currently, the Heritage Council can direct the Executive Director to refuse to issue a permit, or to issue a permit with specified conditions, for certain classes of permit applications. This power has never been exercised and is problematic for a range of reasons. Consequently, the discussion paper proposed to remove this capacity.

Submissions that addressed this proposal: 20

This proposal aims to remove redundant and unused provisions of the Heritage Act. In the 20 years since the Act was enacted, the Heritage Council has never declared classes of permit applications; its submission confirmed it has no need to do so. The single objection was about the Executive Director having the authority to determine a permit.

2.8. Prescribe information to accompany a permit or consent application and implement timeframes for further information requests

For the Executive Director to be able to assess a permit or consent application, it is often necessary to ask the applicant for additional information. On average, 40% of permits are subject to numerous clock stoppages because the applicant did not provide sufficient information. Prescribing the minimum information required to accompany a permit application should reduce this percentage.

To ensure that applications are not subject to numerous permit clock stoppages from requests for further information, timeframes need to be applied for when the clock is stopped. The discussion paper proposed to:

a) provide for the Regulations to prescribe information that must accompany a permit or consent application

b) impose timeframes concerning when the Executive Director can make requests for further information

c) provide for a permit application to lapse where the applicant does not provide further information within a specified time.

Submissions that addressed this proposal: 33

The proposal was strongly supported. However, some respondents considered that with respect to point c)—a permit application lapsing if the applicant does not provide further information within a specified time—that the specified time would need to be sufficient, especially for a complex permit where additional information could take quite some time to compile.
2.9. Provide for amendment of permit applications and permits

The Heritage Act provides for minor amendments to permit applications. The discussion paper argued for the need to make this process more transparent and to prescribe timelines.

Submissions that addressed this proposal: 25

Respondents generally supported this proposal. Some submissions provided in-principle support as long as procedures were in place to ensure fairness to all parties, and that permit conditions allowed for the approval of changes that arise through detailed documentation stages. Other submissions proposed that the Planning and Environment Act 1987 be viewed as an appropriate model for amending permit applications and permits.

2.10. Ensure the Victorian Civil and Administrative Tribunal has appropriate expertise to consider referred matters

The Heritage Act allows for the Minister for Planning to call in and refer a permit to the Victorian Civil and Administrative Tribunal (VCAT) for determination in certain circumstances. The discussion paper proposed in such circumstances to require any VCAT committee to consist of a member or members with in-depth and up-to-date knowledge of heritage legislation and practice.

Submissions that addressed this proposal: 30

The majority of respondents strongly supported VCAT having the appropriate expertise to determine any heritage matters referred to it. Objections to this proposal were on the basis that VCAT should not have a role under the Heritage Act, not that it should not have relevant expertise.

Figure 13: Marmalake/Murtoa Grain Store, Murtoa
2.11. Provide for consistent decision-making on review

The Heritage Act is inconsistent about what matters the Heritage Council, the Minister for Planning and VCAT can consider when reviewing a decision by the Executive Director about a permit. The discussion paper proposed to:

a) require all review bodies to consider the matters set down in section 73 of the Act—matters to be considered in determining applications—when reviewing a permit decision

b) provide for all review bodies to have the same decision-making powers as the Executive Director when reviewing a permit decision.

Submissions that addressed this proposal: 22

The majority of respondents supported this proposal, recognising that the current inconsistencies are inappropriate and could lead to poor heritage outcomes.

The Heritage Council submitted that precise drafting is required to ensure that its role as an expert body is not diminished. An alternative proposal from the Royal Historical Society suggested that the minister’s call-in powers be replaced by the ability of the minister to make a submission to the Heritage Council on matters of state significance, and for that submission to be considered in the decision of the Heritage Council.

2.12. Clarify permit exemptions

There is currently no description of the types of works or activities that can be exempted from a permit. The discussion paper proposed to only allow exemptions that have no detrimental impact on the assessed cultural heritage values of the place or object, as identified by the Heritage Council.

Submissions that addressed this proposal: 29

Similar to proposal 1.9 ‘Clarify exemptions in new registrations’, this proposal aims to ensure that permit exemptions issued after a place or object has been registered be limited to works that have no negative impact on the cultural heritage significance of the place or object.

The many submissions categorised as Extent of support not stated / alternative proposal appears to reflect a lack of understanding of current permit exemption practices, but the majority of submissions supported the proposal on the basis that it would reduce red tape.
2.13. Clarify liturgical permit exemptions

The Heritage Act provides permit exemptions for alterations to churches and church precincts for liturgical purposes. The discussion paper proposed to provide for all places of active religious worship to access the liturgical exemptions.

Submissions that addressed this proposal: 25
While respondents generally supported this proposal, a small number did not support religious organisations having a special exemption or sought increased accountability for this exemption.

2.14. Introduce a fee for lodging a permit appeal

While the costs of processing a permit appeal are high, no fee is currently payable to lodge an appeal. The discussion paper proposed to:

a) provide for the introduction of a fee for permit appeal applications
b) require payment of the fee before the start of the 60-day time limit for appeal determination
c) include fee waiver provisions in certain circumstances.

Submissions that addressed this proposal: 35
Some respondents submitted that a fee should not be applied or should be waived for community organisations and individuals.

Some submissions proposed that any fee should be aligned to existing regimes, for example those of VCAT or under the Planning and Environment Act 1987. Other submissions suggested that a fee should be commensurate with the value of the works proposed.
2.15. Introduce a fee for amending permits

A substantial amount of Heritage Victoria’s work relates to amending permits. To recognise the costs of this work, the discussion paper proposed that a fee be charged for applications to amend a permit.

**Submissions that addressed this proposal: 26**

Respondents made similar comments about this proposal as they did about proposal 2.14 ‘Introduce a fee for lodging a permit appeal’.

There were a few objections to private individuals incurring these costs and recommendations that fees be aligned with the value of the project.
3. STRENGTHEN HERITAGE COMPLIANCE AND ENFORCEMENT MEASURES

The discussion paper contained four proposals to strengthen heritage compliance and enforcement measures. These proposals were strongly supported as appropriate ways to strengthen protection for places and objects included in the Victorian Heritage Register. Respondents also proposed other measures including stop-work and remediation orders. Some respondents raised concerns about the potential cost of complying with proposal 3.4 ‘Minimum standards of repair and maintenance’.
3.1 Increase maximum penalties for unauthorised works and infringements notices

Victoria’s maximum penalty for unauthorised works to heritage places or objects is lower than most other Australian jurisdictions. The discussion paper proposed to create a new infringement for failure to obtain a permit or exemption before undertaking works and to increase the maximum number of penalty units that can be imposed by infringement notices.

Submissions that addressed this proposal: 42

Every respondent supported increasing penalties, believing this to be essential to deter unauthorised works to registered places and objects. There was strong support for penalties under the Heritage Act to align more closely with other Australian jurisdictions and for penalties collected to be directed towards heritage conservation activities.
3.2 Consolidate and clarify offence provisions relating to archaeology and shipwrecks

There is currently duplication of offence provisions about archaeological sites and shipwrecks. The discussion paper proposed to:

a) provide for a single clear and consolidated system of offences for archaeological sites and shipwrecks, based on the shipwreck offence provisions

b) remove ambiguity about what constitutes an archaeological offence by removing the provision allowing items on or near the surface of the land to be removed without consent.

Submissions that addressed this proposal: 20

Submissions that addressed this proposal supported it as good practice. Some suggested that penalties collected should be directed towards heritage management.

3.3 Require heritage certificates to identify enforcement matters affecting a place or object

The Heritage Act provides for certificates to be issued stating whether a place or object is on the Heritage Register and whether there is a repair or Supreme Court order in place. The discussion paper raised the need for certificates to note other orders under part 8 of the Act and whether a court proceeding to remedy an offence under the Act had commenced.

Submissions that addressed this proposal: 18

All submissions that addressed this proposal supported strengthening the information in heritage certificates.
3.4 Minimum standards of repair and maintenance

Under the Heritage Act, owners of a registered place or object must not allow it to fall into disrepair or fail to maintain it to the extent that its conservation is threatened. However, there is no guidance about this requirement. The discussion paper proposed to empower the Heritage Council to issue directions for minimum standards of repair and maintenance. This would clarify for owners and managers of heritage places and objects their responsibilities under section 160 of the Act.

Submissions that addressed this proposal: 38

Submissions that supported this proposal were strongly in favour of establishing standards for maintaining heritage places and objects, and rigorously monitoring and enforcing these standards. Some submissions stated that the standards should not just be guidelines but should form part of the Heritage Act’s Regulations. Other submissions wanted to know if the standards would be place or object specific or would be one-size-fits-all. Some respondents supported the proposal for its potential ability to lessen instances of demolition by neglect.

Respondents that did not support the proposal were primarily concerned about the cost of maintaining heritage assets to a specified standard. Other submissions offering conditional support said the condition of a place or object at the time of registration should be considered when determining an appropriate maintenance standard.
4. OTHER PROPOSALS

The discussion paper made five other proposals to improve various aspects of the Heritage Act and its operations. Most submissions supported streamlining the Act and improving its transparency and procedures. Some respondents objected to VCAT’s existing role in the Act and therefore did not support any proposal that included VCAT. Also, several submissions did not support the prospect of one-member committees of the Heritage Council.

Figure 20: Excavation at Thomas Mill, Plenty Gorge Park
4.1 Consolidate archaeology and historic shipwreck provisions

The discussion paper proposed simplifying the Heritage Act by removing duplications in the archaeology and shipwrecks provisions by:

a) providing for a consistent approach to protecting and managing archaeological cultural heritage, whether land-based or maritime

b) providing for the protection of archaeological places and artefacts in a single section of the Act

c) locating all definitions in one section of the Act

d) retaining the Executive Director’s ability to make non-monetary awards but repealing the power to pay monetary rewards.

The aim of consolidating these provisions is to improve consistency and simplify processes, especially where similar processes are set out in different sections of the Act.

Submissions that addressed this proposal: 15

There was strong support for this proposal, the one exception being a submission that did not support repealing the Executive Director’s power to pay monetary rewards, believing that this should remain a possibility for major discoveries.

4.2 Provide for Victorian Civil and Administrative Tribunal to hear covenant disputes

Currently the Governor in Council is required to arbitrate disputes about releasing covenants where the owner, the Heritage Council or the National Trust cannot agree.

The discussion paper proposed to require VCAT to arbitrate covenant release disputes, rather than the Governor in Council, to be consistent with the Planning and Environment Act 1987.

While this provision of the Heritage Act has not been used since the Act was enacted 20 years ago, it is nonetheless problematic for the Governor in Council to arbitrate covenant disputes as a property owner cannot appeal directly to the Governor in Council. Amending the provision to allow for arbitration by VCAT is intended to provide a fair and accessible path for any person disputing a covenant release.

Submissions that addressed this proposal: 21

While most respondents supported this proposal, it appeared that some of those that objected to it did not fully understand it.

Respondents who did not support this proposal did so on the basis of VCAT having any function under the Heritage Act, not just a covenant release dispute function.
4.3 Improve the operation of the Heritage Fund

The Heritage Fund is maintained by the Heritage Council to support its operational costs, provide assistance for heritage conservation and management, and for other purposes.

The discussion paper proposed that the Heritage Council, rather than the Executive Director of Heritage Victoria, control all payments pertaining to the fund. It also proposed that penalties received under the Heritage Act be paid into the fund.

Submissions that addressed this proposal: 18

This proposal was strongly supported, including by the Heritage Council which views it as good practice.

Submissions that did not support the proposal were on the basis that it would increase the burden on the Heritage Council.

4.4 Clarify the constitution and role of Heritage Council registration and permit committees

The Heritage Council currently delegates its permit appeal and registration hearing functions to committees. The Heritage Act provides little guidance about how these committees should be constituted and how they should function. The discussion paper proposed that the Act include provisions similar to those in the Planning and Environment Act 1987 for planning panels by:

a) providing for one or more members to constitute a committee
b) clarifying the constitutional arrangements and the procedures that govern committees
c) consolidating provisions about hearing procedures.

Submissions that addressed this proposal: 17

Respondents supported increasing the transparency of committee arrangements and procedures. Some commented on the need to match the expertise of committee members with the matters they were considering.

As with proposal 1.2 ‘Reform the heritage nomination process’, several submissions did not support single-member committees.
4.5 Other changes

Other minor changes to the Heritage Act proposed in the discussion paper were:

a) amalgamating and revising definitions and ensuring their consistent use throughout the Act

b) requiring that the owner of a registered place or object must advise a prospective purchaser that the place or object is included in the register and including notification requirements for the purchaser under the Act

c) removing the requirement to notify the Executive Director of an intention to sell a registered place or object

d) clarifying the functions of the Executive Director, including to develop, revise and distribute policy, appropriate guidelines, forms and other material about:

   (1) nominations of places, objects and heritage areas
   (2) applications for permits and consents
   (3) assessment of permits and consents
   (4) criteria and thresholds for the inventory
   (5) reporting requirements under the Act

e) updating various provisions to allow for online access and availability.

Submissions that addressed this proposal: 26

The majority of submissions supported modernising the Heritage Act’s language, having consistent definitions and clarifying the Executive Director’s functions.

The many submissions in the Extent of support not stated / alternative proposal and No support in full or part categories related to the proposal to remove the requirement to notify the Executive Director of an intention to sell.

The Act’s intention-to-sell provision largely duplicates the requirement in section 52A for a person who has purchased a registered place or object to notify the Executive Director within 28 days of the purchase or acquisition. Also, an intention-to-sell notification is worthless if the sale or acquisition does not proceed. The section 52A requirement establishes that the place or object is in new ownership, allowing the Executive Director to update the records accordingly.
4.6. Other issues raised

Respondents also raised other issues that were not addressed in the discussion paper. These issues will be considered as part of the Heritage Act review process, although some may be more appropriately considered as future policy initiatives or through other mechanisms.

Respondents asked the review to consider:

- funding, incentives, offsets and compensation to counter the costs incurred by owners and managers of heritage-listed assets
- the need for Heritage Victoria to improve its communications with, and support of, its stakeholders
- broadening the scope and consultation processes of the Heritage Act review
- a requirement for regular condition audits of registered heritage places and objects
- developing a heritage at-risk register
- a requirement for detailed permit policies and conservation management plans at the time of including a place or object in the register
- developing guidelines about sympathetic additions to heritage places
- Heritage Victoria’s role with respect to local government and local heritage issues, including support for heritage advisers
- more closely aligning the Heritage Act and the Planning and Environment Act 1987
- delegating Heritage Act functions to local government
- issues about existing heritage data and databases
- increased resourcing of Heritage Victoria
- automatic registration of certain categories of heritage places (such as those built before 1850)
- including other types of heritage and heritage values in the register (such as intangible and ephemeral heritage, and natural heritage)
- other issues relating to the current functions of the Executive Director and the Heritage Council
- expanding interim protection orders to allow for the earlier protection of places and objects that have not yet been assessed for inclusion in the register but for which there is a prima facie case for inclusion
- alternative categories of Heritage Council membership
- concerns about procedures and practices enabled by current provisions of the Heritage Act and the Planning and Environment Act 1987
- automatic amendment to a planning scheme for a locally significant place following a decision by the Heritage Council not to include that place in the register
- a two-tiered permit process like VicSmart
- increasing the transparency of permit decisions
- enabling the Executive Director to endorse conservation management plans, to expedite permit decisions
- proposed amendments to sections 63, 64, 66, 68, 75 and 84
- clarifying when an archaeological assessment is required
- a requirement that operational needs be considered when assessing permits for commercial properties
- addressing the ambiguity about approving works documentation as part of a permit condition
- changing the order of issues to be considered under section 73 when determining permit applications
- a requirement to consider climate change issues when determining permits
- a requirement to protect places in the register from the impacts of works and development on adjacent places
- allowing serial nominations where the threshold for inclusion in the register is met by a group of items rather than by individual items
- a strategic review and update of the register to identify underrepresented place and object types
- reinstating the Maritime Heritage Council Committee as a statutory committee under the Heritage Act
- greater recognition of people who discover shipwrecks
- expanding the preamble to the Heritage Act to explain the Act’s purpose and benefit to the community
- issues about heritage data and constraints imposed by the Privacy and Data Protection Act 2014
- greater involvement by the community in registration, permit and consent processes (such as by recognising third-party appeal rights)
issues with ministerial call-in powers
more closely aligning the Heritage Act and the Aboriginal Heritage Act 2006, and considering the Aboriginal heritage values of places and objects in the register
retrospectively including objects in the register
developing a heritage strategy with principles for heritage conservation in Victoria (which could be incorporated into the Victorian Planning Provisions)
developing a whole-of-government approach to tourism and the role of heritage in tourism
using existing heritage consultant reports when developing statements of significance
transferring the Heritage Council’s nonregulatory functions (such as its communications and practice functions) to the government
better aligning the finances and functions of the Heritage Council
enabling the Executive Director to recommend part of a place for inclusion in the register
using negotiated conservation agreements with owners when including a place or object in the register
enabling the issue of notifications electronically
other ways to deal with vexatious nominations (such as mediation and certificates of immunity)
greater use of interim heritage controls for places that do not satisfy the Heritage Council’s assessment criteria
providing for the earlier involvement of local governments in the heritage assessment process.