

Heritage Act 2017



Background

- In 2015 the Minister for planning announced a review of the *Heritage Act 1995* and released *Review of the Heritage Act 1995 Discussion Paper*
- This resulted in a consultation process between June and August 2015 that included:
 - a mail-out of information to more than 5,000 stakeholders
 - public forums held in Melbourne, Ballarat, Bendigo, Traralgon, Wangaratta and Warrnambool
 - targeted meetings with more than 50 key stakeholders including government departments and agencies, industry and community organisations



Minister Wynne at Abbotsford Convent, June 2015

Background

- At the end of the consultation process over 120 submissions had been received that overwhelmingly supported the proposals cited in the *Discussion Paper* .
- *A Summary of submissions* was published from the DELWP website in early 2016.
- 8 November 2016: the Heritage Bill 2016 was introduced to the Legislative Assembly of the Victorian Parliament.
- 24 November 2016: the Bill was debated and passed in the Legislative Assembly.
- 9 March 2017: the Bill was passed by the Legislative Council without amendment.
- 15 March 2017: Bill received Royal Assent.
- *Heritage Act 2017* commenced operation on 1 November 2017

The Heritage Act

Much of the new Act remains unchanged.

- Continues to provide protection for historic heritage place and objects of State significance
- Does not manage places of local significance which are protected by Heritage Overlays in local planning schemes
- Creates the Victorian Heritage Register which lists and protects significant heritage places and objects
- Establishes the function of Executive Director
- Requires that works or activities that may impact a registered place or object require a permit or permit exemption from the Executive Director.
- Establishes the Heritage Council
- Provides for the Heritage Council to advise the Minister for Planning and promote public understanding of Victoria's cultural heritage
- Establishes the Heritage Inventory ('the Inventory') which is a listing of all known historic archaeological sites and relics in Victoria
- Protects shipwrecks in Victoria

General changes

- Appeals are reviews
- Notifications to the responsible authority are also the municipal council where the municipal council is not the responsible authority
- Relics are artefacts
- Shipwreck articles and the remains of ships are captured by the definitions of shipwreck and shipwreck artefact
- Shipwrecks and shipwreck artefacts are considered 'historic shipwrecks' and 'historic shipwreck artefacts' if they are 75 years or more and located in Victorian waters but have not been included in the Heritage Register due to not knowing the existence or location of the item.
- Liturgical purposes has been replaced by religious services and rites
- Reference to an owner also includes reference to a government asset manager

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What changes...

New definitions:

- Harm
- Place of worship
- State-level cultural heritage significance

Amended definitions:

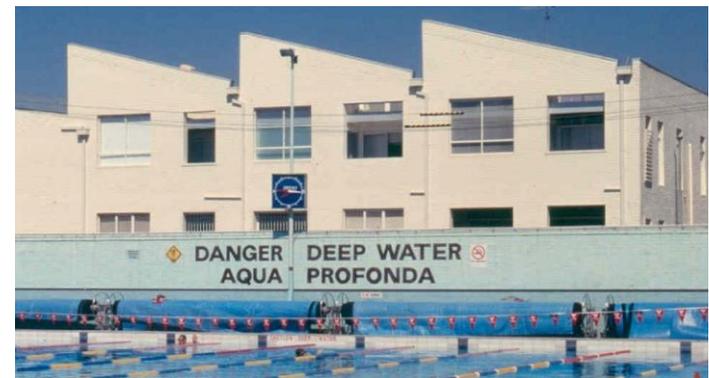
- Archaeological site
- Archaeological artefact
- Object

The Heritage Council:

- New membership categories
- New functions
- New executive officer



Anglican Church, Lake Tyers



'Aqua Profonda' sign, Fitzroy Baths

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Executive Director:

- New functions
- No longer has delegation to the Heritage Fund

Heritage Register

- Places and objects included are of State-level cultural heritage significance
- Objects integral

Nominations to the Heritage Register

- Nominations not accepted
- Refusing nominations
- Review of 'no reasonable prospect' refusals
- Further information



'Loren' prefabricated house, Moe



Marianne Gibson quilt, Wangaratta

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Protected zones

-Can contain registered archaeological places or artefacts

Hearing

-Obligation on the Heritage Council to 'conduct a hearing if the (National) Trust requests a hearing', has been removed

Determinations of the Heritage Council regarding the Heritage Register

-Process streamlined

Certificates

-New categories of information

Expedited amendment of the Heritage Register

-The Heritage Council can amend the Register in certain circumstances without seeking submissions



Arch of Victory, Ballarat

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Underwater cultural heritage

- Provisional determination
- Offences
 - 'mental elements' 'knowingly or recklessly' and 'negligently introduced'
 - reverse liability has been removed so that the legal burden sits with the prosecution
- Rewards



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Permits

-Offences/penalties: maximum penalty increased to 4800 penalty units or 5 years imprisonment or both for a natural person and 9600 penalty units for a body corporate

- -‘mental elements’ 'knowingly or recklessly' and 'negligently introduced'

-Exemptions:

- religious services or rites
- certain subdivisions
- permit exemptions – must not harm

-Extending public display of permit applications

-Amending permit applications

-Requests for additional information

-Stopping of ‘clock’ for permit applications

-RA/council referrals



Former Kilmore Post Office

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Permits

- Undue financial hardship removed
- Applications referred to the Heritage Council
- Amendment of permits
- Determination of reviews by the Heritage Council
- Minister's power to call in or refer matter to VCAT
- Permits and CHMPs



Total House carpark, Melbourne



Anderson's Mill, Smeaton

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Archaeological Heritage

- What is on the Heritage Inventory - thresholds
- Removing sites from the Inventory
- Offences in relation to certain sites
- Consents
- Consent reviews
- Reporting of investigations and surveys of land
- Ownership remains unchanged
- Consents and CHMPs



Bessiebelle Sheepwashes and Yards

Little Lonsdale Street precinct - excavation

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Archaeological Heritage

-Sites of archaeological value - less than 75 years old

- Submissions to the Heritage Council in relation to a recommendation for a site of archaeological value
- Determination on a site of archaeological value



Magenta Quartz Mine, Chiltern

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Covenants

- Can be entered into by a land owner and the Heritage Council, or the land owner and the National Trust
- Covenant disputes resolved by VCAT



Point Hicks Lightstation

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Orders

-Rectification orders

- penalties: 48 penalty units natural person and 240 penalty units for a body corporate
- VCAT the review body

-Stop orders

- penalties: 4800 penalty units natural person and 9600 penalty units for a body corporate



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Enforcement and legal proceedings

- Powers of entry
- Search warrant for any premises
- Powers of inspectors—archaeological artefacts
- Criminal liability of officers of bodies corporate—
failure to exercise due diligence
- Criminal liability of officers of bodies corporate—
accessorial liability



Hoddle Survey Tree, Kew

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Fees

The Act provides for fees to be payable for some activities that did not attract a fee under the *Heritage Act 1995*, these are:

- Fees for a review of the Executive Director's determination to refuse a permit or a condition of a permit
- Fees for a review of the Executive Director's determination to refuse a permit to demolish or destroy a registered place or object



Bells Beach, near Torquay

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Heritage regulations

- Two new sets of regulations – the Heritage Regulations and the Heritage (Underwater Cultural Heritage) Regulations – came into effect on 1 Nov 2017.
- The exhibition of the Regulatory Impact Statement (RIS) and proposed regulations resulted in three submissions.
- The proposed regulations set fees for certain activities, set additional penalties and infringement offences, and prescribe certain documents and forms.
- As detailed by the RIS, it is proposed that most fees will increase from current levels to recover an appropriate amount of costs associated with performing functions under the Act.
- Fees for heritage certificates are proposed to decrease to reflect the cost of producing a certificate.

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Regulations

-Fee exemptions and waivers are proposed to be expanded

- E.g. Groups that meet the definition of *community group* in the regulations may have many fees waived; consent applications and reviews are exempt if the application relates to a persons principal place of residence

-New infringement offences proposed

- In relation to performing certain activities -s.89(1) and (3)
- Non-compliance with a permit
- Not notifying the Executive Director when undertaking a survey of land for a relevant survey purpose – regulation 31 of the proposed Heritage Regulations 2017

-The regulations commenced on 1 November 2017.

-Details of fees, infringement offences and prescribed forms are published on the Heritage Victoria pages of the DELWP website.

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Concluding...

- Heritage Victoria Staff happy to meet and further discuss or clarify any aspects of the new Act or (proposed) regulations
- To arrange a meeting or seek a response to a specific question email

Heritage.ActReview@delwp.vic.gov.au