



Heritage Victoria Compliance and Enforcement Strategy

Protecting Victoria's Cultural Heritage

Introduction

Victoria's cultural heritage is a rich and diverse resource. The Victorian *Heritage Act 2017* ('the Heritage Act') provides for the identification, protection, conservation and management of heritage places and objects that contribute to an understanding Victoria's history and development.

Responsibility for administering the compliance and enforcement provisions of the Heritage Act, the *Heritage Regulations 2017* (Vic), the *Heritage (Underwater Cultural Heritage) Regulations 2017* (Vic), and the *Underwater Cultural Heritage Act 2018* (Cth) as they relate to Victoria, sits with officers of Heritage Victoria, a business unit within the Planning group of Department of Environment, Land, Water and Planning (DELWP). Heritage Victoria's officers operate under delegated authority from the Executive Director (Heritage Victoria) employed under part 2 of the Heritage Act and the responsible Minister pursuant to section 59 of the *Underwater Cultural Heritage Act 2018* (Cth).

The Heritage Act provides a framework to manage Victoria's historic cultural heritage, which includes the ability to appoint inspectors to ensure compliance. Inspectors powers include those to enter, search and seize material in relation to investigating the significance of a building, land or object; and determining whether the Heritage Act has been complied with. Inspectors are appointed by the Executive Director and must be a person employed under the *Public Administration Act 2004*, or any other person appointed with the consent of the Minister for Planning.

This strategy outlines Heritage Victoria's approach to managing its compliance responsibilities under both Acts and associated regulations. It has been prepared to:

- guide Heritage Victoria's compliance and enforcement operations
- be used as a reference by other business units and agencies with compliance responsibilities
- to inform owners of heritage places and the general public.

The strategy identifies many of Heritage Victoria's enforcement powers, how they differ depending on the level and nature of non-compliance and an explanation of how and when they will be used.

The strategy also delivers on Heritage Victoria's targets under its 2018-20 Statement of Expectations (SOE). The Victorian Government requires all regulators to have a SOE in place to establish clear expectations for regulator performance to reduce red tape affecting businesses, not for profit organisations, government service providers, and households. A SOE provides a consistent framework for regulators to improve administration, enforcement and compliance. Heritage Victoria's SOE includes the target to develop this approach by way of a strategy that provides a proactive approach to compliance and enforcement activities including:

- strategic communication initiatives
- partnerships with other regulatory bodies and community groups
- use of new enforcement provisions in the *Heritage Act 2017*.

As an effective regulator Heritage Victoria's role is to exercise its statutory authority fairly and credibly to identify, protect and conserve Victoria's cultural heritage for future generations.



Heritage Victoria Compliance and Enforcement Strategy

Objective

The objective of this strategy is to reduce harm to Victoria's significant heritage places and objects. This objective contributes to the State outcome of *A stronger, fairer, better Victoria* and the *DELWP 2020* strategic framework outcome *Liveable, inclusive, sustainable communities and thriving natural environments*. The strategic priorities of *DELWP 2020* that this strategy supports delivery of are:

- Reform policy, legislation, regulations and systems to help protect our heritage, build productive, sustainable and resilient communities and achieve better outcomes for consumers and industry.
- Manage Victoria's heritage in a holistic manner to ensure its protection and enjoyment by current and future generations.

1. REGULATORY CONTEXT

1.1 Compliance philosophy

To achieve the regulatory objectives of the Heritage Act and the *Underwater Cultural Heritage Act 2018* (Cth), voluntary compliance is encouraged and supported. Compliance is monitored and non-compliance will be addressed through regulatory responses that are proportionate to the degree of non-compliance and the risk it poses.

Resources are prioritised to manage unacceptable or poorly managed risks. Actions taken in response to non-compliance are monitored and evaluated to assess their effectiveness and to inform continuous improvement.

Where appropriate, input from stakeholders is sought to ensure they have the opportunity to influence improvements to how regulation is designed, communicated and enforced.

1.2 Principles of compliance and enforcement

This strategy explains how Heritage Victoria encourages compliance and the circumstances under which it uses enforcement to achieve compliance and create credible deterrents against breaking the law.

Heritage Victoria will encourage compliance with relevant heritage legislation through the provision of information and education, setting standards and supporting compliance obligations. Heritage Victoria will take enforcement action when legal requirements are contravened or not complied with. Requiring parties to meet their legal obligations or remedy their non-compliance is a key part of enforcing the law.

Enforcement of heritage laws should be undertaken for the purpose of:

- better protecting the cultural heritage values of places and objects
- ensuring that no benefit or advantage is obtained by any person who fails to comply with Victoria's cultural heritage laws
- influencing the attitude and behaviour of persons whose actions may have adverse impacts on the cultural heritage values of a place or object.

Enforcement has four key elements:

- Education: Providing information to relevant stakeholders
- Prevention: Limiting the potential for harm to a heritage place
- Remedy: Fixing the problem or 'making good'
- Sanction: Applying a penalty or punishment for breaking the law

Heritage Victoria will use enforcement to try to prevent problems occurring, address non-compliance, aiming to fix the problem and restore and 'make good' the harm caused to cultural heritage values of places or objects. On this basis, Heritage Victoria will require offenders to 'make good' by minimising the extent of the damage or risks and taking all reasonable steps to remediate the impacts. Remedy and punishment can be used in combination.

1.2.A Education: Providing information to relevant stakeholders

Heritage Victoria at every available opportunity will provide the necessary information to stakeholders to inform them of their responsibilities under the relevant legislation with respect to the protection of heritage places and objects. Education can assist meeting this goal by being used as a proactive tool to either prevent non-compliance or prevent harm being caused.

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1.2.B Prevention: Limiting the potential for harm to a heritage place

Where appropriate, Heritage Victoria will monitor situations which could give rise to non-compliance. It will provide stakeholders with prior warning of possible enforcement action and consequences, and provide opportunity to improve management practice or change behaviour which could lead to harm to a heritage place.

1.2.C Remedy: Fix the problem or make good

Where harm has been done to a heritage place, stopping non-compliance with the law, preventing or limiting further harm which may be done and remediation in the form of repairing or rectifying the damage are essential actions.

1.2. D Sanction: Apply a penalty or punishment for breaking the law

Sometimes remedying a breach is insufficient to deter potential lawbreakers.

In some cases, enforcement can include punishment, by way of prosecution for serious breaches of the law in the Magistrates' Court. Timely and effective response to enforcement and compliance issues is an important and effective way of deterring people from breaching their obligations under relevant heritage laws and regulations.

Sanctioning generally deters those offenders who might evade their obligations. In some circumstances it will be necessary to specifically deter them from offending in the future.

Further information about remediation and sanctions is in section 5.

1.3 Guiding principles

Heritage Victoria is guided by eight principles when undertaking its compliance and enforcement role:

Risk-based: We allocate resources to reduce harms which have the greatest influence on heritage outcomes.

Proportionate: Our actions will be in proportion to the problems they are intended to address, based on assessment of risk, impact and culpability.

Graduated: Our response to a breach of the regulatory framework or an offense will be graduated (ranging from education to enforcement) depending on the significance of the offense and the purpose of the response.

Consistent: We apply similar responses to circumstances of similar significance and the community knows what to expect in a compliance experience.

Intelligence-led: Decision-making is **informed** by consistent and comprehensive information collection and analysis at the strategic, operational and tactical levels enabling DELWP and its partners to quickly identify, assess and respond to significant risks.

Transparency: We provide clear information to regulators and community about our requirements making it easy to comply. We will describe our decision-making approach. We regularly report on our compliance activities and the outcomes we are achieving. We will document and share how we prioritise activity.

Equity: We ensure that the rights, responsibilities, risks and rewards are shared in a fair and balanced way.

Safety: We ensure that our compliance activities are undertaken in a manner that maximises the safety of all stakeholders.

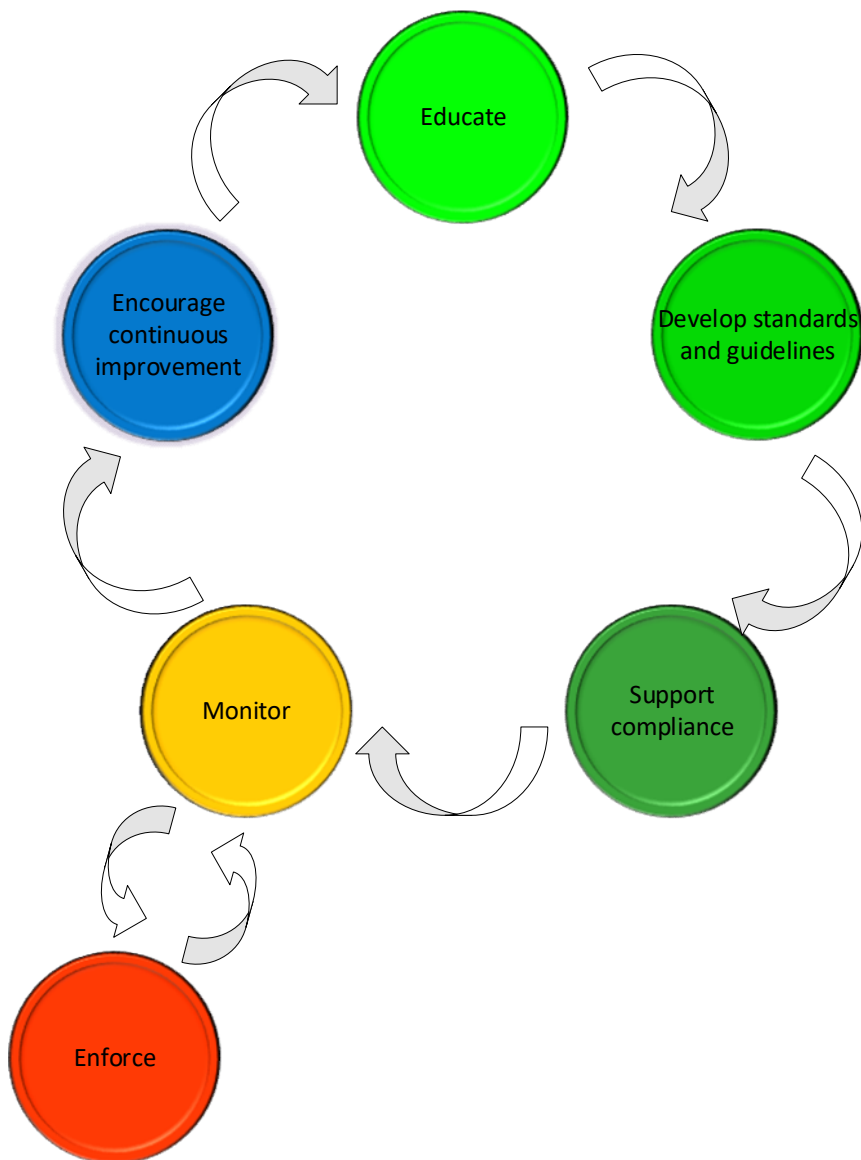
2. HERITAGE VICTORIA'S REGULATORY MODEL

2.1 Cultural heritage protection regulatory model

Compliance means conforming to the law. It means obtaining the right approvals or permissions. It means conducting authorised activities in accordance with any conditions or regulatory requirements.

Compliance is the responsibility of all businesses, organisations, governments and individuals. Everyone has obligations under the law and a duty of care to protect heritage places and objects to ensure that current and future generations have an opportunity to experience them. Heritage Victoria undertakes a range of activities on behalf of the Victorian community to achieve compliance with the relevant heritage laws and regulations and Heritage Victoria uses a balanced regulatory approach with a mix of compulsory and voluntary methods.

Heritage Victoria's approach to regulation involves a number of key steps:





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2.1.A. Educate and inform: Raise awareness of the value of heritage conservation, obligations in relation heritage management and Heritage Victoria's role in law enforcement

A key role for Heritage Victoria is to raise awareness of the heritage legislation that applies to Victoria's heritage places and objects. Heritage Victoria will clearly articulate the obligations of duty-holders. Heritage Victoria will clearly communicate its regulatory approach and how it works with owners, the community, business, government and non-government organisations to protect and care for heritage places and objects.

Heritage Victoria emphasises education and awareness raising as effective ways of encouraging people to comply with relevant legislation and regulations. Knowledge of what obligations exist in relation to people and organisations owning, managing and interacting with Victoria's heritage places and objects will increase compliance with relevant laws and provide a common understanding of Heritage Victoria's approach to enforcing these laws.

Actions:

Heritage Victoria will:

- Broadly promote this enforcement strategy and any future compliance campaigns to provide clear information about areas or issues it is focusing on.
- Seek opportunities to raise awareness of heritage legislative responsibilities through public forums, engagement with key stakeholders and other initiatives.
- Utilise its website, social media and other forms of electronic communication to raise awareness of compliance issues,
- Strategically publicise compliance actions
- Communicate compliance targets and levels achieved.

SOE target: strategic communication initiatives

2.1.B. Develop standards and guidelines: Provide clear and authoritative guidelines and standards for managing and maintaining heritage places and objects

Heritage Victoria will continue to develop standards and expectations for all works and activities to heritage places and objects through regulation, policy and approvals. At a high-level standards and expectations are based upon minimising risk to the cultural heritage values of places and objects, whilst recognising that the endurance of places and objects is often best achieved by ongoing use which may require sensitive adaptation. At a specific level, standards will be determined by undertaking individual assessments of the risk to cultural heritage values through permit or non-compliance activities alongside the decision-making framework required by the Heritage Act. Additionally, conservation guidelines will be developed to assist owners and managers in complying with the Heritage Act. Standards will evolve over time to take into account advances in conservation techniques and technology, national and international standards and community aspirations for cultural heritage management.

Actions:

Heritage Victoria will:

- Work with industry associations, businesses, community organisations, and local and state authorities in developing conservation and maintenance standards for places and objects included in the Victorian Heritage Register and promoting good practice.
- Work with partners and key stakeholders to ensure that standards of protection for Victoria's heritage places and objects continuously evolve to meet community expectations.
- Develop conservation guidelines to assist with compliant heritage management.

SOE target: partnerships with other regulatory bodies and community groups

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2.1.C. Support compliance: Provide practical, constructive and authoritative advice on compliance

Heritage Victoria will clearly articulate the legal obligations of owning, managing or interacting with Victoria's cultural heritage places and objects and will support people to achieve compliance with relevant legislation and regulations.

Heritage Victoria will provide practical, unambiguous and constructive advice on how to comply with the laws affecting Victoria's heritage places and objects. This compliance advice may include referring people to expert professionals, applicable codes of practice, best practice management guidelines, protocols for managing cultural heritage places or objects or other relevant information. Compliance advice does not extend to providing legal advice and the onus for compliance will always rest with the party who has a duty or obligation under the law.

Actions:

Heritage Victoria will:

- Provide clear information on the Heritage Victoria web pages about what is regulated, why regulation is necessary and how to comply.
- Publish material outlining the legal obligations and required conduct for persons or organisations owning, managing or interacting with Victoria's cultural heritage places and objects, highlighting new compliance provisions under the *Heritage Act 2017*.
- Provide consistent and unambiguous advice on complying with relevant legislation and regulations.
- Provide advice to applicants for permits and consents about the information required to support an application, how Heritage Victoria determines whether to issue an approval and what the approval will authorise.
- Provide advice on how permits and conditions can be complied with, this may include conservation outcomes, production of project reports and other details as outlined in permit/consent conditions.
- Wherever possible, work in partnership with industry, peak bodies, stakeholder groups and the community to achieve compliance with legislation.
- Encourage voluntary compliance by assisting the regulated community to understand why heritage controls exist and how to comply; and increase compliance capacity and willingness to comply.

SOE target: strategic communication initiatives; use of new enforcement provisions in the Heritage Act 2017

2.1.D. Monitor compliance: Monitoring compliance with the law and maintaining a credible risk of detection

Heritage Victoria's compliance team's primary focus is on prevention wherever possible. It works to ensure that incidents of non-compliance and their impacts are avoided. Heritage Victoria will continue to work towards improving its capacity to detect and respond to non-compliance incidents on both a reactive and proactive basis as necessary. For matters that require a reactive response, Heritage Victoria will work towards timely resolution of an issue before it leads to any adverse impact on the cultural heritage values of a place or object.

Section 3 of this strategy provides more detail on monitoring methods, the purpose of investigations and criteria for undertaking comprehensive investigations.

Heritage Victoria will take a proactive stance in relation to monitoring the conditions of issued permits and consents, including applying targeted monitoring on the basis of assessed risk. It will leverage partnerships to assist in meeting this strategic objective, See Section 4 for more details on this approach.

Actions:

Heritage Victoria will:

- Apply a targeted risk-based approach to monitoring of issued permits and consents.



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- Periodically visit shipwreck protected zones to monitor prohibited activities such as entry, mooring, trawling, fishing, diving, cultivating, mining, quarrying, dredging, or excavating
- Seek input from the community in detecting non-compliance

SOE target: use of new enforcement provisions in the Heritage Act 2017, partnerships with other regulatory bodies and community groups

2.1.E. Enforce the law: Require parties to make good any harm caused, and deter non-compliance

‘Enforcement’ means the use of influence, authority and statutory methods to compel compliance with the law.

Heritage Victoria addresses non-compliance with relevant laws by objectively and assertively requiring remedy and, where appropriate, taking the appropriate legal action.

The Heritage Act provides a suite of tools and sanctions to deter and cease non-compliant conduct and where possible, require rectification where unlawful works or activities have occurred. Heritage Victoria prioritises remediation above sanction wherever possible and is committed to a proportionate response to any non-compliance.

Actions:

Heritage Victoria will:

- Address risks or acts of non-compliance in a reasonable, proportionate manner to deter further non-compliance and where possible, to remediate non-compliant works or conduct.
- Consider whether sanctions will be pursued based upon proportionate factors including conduct of the offender and the impacts on the cultural heritage values or the place or object affected.

Section 6 of this strategy provides more details on how heritage laws are enforced.

SOE target: use of new enforcement provisions in the Heritage Act 2017

2.1.F. Encourage continuous improvement: Build the case for improving practices and influencing future standards

Heritage Victoria will develop and work with partners to encourage higher performance and leadership to deliver continuous improvement and influence future standards.

Heritage Victoria will work in partnership to promote higher performance and improvement that supports the priorities of DELWP.

It will drive performance, improvements and leadership that may apply to specific sites, sectors, geographic areas and business or industry groups.

Heritage Victoria will:

- Provide training and support to duty-holders, partners and other heritage stakeholders to promote best practice heritage management and compliance.

SOE target: strategic communication initiatives

3. HOW HERITAGE VICTORIA MONITORS, DETECTS AND INVESTIGATES NON-COMPLIANCE

Heritage Victoria monitors compliance and detects non-compliance using responsive and proactive methods and undertakes both regular and comprehensive investigations. Heritage Victoria is strongly supported in detecting non-compliance with cultural heritage laws through reporting by the public, local communities, business and other government and non-government organisations.

3.1. Monitoring and detecting non-compliance

Compliance is monitored and breaches detected through a number of responsive and proactive methods including:

- site visits and inspections
- field and desktop audits
- community, employee or duty-holder advice
- monitoring data and sample collection
- observations by DELWP staff
- observations and reports from other agencies or regulatory authorities
- analysis of intelligence including online data, and reports.

Heritage Victoria will:

- undertake site visits and inspections
- provide community and public reports
- assess all reported and detected contraventions.

3.1.A. Site visits and inspections

Proactive and planned site inspections are an important method by which Heritage Victoria can determine compliance and prevent incidents and breaches.

Heritage Victoria will undertake planned and proactive inspections, targeting areas of greatest risk and where non-compliance is most likely. During an inspection, inspectors, authorised persons or persons assisting the inspector will provide feedback to duty-holders of their observations and any proposed further actions.

3.1.B Community and public reports

The community plays an important role in detecting and reporting heritage compliance issues

Information from the general public, industry, non-government organisations and other government agencies is a key source of intelligence for Heritage Victoria. Heritage Victoria will constructively receive and use public reports and ensure feedback is provided to reporters on any action taken, as well as the result of that action.

The public can access information about places and objects protected under the Heritage Act from <http://vhd.heritagecouncil.vic.gov.au/>

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3.2 Investigating non-compliance

Heritage Victoria will assess all reported or detected contraventions of the law, regulations and other requirements to determine their priority for further compliance and enforcement action.

Heritage Victoria will prioritise reported and detected contraventions to ensure the most effective use of its resources.

An initial assessment typically includes a preliminary desk top assessment of the report or allegation in order to decide its seriousness, the likelihood that a contravention has occurred and the probable consequences. Wherever possible, Heritage Victoria will act to prevent potential breaches and discourage continual and future unlawful activity. The assessment would also involve any applicable studies or conditions reports relating to the place or object, its permit and grants history, details of any prior compliance action or engagement with Heritage Victoria.

Based on the outcome of the initial assessment, Heritage Victoria will determine the appropriate level, if any, of further investigation or response possible under the relevant legislation.

3.2 A. Aim of Heritage Victoria investigations

Any Heritage Victoria investigation aims to:

- Determine whether a law, regulation, policy or other requirement has been contravened.
- Determine what, if any, impact to the cultural heritage values has occurred and provide advice or direction on stopping and preventing further impact and any future required actions.
- Collect evidence that can be used in criminal prosecutions or that might assist with other appropriate compliance and enforcement measures.
- Ensure relevant stakeholders improve measures to prevent continuing and future non-compliance.
- Use education to deter further or similar action to that which led to the non-compliance.
- Improve public confidence in the integrity of the regulatory system.
- Achieve an appropriate outcome within a reasonable time and at reasonable cost.
- Investigate all complicit parties involved in any incident or non-compliance.

The nature, time taken and method of investigation will be determined by the circumstances of the particular incident or contravention. The evidence gathered in these investigations can form part of a comprehensive investigation.

3.2.B. Comprehensive investigations

Comprehensive investigations are directed at the most serious incidents adversely impacting cultural heritage values and breaches that are likely to warrant a prosecution or other serious response.

A comprehensive investigation is one that involves the collection of evidence that will form a 'brief of evidence'. Heritage Victoria will review the brief of evidence to determine whether there is sufficient evidence that a criminal offence has been committed. The evidence must be credible and admissible in a court. In these circumstances, Heritage Victoria may commence a criminal prosecution.

Comprehensive investigations are undertaken in order to determine:

- Whether there is evidence that an offence has been committed under relevant legislation or regulations administered by Heritage Victoria
- What are the causes and consequences of non-compliance?
- Has there been any harm caused by the non-compliance to cultural heritage values?
- Whether, or the extent to which, the offender benefited commercially from the non-compliance
- What is the identity and responsibility of each party complicit in the offence?
- Whether action has been taken, or needs to be taken, to prevent a recurrence and to secure compliance with the law

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- Were there any failings of law, policy or practice in order to influence the law and guidance?
- What evidence has been gathered linking any party to the offence being alleged?
- Has any party made admissions that are admissible in court regarding the commission of an offence?
- Are there any mitigating factors that could detrimentally affect a prosecution case?

3.2.C. Criteria for a comprehensive investigation

Comprehensive investigations generally happen following an incident resulting in a major or severe impact on the cultural heritage values of a place or object

Heritage Victoria considers three criteria in determining whether to undertake a comprehensive investigation:

- a. consequence
- b. culpability
- c. strategic value of achieving compliance

The sum of these criteria determines whether Heritage Victoria will undertake a comprehensive investigation.

(a) Consequence: Risk created or harm caused to cultural heritage values

Factors of consequences include:

- the seriousness of the alleged breach because of the harm or potential harm caused to the cultural heritage values of a place or object
- public concern arising from the alleged breach
- how common the offence is.

(b) Culpability: Related to an accused's behaviour or past actions

Factors of culpability include:

- a. any financial benefit obtained through delaying or avoiding compliance
- b. the alleged breach happened because they were operating at significantly less than accepted standards
- c. any history of previous incidents
- d. whether there was any deliberate behaviour or recklessness that contributed to the alleged breach
- e. whether the alleged non-compliance/offence and consequences were foreseeable
- f. how long the alleged breach continued
- g. how long it's been since the alleged breach
- h. If the accused expresses willingness to rectify

(c) Strategic value: Priority areas identified and communicated by Heritage Victoria

The alleged breach:

- a. came to light as a result of a compliance program or campaign, e.g. high value permit works monitoring
- b. involved a breach of an issued notice or order
- c. involved more than one party, such as company officers, consultants, or other parties involved with the primary offender
- d. has the potential to deter future non-compliance for similar offences.
- e. Has attracted significant community and/or media interest



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3.2.D Situations leading to a comprehensive investigation

Some situations will warrant a comprehensive investigation due to their seriousness.

Examples of where comprehensive investigations may be undertaken include the following:

- There has been significant damage or harm to the cultural heritage values of a place or object.
- Repeated infringement notices have been issued with no change in conduct.
- A notice, order or other lawful direction by an inspector or authorised officer has not been complied with.
- Failure to implement preventative measures has resulted in significant commercial advantage.
- Assault, intimidation or attempt to bribe an inspector or authorised officer has taken place.
- Obstruction of an inspector or authorised officer has taken place.
- There has been false or misleading information, obstruction or interference by the accused.
- The Executive Director (Heritage Victoria) has not been notified of a breach or an action (where this is required by law).
- The nature of the offence and action, or the attitude of the accused, indicates that an infringement notice is unlikely to act as a sufficient deterrent (e.g. deliberate contravention, providing false or misleading information, contravention despite advice or a warning given by an inspector or authorised officer).

If, after a comprehensive investigation, and following a legal review, Heritage Victoria determines that there is evidence that an offence appears to have been committed, enforcement action will be taken. This may involve prosecution or the issuing of a penalty infringement notice (see section 5). Decisions to prosecute are taken in line with section 5 of this policy and the Director of Public Prosecution's policies.

4. TARGETED ENFORCEMENT – A RISK-BASED, INTELLIGENCE LED APPROACH

Heritage Victoria will prioritise compliance and enforcement activity and resources to ensure that the greatest risks are addressed to minimise adverse impacts on Victoria's heritage places and objects.

A risk-based approach to compliance and enforcement means that Heritage Victoria's response will be proportionate to the potential for harm and the risk of non-compliance, and resources are allocated in accordance with the assessed risk.

This risk-based model prioritises enforcement actions on the basis of identified risk. Heritage Victoria defines risk as a combination of two elements: consequence (the risk or harm to the cultural heritage values) and likelihood (the chance that non-compliance will occur).

Intelligence led means that Heritage Victoria will use a range of information sources to identify and analyse compliance issues and identify the most appropriate response. This approach helps to understand the context of the issue and can assist with deterring non-compliance.

4.1 Permits and consents – proactive monitoring

Heritage Victoria will apply a risk-based assessment to all permits and consents issued under the Heritage Act which will then inform the allocation of resources for proactive monitoring. Issued permits and consents will obtain their risk rating on the basis of the targeted enforcement matrix below.

LIKELIHOOD OF NON-COMPLIANCE	Certain					
	Likely					
	Possible					
	Unlikely					
	Low					
		Low	Minor	Moderate	Major	Severe
		CONSEQUENCE: RISK OR HARM TO CULTURAL HERITAGE VALUES				



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Issues to be considered by Heritage Victoria when determining the risks of issued permits and consents will include:

- value and complexity of the project
- past conduct of the applicant with regard to compliance
- capacity of the applicant to undertake the permitted works or activities in accordance with the permit or consent
- potential for the works to harm the cultural heritage values of the place or object if not undertaken in accordance with the permit or consent
- importance of any requirements (conservation outcomes, project reports required under the terms of the approval)
- potential for the applicant to benefit financially or by other means if the works are not undertaken in accordance with the permit or consent.

In assessing risk, the following factors are likely to result in the assessment of major-severe risk:

- The value of the works are \$10 million or greater.
- The permit is for a complex development project with conditions for conservation works.
- Financial security for the conservation works is a condition of the permit.
- A covenant is in place for a Heritage Assessment Management Plan or conservation works.
- Previous works have been done unlawfully resulting in irreversible harm.
- The applicant/owner has a history of prior compliance issues relating to heritage.
- The applicant/owner has been previously convicted of a heritage offence.
- The heritage place or object is in a poor state of repair.

Once the risk has been assessed, targeted permit and consent monitoring will occur on the basis of the following timeframes. Low-minor risk and likelihood of non-compliance will be monitored as resources permit. Targeted monitoring will include contact with the permit or consent holder and site inspections.

Heritage Victoria will:

- Ensure every permit and consent condition clearly identifies the need to notify the Executive Director before works commence.
- Proactively monitor all permits and consents within 12 months of works commencing where the assessed risk is that the likelihood of non-compliance is possible or greater and the harm to cultural heritage significance is major or greater.

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Heritage Victoria's approach to risk based permit monitoring

LIKELIHOOD OF NON-COMPLIANCE	Certain	6 m	6 m	4 m	2 m	2 m
	Likely	12 m	12 m	6 m	4 m	2 m
	Possible	AR	AR	12 m	6 m	4 m
	Unlikely	AR	AR	24 m	6 m	6 m
	Low	AR	AR	24 m	6 m	6 m
		Low	Minor	Moderate	Major	Severe
CONSEQUENCE: RISK OR HARM TO CULTURAL HERITAGE VALUES						

AR – As Required
m months

4.2 Targeted compliance

Heritage Victoria will develop an annual compliance focus which will target particular behaviours, heritage place/object type or location. The campaign will be informed by past non-compliance issues, including any trends in patterns of non-compliance, review of permits and permit exemptions issued in the past 12 months, and strategic priorities such as programs of financial assistance. The annual focus will be published from the Heritage Victoria website and any known affected stakeholders will be contacted.

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Heritage Victoria will:

- Identify an annual focus for its targeted compliance and promote this through its website and other communication networks.

4.3 Defining risk factors

4.3.A Consequence: Risk or harm to cultural heritage values

The risk or harm to cultural heritage values has five levels: low, minor, moderate, major and severe. This takes into account the actual or potential impacts on the cultural heritage values or on required heritage outcomes, the scale of any harm or impact on the cultural heritage values, the ability to rectify any unauthorised works and the level of public concern.

Risk or harm

The five risk levels for risk or harm to cultural heritage values are:

- **Severe:** Permanent or long-term, serious harm to cultural heritage values to the extent that the conservation of a place or object is significantly threatened or unviable. High level of public concern.
- **Major:** Actual or imminent serious harm to cultural heritage values to the extent that the conservation of a place or object is at risk. Medium to high level of public concern.
- **Moderate:** Medium level or term of actual or potential harm to cultural heritage values to the extent that the conservation of a place or object is at risk. Medium level of public concern.
- **Minor:** Works or activities that have minimal impact on the cultural heritage values and can be remediated. Minimal level of public concern.
- **Low:** No or low impact on the cultural heritage values and can be easily remediated if required. No or low public concern.

4.3.B Likelihood of non-compliance:

The likelihood of non-compliance also has five levels: low, unlikely, possible, likely and certain. Likelihood takes into account (a) the track record of the offender permit/consent history, past incidents, inspections, other enforcement and compliance actions; (b) the competence, commitment and resources of the offender or its agent to rectify any unauthorised works or remediate any contraventions; (c) the quality of resources the offender has to manage its cultural heritage obligations; and (d) any potential financial gain arising from unauthorised activity.

Likelihood

- **Certain:** Repeated unlawful behaviour and more than likely not to make an effort to comply. Refusing to comply to provide required information or providing intentionally false or misleading information.
- **Likely:** Wilful non-compliance. Numerous previous occurrences of non-compliance. Little or no demonstrated assurance and/or capacity to meet regulatory requirements. No attempt to manage heritage values.
- **Possible:** May have had previous occurrence of non-compliance. May not make adequate effort to comply. Little or no awareness of and/or capacity to meet regulatory requirements and manage heritage values.
- **Unlikely:** Fair record with previous isolated occurrences of non-compliance with low-minor consequences. Reasonable awareness of and/or capacity to meet regulatory requirements and manage heritage values.
- **Low:** No previous occurrences of non-compliance. Good demonstrated awareness of and/or capacity to meet regulatory requirements and manage heritage values. Co-operative attitude.



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Following an incident of risk or non-compliance, Heritage Victoria will consider the risk or harm and take into account the circumstances and culpability of the offender. Culpability takes into consideration the offender's history, how long the incident or non-compliance continued, whether or not the harm is still occurring, has been reduced or can be rectified, whether the risk was foreseeable and whether the act or omission was intentional. For a full description of culpability factors and Heritage Victoria's enforcement response, see section 3.

Heritage Victoria's regulatory model uses objective elements that can be applied when undertaking proactive monitoring and other regulatory activities for heritage places and objects with the greatest risk of non-compliance and where non-compliance will have the greatest potential for harm to cultural heritage values. The model also allows a transparent discussion between a heritage place or object owner/manager and Heritage Victoria about the level of attention a breach of the Heritage Act or its regulations might receive.

Actions:

Heritage Victoria will:

- Apply a targeted risk-based approach to monitoring issued permits and consents.
- Use a targeted risk-based approach to assess initial non-compliant activities or conduct.
- Investigate any community led intelligence regarding potential or actual offences regarding heritage places and objects.

5. REMEDIAL MEASURES AND SANCTIONS

Heritage Victoria will where necessary, enforce the law and respond to incidents of non-compliance. In appropriate circumstances Heritage Victoria will use these measures together with sanctions. In some cases, due to the nature of a breach or history of an offender, a sanction or punishment should be applied. Heritage Victoria will take an escalating approach to enforcement, from least to greatest intervention. In some circumstances, multiple sanctions could be applied if this is likely to improve the level of compliance.

5.1. Compliance advice

Advice from Heritage Victoria officers may be given as a preliminary warning to provide duty holder with an opportunity to comply prior to more formal statutory actions.

Advice may be given by an inspector authorised officer under the Heritage Act where:

- The degree of harm or potential harm to the cultural heritage values of a place or object is minimal
- Breaches of relevant legislation or regulations are of an administrative nature, with no material impact.

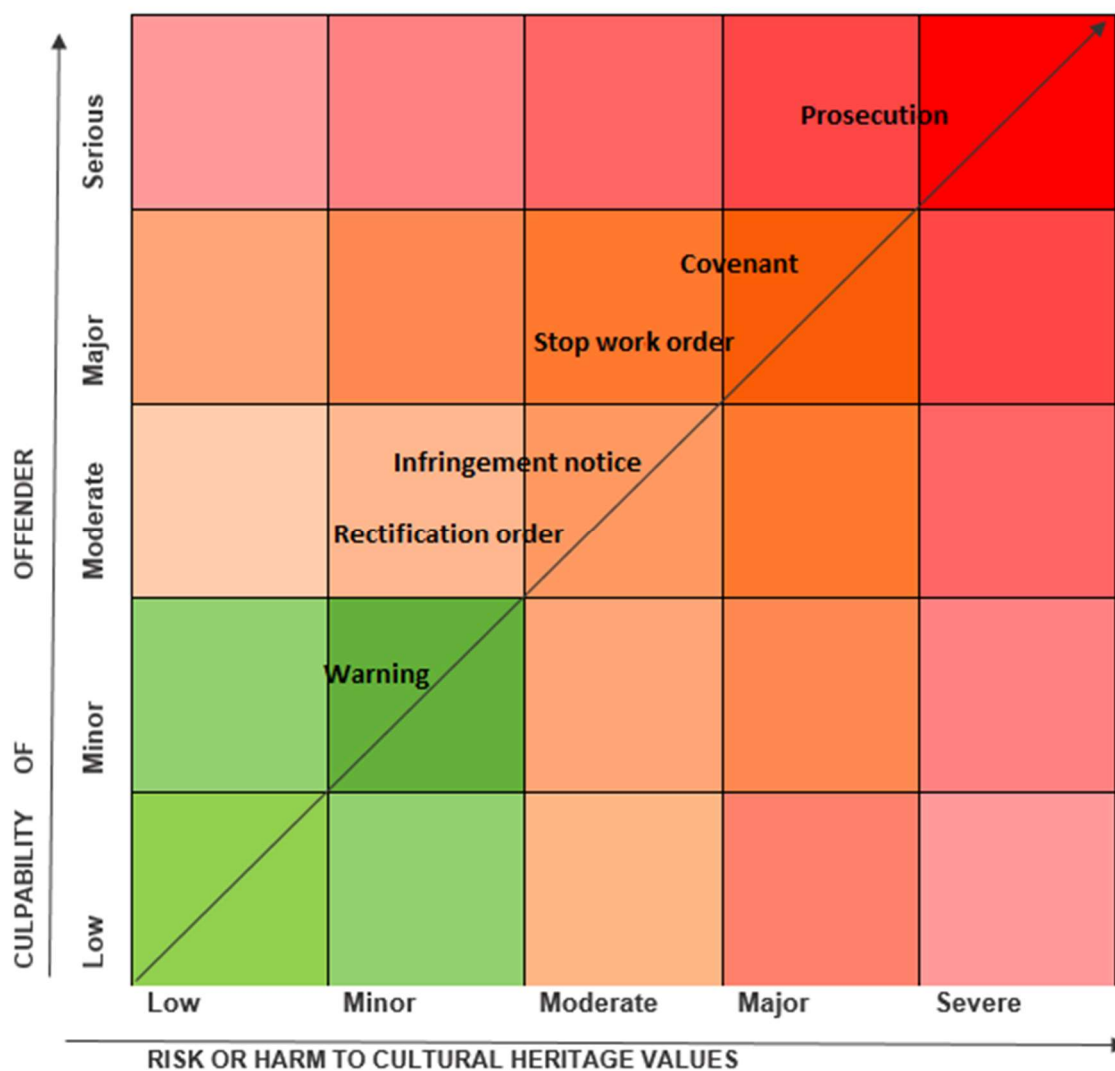
This is an effective way of dealing with minor issues or risks where simple, immediate or short-term action can be taken by a duty-holder to comply. An example of where advice may be provided is where non-compliance can be immediately or easily remedied with little effort or cost or without the need to issue more formal statutory directions e.g. rectification order or stop order under the Heritage Act.

Inspectors or authorised officers will advise recipients of compliance advice prior to its issue. Where the situation allows, an officer will consult on its draft contents, including the time frame for compliance.

Failure to comply may lead to further enforcement action e.g. infringement notice.

Heritage Victoria Compliance and Enforcement Strategy

Heritage Victoria's Enforcement Response



*Note: this model does not address the enforcement provisions of show cause notices or repair orders, which are issued as a result of failure to maintain a heritage place or object. See 5.7 and 5.8 for information on these enforcement options.

Heritage Victoria will take an escalating approach to sanctions, ranging from compliance advice as the least severe to a prosecution as the most severe. Section 3 provides further detail of the levels of culpability and risk in the ladder of sanctions applied by Heritage Victoria.

Heritage Victoria

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5.2 (a) Preliminary Warnings

Preliminary warnings are given in writing and recorded by Heritage Victoria. Initially, the warning may be given verbally, but this will be confirmed in writing as soon as possible. Warnings may set out any further actions that may be undertaken if there is a failure to comply.

Warnings may be given by Heritage Victoria where:

- In the interests of fairness, a warning can be used to signal that any further non-compliance will result in an escalating enforcement response.
- The degree of harm or potential harm to the cultural heritage values of a place or object is minimal.
- Breaches of works approvals, notices, permits, regulations and policies are of an administrative nature, with no material impact.

In determining whether to give a warning, Heritage Victoria may consider:

- a. Whether the duty-holder has a good history of compliance.
- b. Whether the duty-holder has taken reasonable steps to remedy the situation and prevent a recurrence of the breach.
- c. Whether the duty-holder is willing to work with Heritage Victoria to achieve compliance with any permit issued, covenant and the Heritage Act and the breach is considered minor.

Repeated or continual offending once a warning is issued will be documented and further enforcement action will be taken by HV. Failure to comply with a warning will be documented and considered in further enforcement action.

5.2 (b) Official Warnings

As with Preliminary Warnings, Official Warnings are given in writing. Official warnings are issued when the gravity of the offence are such that a preliminary warning would be inadequate.

Official warnings may be given where:

- The seriousness of the actions of a party are such that an official warning is appropriate
- The degree of harm or potential harm to the cultural heritage values of a place or object is moderate
- Breaches of the Act and/or Regulations are intentional or negligent with moderate or material impact.

The determining factors for consideration in issuing an Official Warning are:

- a. Whether the duty-holder has a good history of compliance.
- b. Whether the duty-holder had intentionally or negligently caused the breach or recurrence of the breach.
- c. Whether the duty-holder is resistant to work with Heritage Victoria or had hindered or obstructed its officers to achieve compliance with any permit issued, covenant and the Heritage Act and the breach is significant.

Official Warnings are issued by DELWP legal upon application by Heritage Victoria.

These type of warnings can only be issued to a duty-holder once regardless of whether the issue is with a different site or not and any further non-compliance must be dealt with via prosecution in the Magistrates' Court.

Heritage Victoria Compliance and Enforcement Strategy

5.3 Rectification orders

Rectification orders provide an opportunity to remedy unlawful works to a registered heritage place or object without imposing a penalty sanction.

A rectification order under Part 8 of the *Heritage Act 2017* may be issued by the Executive Director in circumstances where the Act has been breached, but where unlawful works can be reversed so as not to permanently harm the cultural heritage values of a registered place or object.

Rectification orders may be issued by Heritage Victoria where:

- A warning has failed to result in the satisfactory rectification of works that are believed to have been undertaken without a heritage permit or permit exemption.
- A warning notice is considered insufficient to achieve the desired level of compliance.
- The degree of harm or potential harm to the cultural heritage values of a place or object is minimal and can be fully remediated.
- The non-compliance is a one-off situation.

In determining whether to issue a rectification order, Heritage Victoria may consider:

- a. Whether the duty-holder has a good history of compliance.
- b. The conduct of the duty-holder in relation to the initial warning notice (if one had been issued), e.g. whether the duty-holder has taken any steps to remedy the situation and prevent a recurrence of the breach.
- c. Whether any other enforcement actions should be taken in conjunction to optimise compliance and minimise the harm to the heritage place or object.

Where a rectification order is inappropriate

Rectification orders are generally not appropriate where any of the following are true:

- a. A warning is more appropriate, according to the criteria in this strategy.
- b. The works are having a more than moderate impact on the cultural heritage values of a place or object and are unlikely to be easily remediated.
- c. A prosecution is appropriate according to the criteria in this strategy (e.g. for repeated offences or an offence where no reasonable steps were taken heed a warning notice to remedy the situation).
- d. An offence that leads to an additional offence for which an infringement notice is not available (e.g. knowingly or recklessly removing, relocating, demolishing, damaging, despoiling, developing or altering or excavating any part of a registered heritage place or registered object).
- e. Any benefit obtained by delaying or avoiding compliance is significantly more than the infringement amount.
- f. The breach is continuing and has not been remedied.
- g. Substantial breaches of notices or other Heritage Victoria directions or orders are involved.
- h. The penalty would be inadequate for the severity of the offence and not act as a deterrent.

5.4 Infringement notices

Infringement notices are a way of dealing with common breaches of the law where the impacts are not considered serious enough to warrant prosecution.

A penalty infringement notice (PIN) imposes a financial penalty for breaches of relevant legislation and regulations and can be issued by an Inspector or authorised officer. Seven types of infringement notices can be issued by Heritage Victoria:

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Regulation No. <i>Heritage Regulations 2017</i>	Infringeable offence	Penalty Natural Person	Penalty Body Corporate
33(a)	Infringement penalty for an offence against section 89(1) of the Heritage Act 2017	10	20
33(b)	Infringement penalty for an offence against section 89(3) of the Heritage Act 2017	10	20
33(c)	Infringement penalty for an offence against section 104 of the Heritage Act 2017	10	20
33(d)	Infringement penalty for an offence against section 31 of the Heritage Act 2017	3	

Regulation No. <i>Heritage (Underwater Cultural Heritage) Regulations 2017</i>	Infringeable offence	Penalty Natural Person
22 (a)	Infringement penalty against regulation 8 or 9	3
22 (b)	Infringement penalty against regulation 10	6
22 (c)	Infringement penalty against regulation 11 or 13	10

Offences for which infringement notices may be applied will be where there is usually a low to moderate level of harm to the cultural heritage values of a place or object, or the breach is of an administrative manner. Infringement notices may be issued in conjunction with other sanctions, e.g. rectification orders. Examples of conduct that might result in an infringement notice include the following:

- use of unapproved materials or application of an unapproved colour scheme
- removal, lopping, pruning or destruction of trees without a permit or permit exemption or planting of unapproved trees or plants
- partial demolition of an existing retaining wall or fence or installation of a new fence or gate without a permit or permit exemption
- installation of signage without a permit or permit exemption
- installation of unapproved services (e.g. air conditioners, solar panels, satellite dishes, septic tanks, security systems, lights, hot water service units, heating unit, fire services, safety ladders, walkways or fall barriers)
- removal or insertion of doorways or windows without a permit or permit exemption
- storage or display of an object in unapproved conditions or failure to give notice of the relocation of an object
- failure to provide a set of development drawings or plans prior to the commencement of works
- failure to provide financial security (bank guarantee) prior to the commencement of works
- failure to undertake or complete conservation works
- mooring, fishing or parking in a shipwreck protected zone.

Infringement notices are generally appropriate where the following criteria are met:

- the non-compliance has a moderate or lower impact on cultural heritage values (see section 4)
- less punitive actions have not succeeded in achieving compliance
- any benefit gained by delaying or avoiding compliance is roughly equal to or less than the infringement amount
- the facts are apparently indisputable
- the offence doesn't involve obvious recklessness or negligence
- an infringement notice is likely to act as a deterrent.

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Where an infringement notice is inappropriate

Infringement notices are generally not appropriate where any of the following are true:

- a. A warning is more appropriate, according to the criteria in this strategy.
- b. A prosecution is appropriate according to the criteria in this strategy (e.g. for repeated offences or an offence where no reasonable steps were taken to remedy the situation).
- c. An offence that leads to an additional offence for which an infringement notice is not available (e.g. knowingly or recklessly removing, relocating, demolishing, damaging, despoiling, developing or altering or excavating any part of a registered heritage place or registered object).
- d. Non-compliance has a greater than moderate impact on cultural heritage values or level of culpability.
- e. Any benefit obtained by delaying or avoiding compliance is significantly more than the infringement amount.
- f. The breach is continuing and has not been remedied.
- g. Substantial breaches of Heritage Victoria directions or orders are involved.
- h. The penalty would be inadequate for the severity of the offence and not act as a deterrent.

Resolving an infringement notice

The recipient of an infringement notice has the option of paying the penalty by a given date, seeking an internal review or appearing in court to answer the charges. Payment of the penalty resolves the matter and avoids the recording of a criminal conviction. The process is outlined below.

Within 28 days of the date on the infringement notice a person can do one of the following:

- Make payment — pay the penalty in full or request an extension of time to pay or a payment plan.
- Seek internal review — see 'internal review of an infringement' section below.
- Go to court — elect to have the matter heard in a court.

With regards to PINs:

- If a penalty is not paid within the specified time, Heritage Victoria will send a courtesy letter advising that failure to pay will initiate prosecution proceedings.
- If no payment is received, Heritage Victoria will withdraw the PIN and initiate prosecution proceedings.
- If a person elects to have the matter heard in court, proceedings are commenced in the criminal jurisdiction of the Magistrates' Court of Victoria.

Internal review of an infringement

The *Infringements Act 2006* allows a person to request an internal review of a decision to issue an infringement notice. The review is done by a DELWP staff member who didn't issue the fine. The right of review is limited to the following grounds of appeal:

- a. mistaken identity
- b. the decision was contrary to law
- c. special circumstances, which are defined in the *Infringements Act 2006*, such as mental or intellectual disability apply
- d. that there are exceptional circumstances that should excuse the conduct for which the infringement notice was served.

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5.5 Stop orders

A stop order requires a person to immediately cease specified works or activities that the Executive Director believes will harm or are harming a registered place or object.

A stop order will be issued under Part 8 of the Heritage Act where there is a major contravention and the works proposed to be carried out, or those that are being carried out, have a moderate to severe impact on the cultural heritage values of a registered place or object. The issue of a stop order indicates that Heritage Victoria considers any further breach a serious offence.

All stop orders will trigger:

- A review of alternative avenues to prevent further non-compliance or harm, such as a rectification order, or permit or permit exemption.
- Active surveillance and monitoring of the site to determine whether impact or harm has been lessened, whether remedial action has been initiated by the offender, and to collect evidence for any future prosecution.

Stop orders may be issued by Heritage Victoria where:

- A previous enforcement action under the Act has failed to result in works ceasing and compliance of the duty-holder.
- Works are believed to have been undertaken without a heritage permit or permit exemption.
- The continuation of the works or activities will irreversibly and significantly harm the registered heritage place or object.

In determining whether to issue a stop order, Heritage Victoria may consider:

- a. the compliance history of the duty-holder
- b. whether any other enforcement actions should be taken in conjunction to optimise compliance
- c. minimise the harm to the heritage place or object
- d. the proposed/current works or activities will irreversibly and significantly harm the registered heritage place or object.

Where a stop order is inappropriate

Stop orders are generally not appropriate where any of the following are true:

- a. A warning is more appropriate, according to the criteria in this policy.
- b. A rectification order can achieve compliance, (e.g. the works have a minor impact on the cultural heritage values of a place or object and can be remediated).

5.6 Covenants

The Heritage Act enables land owners to enter into covenants with the Heritage Council which binds the owner as to the development or use of a registered place or land; or the conservation of a registered place or object. Covenants are considered a constructive alternative to prosecution as it allows an alleged offender to voluntarily enter into a binding agreement to undertake works to settle an alleged contravention of the law and remedy cultural heritage harm caused.

A covenant can implement systemic change within a business or by an individual to prevent future breaches of the Heritage Act, as well as delivering positive heritage outcomes. Covenants issued under Part 7 of the Heritage Act can be either restrictive or non-restrictive and require the agreement of the land owner on which the registered heritage place is situated. A covenant must deliver heritage benefits that go beyond mere compliance with the law.

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If a covenant is breached, Heritage Victoria will seek to prosecute the offence for which the covenant was designed to remediate.

For enforcement purposes, a covenant will only be considered as an acceptable alternative where:

- a. The person or organisation (the offender) takes active responsibility for the offence and its impacts.
- b. It is the most appropriate form of enforcement response and will achieve a more effective and long-term heritage outcome than prosecution.

Covenants are gazetted in the Government Gazette and run with the land affected.

5.7 Show cause notices

A show cause notice can be issued by the Executive Director, with the consent of the Heritage Council, if the owner of a registered heritage place or object has failed to maintain a heritage asset to the extent that its conservation is threatened.

A decision to issue a show cause notice under Part 8 of the Heritage Act will result in circumstances where other compliance or enforcement measures have failed and the conservation of the place or object is threatened. Threatened conservation means that the state-level cultural heritage significance of the heritage place or object is at risk of being harmed, or has been harmed.

A show cause notice requires an owner to 'show cause' as to why the Executive Director should not make a repair order requiring the owner to carry out specified works. The specified works can only be those that prevent further deterioration in the condition of the registered place or object.

The following matters will be considered in deciding whether or not to issue a show cause notice:

- the degree to which the conservation of the place or object has been threatened
- the period of time over which the failure to maintain and resultant disrepair has occurred
- any mitigating or aggravating circumstances that has led to the deteriorated condition of the heritage item
- the circumstances of the owner — their capacity to remediate the condition, prior compliance history and background
- local community concerns.

Where a show cause is inappropriate

Show cause notices are generally not appropriate where any of the following are true:

- a. A warning is more appropriate, according to the criteria in this strategy.
- b. A rectification order and/or infringement notice can achieve compliance and remediation.
- c. The conservation of the heritage place or object has been threatened by a one-off catastrophic event that the owner had no control over, e.g. bush fire, flood.
- d. The actions of a third party have resulted in disrepair or threatened conservation to a place or object despite the site being secured.
- e. An owner is taking action to remediate the condition of the heritage place or object.

There has been a significant breach of cultural heritage laws and a prosecution is appropriate according to the criteria in this strategy.

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5.8 Repair orders

A repair order will follow a show cause notice if an owner fails to comply with the show cause notice. Repair orders ensure that the deteriorated condition of a registered heritage place or object is arrested and that there is no threat to the cultural heritage values.

Repair orders can only be issued by the Executive Director, with the consent of the Minister for Planning, under Part 8 of the Heritage Act where an owner on whom a show cause notice has been issued has failed to show cause with respect to the works specified in the notice. A repair order requires an owner to make the specified repairs within a stated timeframe. A decision to issue a repair order is significant due to the impact on the owner and the penalties and actions that can apply if the owner fails to comply.

The following matters will be considered in deciding whether or not to issue a repair order:

- Whether there are any mitigating or aggravating circumstances that has led to the failure to comply with the show cause notice?
- Whether an extension to the show cause notice will achieve compliance?

Where a repair order is inappropriate

Repair order notices are not allowable or appropriate where any of the following are true:

- a. A show cause notice has not been issued or has been complied with.
- b. The owner is taking satisfactory steps to 'show cause' and is seeking an extension of time.

5.9 Prosecutions

Prosecutions seek to provide an appropriate sanction to the offender and act as a deterrent. Heritage Victoria will consider prosecuting an individual or company where other enforcement measures are inadequate, unlikely, or have failed to ensure ongoing compliance.

The decision on whether to prosecute for a breach of cultural heritage laws is significant, as the effect on those involved (the defendant/accused, the community) will be considerable.

Some cultural heritage offences are indictable or serious criminal offences – see Appendix One of a list of all offences and penalties. Heritage Victoria must operate within a broader prosecutorial framework as part of the criminal justice system. This requires the highest standard of integrity to be applied to any decisions around prosecutions.

In cases where there are several possible defendants, Heritage Victoria may prosecute one, some or all parties, depending on the circumstances. If a corporation by act or omission has broken the law, the Heritage Act also holds individual directors and those concerned in the management of the corporation to account.

When considering a prosecution Heritage Victoria will always seek to calculate the economic benefit gained from delayed or avoided compliance.

Criteria for a prosecution

In deciding whether or not to prosecute, Heritage Victoria adopts the policies of the Director of Public Prosecutions (DPP)⁷ which are based on the Prosecution Policy of the Commonwealth. Three tests set by the DPP policies need to be met.

Sufficient evidence exists:

- The existence of a prima facie case exists.
- There is enough evidence to justify proceedings.

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Prospect of conviction:

- There needs to be a reasonable prospect of conviction — that is, an evaluation of how strong the case is likely to be when presented in court.

This takes into account such matters as the availability, competence and credibility of witnesses and their likely impression on the court or tribunal that will determine the matter, and the admissibility of any confession or other evidence, and any lines of defence available to the defendant.

Public interest considerations, which include but are not limited to:

- the seriousness or, conversely, triviality of the alleged offence or whether it is only of a technical nature
- any mitigating or aggravating circumstances
- the characteristics of the alleged offender — any special infirmities/medical conditions, prior compliance history and background
- consideration to its impact, and the age of the alleged offence
- the degree of culpability of the alleged offender
- whether the prosecution would be seen as counter-productive — that is, by bringing the law into disrepute;
- the availability and efficacy of any alternatives to prosecution
- the prevalence of the alleged offence and the need for deterrence, both specific and general
- whether the alleged offence is of considerable public concern.

Criteria for a prosecution against a company officer, director or manager

Company officers are responsible for cultural heritage protection. They, and not just the company, may be personally accountable if their company fails to comply.

Heritage Victoria regards a ‘company officer’ as anyone who has the capacity to make decisions, or participates in making decisions, that have a real or direct influence on an organisation’s policy, planning or financial standing. A person who only implements these decisions is not regarded as a ‘company officer’.

DELWP will consider the following matters in deciding whether or not to prosecute company officers:

- a. Whether the person exercised due diligence in the performance of the company and actions to prevent the incident, including:
 - i. their degree of knowledge
 - ii. their capacity for decision making
 - iii. the actions or inactions of others
 - iv. any other relevant matters.
- c. Whether the officer failed to take reasonable steps to prevent the incident?
- d. What was the degree of culpability involved in the officer’s behaviour?
- e. Past advice or warnings provided to the officer regarding matters leading to the incident, or whether the officer should have reasonably known about past advice or warnings.

Court orders and alternative sentencing

Where found guilty of an offence, a person may be ordered by the court to undertake actions in addition to, or instead of, any penalty. An order may include publicising the offence, undertaking a specific project to interpret, restore or enhance the cultural heritage values of a place or object.

6. PUBLICATION OF ENFORCEMENT INFORMATION

When Heritage Victoria undertakes enforcement actions concerning serious breaches of relevant laws or regulations it will make information regarding the offence, the offender and the remediation or sanction publicly available on Heritage Victoria's pages on the DELWP website. A serious incident is considered to be a repair order and any breach of the legislation that results in prosecution, however show cause notices, rectification orders and stop work orders may also be regarded as serious incidents in circumstances where previous enforcement actions have failed to achieve compliance.

Heritage Victoria will publish information in relation to the number of official warning notices, rectification orders, and infringement notices as a summary without disclosing details of the breach or perpetrator to demonstrate Heritage Victoria's commitment to enforcing the law. This public disclosure is considered an integral part of both specific and general deterrence. Stop work orders and show cause notices will also be published in this manner, unless they have been identified as serious incidents based on the circumstances above.

All Heritage Victoria prosecutions are made public, with an accurate account of the case provided on the DELWP website and a summary in the annual report of the Heritage Council of Victoria.

All published information will be accurate and not infringe privacy requirements. Publishing information aims to enhance the deterrent effect of enforcement and promote compliance.

Heritage Victoria will publicly disclose:

- details of any repair orders issued under section 155 of the *Heritage Act 2017* 28 days after the order has been issued
- details of any successful prosecution in relation to a breach of the *Heritage Act 2017*
- a summary of official warning notices, rectification orders, stop work orders, show cause notices and infringement notices without disclosing details of the offence or perpetrator.

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7. HERITAGE COMPLIANCE AND ENFORCEMENT DELIVERY

Heritage Victoria will undertake the following actions to improve the administration and enforcement of heritage laws and regulations in Victoria.

Actions	Delivery
Broadly promote this enforcement strategy and any future compliance campaigns to provide clear information about areas or issues Heritage Victoria is focusing on.	2018-19
Communicate compliance targets and levels achieved.	2018-19
Work with industry associations, businesses, community organisations, and local and state governments in developing conservation and maintenance standards for places and objects included in the Victorian Heritage Register and promoting good practice.	2019-20
Develop conservation guidelines to assist with compliant heritage management.	2019-20
Work with partners and key stakeholders to ensure that standards of protection for Victoria's heritage places and objects continuously evolve to meet community expectations.	2018-19
Provide clear information on the Heritage Victoria web pages about what is regulated, why regulation is necessary and how to comply.	2019-20
Publish material outlining the legal obligations and required conduct for persons or organisations owning, managing or interacting with Victoria's cultural heritage places and objects, highlighting new compliance provisions under the <i>Heritage Act 2017</i> .	2017-18
Provide consistent and unambiguous advice on complying with relevant legislation and regulations.	2018-19
Provide advice to applicants for permits and consents about the information required to support an application, how Heritage Victoria determines whether to issue an approval, what the approval will authorise and how to comply with the approval.	Ongoing
Wherever possible, work in partnership with industry, peak bodies, stakeholder groups and the community to achieve compliance with legislation.	Ongoing
Encourage voluntary compliance by assisting the regulated community to understand why heritage controls exist and how to comply; and increase compliance capacity and willingness to comply.	Ongoing
Apply a targeted risk-based approach to monitoring of issued permits and consents.	2018-19
Use a targeted risk-based approach to assess initial non-compliant activities or conduct; and	Ongoing
Investigate any community led intelligence regarding potential or actual offences regarding heritage places and objects.	
Address risks or acts of non-compliance in a reasonable, proportionate manner to deter further non-compliance and where possible, to remediate non-compliant works or conduct.	Ongoing
Consider whether sanctions will be pursued based upon proportionate factors including conduct of the offender and the impacts on the cultural heritage values or the place or object affected.	Ongoing
Provide training and support to duty-holders, partners and other heritage stakeholders to promote best practice heritage management and compliance.	2020-21
Proactively monitor all permits and consents within 12 months of works commencing where the likelihood of non-compliance is possible or greater and the harm to cultural heritage significance is major or greater.	2020-21

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Periodically visit shipwreck protected zones to monitor prohibited activities such as entry, mooring, trawling, fishing, diving, cultivating, mining, quarrying, dredging or excavating	Ongoing
Ensure every permit and consent condition clearly identifies the need to notify the Executive Director before works commence.	2018-19
Identify an annual focus for a targeted compliance campaign and promote this through the Heritage Victoria pages of the DELWP website and other communication networks.	2019-20
Use a targeted risk-based approach to assess initial non-compliant activities or conduct.	2018-19
<p>Heritage Victoria will publicly disclose:</p> <ul style="list-style-type: none"> • details of any serious offences including repair orders issued under section 155 of the <i>Heritage Act 2017</i> 28 days after the order has been issued, and details of any successful prosecution in relation to a breach of the <i>Heritage Act 2017</i>; and • a summary of warning notices, rectification orders, infringement notices and any other enforcement actions considered necessary to deter future offences. 	2018-19

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GLOSSARY

Authorised officer	A person who has been appointed as an inspector in accordance with Part 10 of the <i>Heritage Act 2017</i> or Part 5 of the <i>Underwater Cultural Heritage Act 2018</i> (Cth).
Duty holder	A person who is responsible for ensuring that their activities and interactions with places and objects are compliant with the <i>Heritage Act 2017</i> (Vic) and its regulations, and the <i>Underwater Cultural Heritage Act 2018</i> (Cth) as it relates to Victoria.
Executive Director	A statutory position established by the <i>Heritage Act 2017</i> . The Executive Director's powers and functions include to regulate the investigation and documentation of registered places and registered objects and other cultural heritage in the State; and to manage the enforcement of the Heritage Act;
Harm	Includes moving or relocating any part of a place or object, or any works or activities that adversely impact cultural heritage values.
Heritage Council	An independent statutory authority established by the <i>Heritage Act 2017</i> . The Council's powers and functions include to advise the Minister on the status of the State's cultural heritage resources and on any steps necessary to protect and conserve them; and to make and publish guidelines in relation to the conservation of cultural heritage.
Inspector	A police officer or a person appointed by the Executive Director for the purposes of the <i>Heritage Act 2017</i> . An inspector is appointed in accordance with Part 10 of the Heritage Act. Part 5 of the <i>Underwater Cultural Heritage Act 2018</i> (Cth) provides for an officer or employee of a State to be appointed as an inspector for the purposes of Part 3 or 4 of that Act.
Place	Includes an archaeological site; an area of land covered with water; a building; a garden; a landscape; a precinct; a shipwreck; a site; a tree; and land associated with any of the above.
Object	Includes any fixed or non-fixed object; a collection of objects; a shipwreck artefact; and an archaeological artefact.
Victorian Heritage Inventory	A list of all known historical archaeological sites in the state aged 75 years or more, other than sites that have been assessed as having no or low archaeological value. Sites less than 75 years may be included in the Inventory if they have been assessed as having archaeological value.
Victorian Heritage Register	Lists and provides legal protection for heritage places and objects that have been determined to be of state level cultural heritage significance

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APPENDIX ONE

Offence provisions *Heritage Act 2017*

Section No.	Offence	Penalty Natural Person	Imprisonment	Penalty Body Corporate	Indictable
43	Owners of places and objects must comply with obligations	120	n/a	240	No
59	Notice of intention to sell registered place or registered object	60	n/a	120	No
60	Change of owner of registered place or registered Object – 2 offences	60	n/a	120	No
64	Erection of notices (archaeological places and associated archaeological places)	60	n/a	120	No
67	Power of Executive Director to direct excavation or examination of place (archaeological places and associated archaeological places)	120	n/a	240	No
70	Notice of location of registered shipwrecks, historic shipwrecks, registered shipwreck artefacts and historic shipwreck artefacts - 3 offences	120	n/a	240	No
71	Powers to ascertain location of registered shipwrecks, historic shipwrecks, registered shipwreck artefacts and historic shipwreck artefacts	120	n/a	240	No
72	Directions powers in relation to custody of registered shipwrecks, historic shipwrecks, registered shipwreck artefacts and historic shipwreck artefacts	120	n/a	240	No
73	Offence to remove registered shipwrecks, historic shipwrecks, registered shipwreck artefacts and historic shipwreck artefacts from the State	240	n/a	480	No
74	Other offences in relation to registered shipwrecks, historic shipwrecks, registered shipwreck artefacts and historic shipwreck artefacts – knowingly or recklessly – 2 offences	2400	5 years	4800	Yes
74	Other offences in relation to registered shipwrecks, historic shipwrecks, registered shipwreck artefacts and historic shipwreck artefacts – negligently	1200	2 years	2400	No
75	Directions to deliver a removed registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact	240	n/a	480	No
76	Offence to be near registered shipwrecks, historic shipwrecks, registered shipwreck artefacts or historic shipwreck artefacts with certain equipment	120	12 months	240	No
77	Permits for exploration or recovery of registered shipwrecks, historic shipwrecks, registered shipwreck artefacts or historic shipwreck artefacts	120	12 months	240	No

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78	Permits for the use of registered shipwrecks or registered shipwreck artefacts	10	n/a	20	No
80	Discovery of shipwrecks and ship wreck artefacts to be notified – 3 offences	120	n/a	240	No
87	Offences in relation to knowingly or recklessly performing certain activities – 3 offences (Victorian Heritage Register)	4800	5 years	9600	Yes
88	Offences in relation to negligently performing certain activities – 3 offences (Victorian Heritage Register)	2400	2 years	4800	Yes
89	Offences in relation to performing certain activities – 3 offences (Victorian Heritage Register)	48	n/a	240	No
104	Noncompliance with permit (Victorian Heritage Register)	120	n/a	600	No
123	Offences in relation to certain sites – 2 offences (Heritage Inventory)	600	12 months	1200	No
125	Compliance with consents	240	n/a	480	No
127	Reporting of investigations and surveys of land – 2 offences (archaeological sites)	120	n/a	240	No
128	Actions to preserve archaeological artefacts	120	n/a	240	No
129	Offence to buy, sell or possess archaeological artefacts without consent	120	n/a	240	No
147	Display of interim protection order – 2 offences	120	n/a	240	No
157	Failure to comply with repair order	2400	5 years	4800	Yes
163	Compliance with rectification orders	48	n/a	240	No
168	Compliance with stop orders	4800	n/a	9600	No
192	Offence to fail to comply with Approved World Heritage Management Plan	2400	n/a	10,000	No
195	Identity cards	1	n/a	-	No
197	Inspector may demand name and address	50	n/a	100	No
198	Offence to hinder inspector or authorised person	60	6 months	-	No
199	Offence to impersonate inspector	30	3 months	-	No
209	Powers of inspectors—archaeological artefacts – 2 offences	10	n/a	20	No
211	Powers of inspectors—registered shipwrecks, historic shipwrecks, registered shipwreck artefacts and historic shipwreck artefacts	50	n/a	-	No
231	Confidentiality	20	n/a	-	No

Heritage Victoria

Compliance and Enforcement Strategy

Penalty provisions *Heritage Regulations 2017*

Regulation No.	Offence	Penalty Natural Person	Penalty Body Corporate
31(1)	Relevant survey reports	20	
33(a)	Infringement penalty for an offence against section 89(1) of the Act	10	20
33(b)	Infringement penalty for an offence against section 89(3) of the Act	10	20
33(c)	Infringement penalty for an offence against section 104 of the Act	10	20
33(d)	Infringement penalty for an offence against section 31 of the Act	3	

Penalty provisions *Heritage (Underwater Cultural Heritage) Regulations 2017*

Regulation No.	Offence	Penalty Natural Person
8	Activities prohibited within protected zones—entry	50
9	Activities prohibited within protected zones— mooring	50
10	Activities prohibited within protected zones— trawling, fishing or diving	50
11	Activities prohibited within protected zones—use of equipment constructed for the purpose of diving, salvage or recovery operations	50
12	Activities prohibited within protected zones—use of equipment adapted for the purpose of diving, salvage or recovery operations	50
13	Activities prohibited within protected zones—use of equipment, instruments or tools constructed for the purposes of cultivating, mining, quarrying, dredging or excavating land	50
14	Activities prohibited within protected zones—use of equipment, instruments or tools adapted for the purposes of cultivating, mining, quarrying, dredging or excavating land	50
15	Activities prohibited within protected zones—entry of ship or other vehicle carrying any equipment, explosives, instruments or tools	50
16	Activities prohibited within protected zones— cultivating, mining, quarrying, dredging or excavating	50
17	Activities prohibited near registered shipwrecks, historic shipwrecks, registered shipwreck artefacts or historic shipwreck artefacts or in any protected zone	50
22 (a)	Infringement penalty against regulation 8 or 9	3
22 (b)	Infringement penalty against regulation 10	6
22 (c)	Infringement penalty against regulation 11 or 13	10

Penalty Unit

The value of a penalty unit for a financial year is fixed by the Treasurer under section 5(3) of the *Monetary Units Act 2004*. For the financial year 2018-19 the value of one penalty unit is \$161.19.

Note: This document is a broad compliance and enforcement strategy statement outlining Heritage Victoria's approach to alleged breaches of the *Heritage Act 2017* and should be used as a guide and reference supplement to the requirements of the *Heritage Act 2017*, *Heritage (General) Regulations 2017*, *Heritage (Underwater Cultural Heritage) Regulations 2017* Victorian Civil and Administrative Tribunal Act 1998, Victorian Civil and Administration Rules 1998 and other relevant legislation.