

**Authorised Version No. 004**

**Heritage Act 2017**

**No. 7 of 2017**

Authorised Version incorporating amendments as at  
6 April 2020

**TABLE OF PROVISIONS**

<i>Section</i>	<i>Page</i>
<b>Part 1—Preliminary</b>	<b>1</b>
1 Purpose	1
2 Commencement	2
3 Definitions	2
4 Meaning of <i>historic shipwreck</i>	13
5 Meaning of <i>historic shipwreck artefact</i>	14
6 Specification of period of years for determining a historic shipwreck or historic shipwreck artefact	15
7 Crown to be bound	15
8 Application of Act	16
<b>Part 2—Heritage administration</b>	<b>17</b>
<b>Division 1—Heritage Council</b>	<b>17</b>
9 Establishment of the Heritage Council	17
10 Members of the Heritage Council	17
11 Functions and powers of the Heritage Council	18
12 Assessment criteria regarding cultural heritage significance	20
13 Committees	21
14 Consultation and advice	21
15 Delegation of powers—Heritage Council	22
16 Immunity from liability	23
17 Further heritage administration	23
<b>Division 2—Executive Director</b>	<b>23</b>
18 Executive Director	23
19 Functions and powers of Executive Director	24
20 Delegation of powers—Executive Director	25
21 Staff	25
<b>Division 3—Executive officer of Heritage Council</b>	<b>25</b>
22 Executive officer of the Heritage Council	25

<i>Section</i>	<i>Page</i>
<b>Part 3—Victorian Heritage Register</b>	<b>27</b>
<b>Division 1—Establishment and content of Victorian Heritage Register</b>	<b>27</b>
23 Establishment of the Victorian Heritage Register	27
24 Content of the Heritage Register	27
25 Categories of registration	27
26 Details included in the Heritage Register	28
<b>Division 2—Nominations for registration</b>	<b>28</b>
27 Nominations for inclusion in the Heritage Register	28
28 Certain nominations cannot be accepted	29
29 Executive Director may refuse nominations in certain circumstances	30
30 Requests for review of the Executive Director's refusal of nomination	30
31 Nominations of objects integral to places	32
32 Nominations of additional land	32
33 Requests for further information regarding nominations	33
34 Notice of nominations	33
35 Deferral of consideration for nomination	34
36 Owner to notify purchaser of nomination and deferral	34
<b>Division 3—Recommendations of registration</b>	<b>35</b>
37 Executive Director recommendations in respect of nominations	35
38 Executive Director recommendations for exempted works or activities	35
39 Executive Director recommendations for protected zones	36
40 Statement of recommendation	37
41 Notice of recommendation to be published	38
42 Obligations of owners of places and objects	39
43 Owners of places and objects must comply with obligations	41
<b>Division 4—Determinations of registration</b>	<b>41</b>
44 Submissions to the Heritage Council	41
45 Requests for further information regarding submissions	42
46 Consideration of submissions to the Heritage Council	42
47 Role of the Executive Director in determination of recommendation	42
48 Sale of place or object the subject of recommendation	43
49 Determinations of the Heritage Council	43
<b>Division 5—Minister's powers regarding registration</b>	<b>46</b>
50 Minister's call-in powers	46
51 Heritage Council must hear submissions and give report	46
52 Determination of the Minister	46

<i>Section</i>	<i>Page</i>
<b>Division 6—Effects of registration</b>	<b>47</b>
53 Notice of registration	47
54 Notice to the Registrar of Titles	48
55 Notice to owner	48
56 Amendment of planning schemes	49
57 Copies of Heritage Register	50
58 Heritage certificates	50
59 Notice of intention to sell registered place or registered object	52
60 Change of owner of registered place or registered object	52
<b>Division 7—Amendment of Heritage Register</b>	<b>53</b>
61 Destroyed places and registered objects	53
62 Amendment of the Heritage Register	53
63 Expedited amendment of the Heritage Register	53
<b>Division 8—Other provisions relating to registered archaeological places and associated archaeological artefacts</b>	<b>55</b>
64 Erection of notices	55
65 Archaeological artefacts in a registered archaeological place taken to be property of the Crown	55
66 Museum of Victoria to be place of lodgement	55
67 Power of the Executive Director to direct excavation or examination of place	56
<b>Part 4—Underwater cultural heritage</b>	<b>57</b>
<b>Division 1—Provisional registration</b>	<b>57</b>
68 Determination of provisional registration	57
69 Duration of provisional registration	58
<b>Division 2—Shipwrecks and shipwreck artefacts</b>	<b>58</b>
70 Notice of location of registered shipwrecks, historic shipwrecks, registered shipwreck artefacts and historic shipwreck artefacts	58
71 Powers to ascertain location of registered shipwrecks, historic shipwrecks, registered shipwreck artefacts and historic shipwreck artefacts	60
72 Directions powers in relation to custody of registered shipwrecks, historic shipwrecks, registered shipwreck artefacts and historic shipwreck artefacts	61
73 Offence to remove registered shipwrecks, historic shipwrecks, registered shipwreck artefacts and historic shipwreck artefacts from the State	62
74 Other offences in relation to registered shipwrecks, historic shipwrecks, registered shipwreck artefacts and historic shipwreck artefacts	63

<i>Section</i>	<i>Page</i>	
75	Directions to deliver a removed registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact	65
76	Offence to be near registered shipwrecks, historic shipwrecks, registered shipwreck artefacts or historic shipwreck artefacts with certain equipment	66
77	Permits for exploration or recovery of registered shipwrecks, historic shipwrecks, registered shipwreck artefacts or historic shipwreck artefacts and in relation to protected zones	66
78	Permits for the use of registered shipwrecks or registered shipwreck artefacts	67
79	Further exceptions to offences	68
80	Discovery of shipwrecks and shipwreck artefacts to be notified	68
81	Rewards	70
82	Declaration as to Crown ownership of registered shipwrecks or registered shipwreck artefacts	71
83	Right to claim compensation for loss on vesting of registered shipwreck or registered shipwreck artefact in the Crown	71
84	Official place of lodgement of registered shipwrecks and registered shipwreck artefacts	71
85	Danger to navigation	72
<b>Part 5—Permits</b>		<b>73</b>
<b>Division 1—General</b>		<b>73</b>
86	Scope of Part	73
87	Offences in relation to knowingly or recklessly performing certain activities	73
88	Offences in relation to negligently performing certain activities	74
89	Offences in relation to performing certain activities	76
90	Exemption for the purposes of religious services or rites	77
91	Exemption for certain subdivisions	77
92	Other exemptions from permits	78
<b>Division 2—Permit applications</b>		<b>79</b>
93	Permit applications	79
94	Public display of permit applications in certain circumstances	79
95	Public submissions in relation to permit applications	81
96	Amending permit applications	81
97	Time for determining permit applications	82
98	Requests for additional information in relation to permit applications	82
99	Stopping of time for permit applications	83
100	Submissions by responsible authorities and municipal councils in relation to permit applications	84
101	Determination of permit applications	85

<i>Section</i>	<i>Page</i>
<b>Division 3—Issue of permits</b>	<b>86</b>
102 Issue of permits	86
103 Issue of permits subject to security	87
104 Noncompliance with permit	88
<b>Division 4—Amendment of permits</b>	<b>88</b>
105 Amendment of permits	88
<b>Division 5—Reviews of determinations relating to permits</b>	<b>89</b>
106 Review of the Executive Director's determinations relating to permits	89
107 Adjournment of reviews relating to permits	91
108 Determination of reviews by the Heritage Council	91
109 Minister's power to call in or refer matter to VCAT	93
110 Notice of referral to VCAT	94
111 Powers of VCAT on review	94
112 Notice of VCAT's decision	95
113 Exercise of call-in power by the Minister	95
114 Powers of the Minister on referral	95
<b>Division 6—Miscellaneous</b>	<b>96</b>
115 Applications for permits before registration in urgent cases	96
116 Delegation	97
<b>Part 6—Archaeological heritage</b>	<b>98</b>
<b>Division 1—Heritage Inventory</b>	<b>98</b>
117 Establishment of the Heritage Inventory	98
118 Content of the Heritage Inventory	98
119 Removing archaeological sites from the Heritage Inventory	98
120 Notice of removal of sites from the Heritage Inventory	98
121 Public availability of the Heritage Inventory	99
<b>Division 2—Protection of archaeological heritage</b>	<b>99</b>
122 Application of Division	99
123 Offences in relation to certain sites	99
124 Executive Director may issue consents	100
125 Compliance with consents	102
126 Requests for reviews regarding consents	103
127 Reporting of investigations and surveys of land	104
128 Actions to protect archaeological artefacts	105
129 Offence to buy, sell or possess archaeological artefacts without consent	106
<b>Division 3—Sites of archaeological value</b>	<b>106</b>
130 Recommendation for site of archaeological value	106
131 Notice of recommendation for site of archaeological value	107

<i>Section</i>	<i>Page</i>
132 Consideration of submissions in relation to a recommendation for a site of archaeological value	108
133 Approval of recommendation for a site of archaeological value	109
<b>Part 7—Covenants</b>	<b>110</b>
134 Land owner may enter covenant with the Heritage Council	110
135 Land owner may enter covenant with the National Trust	110
136 VCAT may release covenant	111
137 Notice of covenants	112
138 Heritage Council to consider submissions and make decisions	113
139 Covenant affecting Crown land	113
140 Recording of notice of covenant or agreement	114
141 Effect of recording of notice of covenant or agreement	114
<b>Part 8—Orders</b>	<b>115</b>
<b>Division 1—Interim protection orders</b>	<b>115</b>
142 Scope of Division	115
143 Heritage Council or Executive Director may make interim protection order	115
144 Effect of interim protection order	116
145 Manner of service of interim protection order	116
146 Additional requirements relating to service of interim protection order	116
147 Display of interim protection order	117
148 Works or activities while interim protection order is in force	118
149 Recommendation regarding registration	118
150 Revocation of interim protection order	118
151 Period of interim protection order	119
<b>Division 2—Repair orders</b>	<b>119</b>
152 Disrepair of registered place or registered object	119
153 Failure to maintain registered place or registered object	119
154 Notices to show cause why works should not be carried out	120
155 Repair orders for the carrying out of works	120
156 VCAT review of repair order to carry out works	121
157 Failure to comply with repair order	121
158 Revocation of repair order	122
159 Executive Director may carry out works	122
<b>Division 3—Rectification orders</b>	<b>122</b>
160 Issue of rectification order	122
161 Effect of rectification order	123
162 Manner of service of rectification order	123
163 Compliance with rectification orders	123
164 VCAT review of rectification order	124

<i>Section</i>	<i>Page</i>
<b>Division 4—Stop orders</b>	<b>124</b>
165 Issue of stop orders	124
166 Service of stop orders	125
167 Period of stop orders	125
168 Compliance with stop orders	126
<b>Part 9—World Heritage</b>	<b>127</b>
<b>Division 1—World Heritage Environs Areas</b>	<b>127</b>
169 Declaration of World Heritage Environs Area	127
<b>Division 2—World Heritage Strategy Plans</b>	<b>127</b>
170 Preparation of World Heritage Strategy Plan	127
171 Notice of draft World Heritage Strategy Plan	128
172 Submissions on draft World Heritage Strategy Plan	129
173 Procedure of the Heritage Council where no submissions	129
174 Heritage Council to consider submissions	129
175 Decision of the Heritage Council	129
176 Approval of World Heritage Strategy Plan	130
177 Amendments to Approved World Heritage Strategy Plans	130
178 Public availability of Approved World Heritage Strategy Plans	130
179 Notice of Approved World Heritage Strategy Plan	131
180 Amendment of planning schemes	131
<b>Division 3—World Heritage Management Plans</b>	<b>132</b>
181 Steering Committees for listed places	132
182 Functions of Steering Committees	133
183 Preparation of World Heritage Management Plan	133
184 Notice of draft World Heritage Management Plan	134
185 Submissions on draft World Heritage Management Plan	135
186 Steering Committee to consider submissions	135
187 Decision of the Steering Committee	136
188 Approval of World Heritage Management Plan	136
189 Amendments to Approved World Heritage Management Plans	136
190 Public availability of Approved World Heritage Management Plans	137
191 Review of Approved World Heritage Management Plan	137
192 Offence to fail to comply with Approved World Heritage Management Plan	137
193 Annual report on condition of property	138
<b>Part 10—Enforcement and legal proceedings</b>	<b>139</b>
<b>Division 1—Appointment and powers of inspectors</b>	<b>139</b>
194 Appointment of inspectors	139
195 Identity cards	139
196 Inspector must show identity card	139

<i>Section</i>	<i>Page</i>
197 Inspector may demand name and address	140
198 Offence to hinder inspector or authorised person	141
199 Offence to impersonate inspector	141
200 Police officers must assist inspectors	141
<b>Division 2—Powers of entry, search and seizure</b>	<b>141</b>
201 General powers of entry	141
202 Search warrant for any premises	143
203 Announcement before entry of premises on warrant	144
204 Copy of warrant to be given to occupier	145
205 Powers of inspectors on entry on warrant	145
206 Court order for entry to residence for cultural heritage significance reasons	146
207 Announcement before entry of residence using order	147
208 Powers on entry using order	147
209 Powers of inspectors—archaeological artefacts	148
210 Seizure and forfeiture—archaeological artefacts	149
211 Powers of inspectors—underwater cultural heritage	149
212 Arrest without warrant—underwater cultural heritage	151
213 Search warrants—registered shipwrecks, historic shipwrecks, registered shipwreck artefacts and historic shipwreck artefacts	152
214 Seizure and forfeiture—underwater cultural heritage	153
<b>Division 3—Orders of the Supreme Court</b>	<b>154</b>
215 Definitions	154
216 Remedy or restraint of contraventions of this Act	155
217 Orders of the Supreme Court	155
<b>Division 4—Infringement notices</b>	<b>156</b>
218 Infringement notices—general	156
219 Infringement notices—additional steps	156
<b>Division 5—Evidence and legal proceedings</b>	<b>157</b>
220 Service of documents	157
221 Prosecutions of offences	158
222 Persons who may prosecute	158
223 Certificates to be evidence	159
224 Statement of inspector is evidence	160
225 Possession of certain items is evidence of contravention	160
<b>Division 6—Additional enforcement provisions</b>	<b>161</b>
226 Scope of Division	161
227 Declaration by the Governor in Council	161
228 Effect of Governor in Council declaration	161
<b>Division 7—Miscellaneous</b>	<b>162</b>
229 Powers of court with respect to contravention	162

<i>Section</i>	<i>Page</i>
230 Powers of the Executive Director with respect to contravention	164
231 Confidentiality	165
232 Criminal liability of officers of bodies corporate—failure to exercise due diligence	165
233 Criminal liability of officers of bodies corporate—accessorial liability	167
<b>Part 11—Heritage Fund</b>	<b>170</b>
234 Heritage Fund	170
235 Payments into the Heritage Fund	170
236 Payments out of the Heritage Fund	170
237 Power of the Heritage Council to borrow money	171
238 Heritage Council may accept gifts	171
239 Making of loans and grants from the Heritage Fund	172
240 Rates of interest on loans made from the Heritage Fund	173
241 Acquisition of places by the Heritage Council	173
242 Sale of places and objects by the Heritage Council	173
243 Special assistance	174
244 Remitted taxes and rates become immediately payable on occurrence of certain events	175
245 Payment of deferred taxes or rates	176
<b>Part 12—Hearings</b>	<b>177</b>
246 Application of Part	177
247 Directions about hearings	177
248 Hearings to be public	177
249 General procedure for hearings	177
250 Persons who may appear before the Heritage Council	178
251 Failure to attend hearing	178
252 Heritage Council may hear submissions together	178
253 Adjournment of hearings	178
254 Heritage Council may regulate its own proceedings	178
<b>Part 13—General</b>	<b>179</b>
255 Regulations—general	179
256 Regulations—underwater cultural heritage	181
<b>Part 14—Repeal, savings and transitional provisions</b>	<b>184</b>
<b>Division 1—Repeal of the Heritage Act 1995</b>	<b>184</b>
257 Repeal of the Heritage Act 1995	184
<b>Division 2—Savings and transitional provisions</b>	<b>184</b>
258 Definitions	184
259 General transitional provisions	184
260 Heritage Council	185
261 Committees	185

<i>Section</i>	<i>Page</i>
262 Executive Director	186
263 Heritage Register	186
264 Nominations in respect of which recommendations have not been made	187
265 Nominations in respect of which recommendations have been made	188
266 Decisions of the Heritage Council	188
267 Heritage certificates	188
268 Exemptions for liturgical purposes	189
269 Other exemptions from permits	189
270 Permit applications in respect of which determinations have not been made	189
271 Permits	189
272 Appeals to the Heritage Council in respect of which determinations have not been made	190
273 Determinations of the Heritage Council in respect of appeals	190
274 Matters called in or referred to VCAT	190
275 Covenants	191
276 Recommendations relating to remains of ships and articles in respect of which determinations have not been made	191
277 Determinations relating to remains of ships and articles	192
278 Provisional registration	192
279 Recommendations for protected zones in respect of which determinations have not been made	192
280 Protected zones	192
281 Permit applications relating to shipwrecks in respect of which determinations have not been made	193
282 Permits relating to shipwrecks	193
283 Notice of discovery of shipwrecks and articles	193
284 Permits for the use of historic shipwreck relics	193
285 Heritage Inventory	194
286 Permits for the use of archaeological relics	194
287 Consent applications in respect of which determinations have not been made	194
288 Consents	195
289 Orders for the carrying out of works	195
290 Reviews of orders to carry out works	195
291 Heritage Fund	195
292 Inspectors	195
293 Governor in Council declarations	196
<b>Schedule 1—Further heritage administration</b>	<b>198</b>

<i>Section</i>	<i>Page</i>
<b>Endnotes</b>	<b>207</b>
1 General information	207
2 Table of Amendments	209
3 Amendments Not in Operation	210
4 Explanatory details	211

*Section*

*Page*

---

---

**Authorised Version No. 004**

**Heritage Act 2017**

**No. 7 of 2017**

Authorised Version incorporating amendments as at  
6 April 2020

**The Parliament of Victoria enacts:**

**Part 1—Preliminary**

**1 Purpose**

The purpose of this Act is to re-enact with amendments the **Heritage Act 1995**—

- (a) to provide for the protection and conservation of the cultural heritage of the State; and
- (b) to establish a Victorian Heritage Register for the registration of places and objects; and
- (c) to establish a Heritage Inventory for the recording of archaeological sites and approved sites of archaeological value; and
- (d) to establish a Heritage Council to perform functions in relation to cultural heritage; and
- (e) to establish a Heritage Fund to provide for the conservation and management of cultural heritage; and
- (f) to provide for the management of places included in the World Heritage List; and
- (g) to create offences and other enforcement measures to protect and conserve cultural heritage.

## 2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 November 2017, it comes into operation on that day.

## 3 Definitions

- (1) In this Act—

*Aboriginal person* has the same meaning as in the **Aboriginal Heritage Act 2006**;

*Aboriginal tradition* has the same meaning as in the **Aboriginal Heritage Act 2006**;

*alter*, in relation to a place or object, means to modify or change the appearance or physical nature of the place or object, including any modification or change by way of structural or other works, by painting, plastering or other decoration;

*approved site of archaeological value* means a site of archaeological value approved by the Heritage Council under section 133;

*Approved World Heritage Management Plan* means a World Heritage Management Plan approved under Part 9 and includes any approved amendments to that plan;

*Approved World Heritage Strategy Plan* means a World Heritage Strategy Plan approved under Part 9 and includes any approved amendments to that plan;

*archaeological artefact* means an object (other than a shipwreck artefact) which provides information of past activity in the State and—

- (a) is associated with an archaeological site; or
- (b) is associated with a registered archaeological place; or
- (c) is associated with an approved site of archaeological value; or
- (d) is associated with a place that was an archaeological site, registered archaeological place or approved site of archaeological value;

***archaeological site*** means a place (other than a shipwreck) which—

- (a) contains an artefact, deposit or feature which is 75 or more years old; and
- (b) provides information of past activity in the State; and
- (c) requires archaeological methods to reveal information about the settlement, development or use of the place; and
- (d) is not associated only with Aboriginal occupation of the place;

***building*** includes a structure, work and fixture, and any part of a building, structure, work or fixture;

***committee*** means a committee established under section 13;

***conservation*** includes—

- (a) the retention of the cultural heritage significance of a place or object; and
- (b) any maintenance, protection, preservation, restoration, reconstruction or sustainable use of a place or object;

***corporate plan*** means a corporate plan prepared by the Heritage Council and approved by the Minister under clause 9 of Schedule 1;

***cultural heritage*** means places and objects of—

- (a) cultural heritage significance; or
- (b) State-level cultural heritage significance;

***cultural heritage management plan*** has the same meaning as in the **Aboriginal Heritage Act 2006**;

***cultural heritage permit*** has the same meaning as in the **Aboriginal Heritage Act 2006**;

***cultural heritage significance*** means aesthetic, archaeological, architectural, cultural, historical, scientific or social significance;

***Department*** means the Department of Environment, Land, Water and Planning;

***develop***, in relation to a place, means—

- (a) to construct or alter the place or a building on the place; or
- (b) to demolish or remove a building or structure on the place; or
- (c) to carry out any works on, over or under the place; or
- (d) to subdivide or consolidate land comprising the place, including any building or airspace; or
- (e) to place or relocate a building or structure on the place; or
- (f) to construct or put up for display signs or hoardings;

*dispose*, in relation to a place or object, includes—

- (a) any assumption of any of the rights of an owner in relation to the place or object; and
- (b) any dealing in the place or object whether for reward or not; and
- (c) selling, offering to sell, bartering or exchanging and agreeing to sell, barter or exchange the place or object;

*Executive Director* means the Executive Director employed under section 18;

*executive officer* means an executive officer of the Heritage Council employed under section 22;

*government asset manager* means a Minister or any entity responsible for the care, management or control of—

- (a) a building on government land; or
- (b) government land; or
- (c) a government object;

*government land* means land, other than Crown land which is permanently or temporarily reserved under section 4 of the **Crown Land (Reserves) Act 1978** and vested in trustees or is under the control of a committee of management under that Act, which is—

- (a) Crown land; or
- (b) land vested in a Minister; or
- (c) land vested in a public authority;

*government object* means an object owned by or vested in—

- (a) the Crown; or

(b) a Minister; or

(c) a public authority;

***harm***, in relation to a place or object, includes moving or removing any part of the place or object;

***heritage certificate*** means a certificate given under section 58;

***Heritage Council*** means the Heritage Council established under Division 1 of Part 2;

***Heritage Fund*** means the Heritage Fund established under Part 11;

***Heritage Inventory*** means the Heritage Inventory established under Division 1 of Part 6;

***Heritage Register*** means the Victorian Heritage Register established under Division 1 of Part 3;

***historic shipwreck*** has the meaning given by section 4;

***historic shipwreck artefact*** has the meaning given by section 5;

***inspector*** means—

(a) an inspector appointed under Part 10; or

(b) a police officer;

***interim protection order*** means an order issued under Division 1 of Part 8;

***listed place*** means a place in the State which is included in the World Heritage List and is recorded in the Heritage Register;

***municipal council*** means a Council within the meaning of the **Local Government Act 2020**;

S. 3(1) def. of  
*municipal  
council*  
amended by  
No. 9/2020  
s. 390(Sch. 1  
item 53).

**National Trust** means the National Trust of Australia (Victoria);

**notice of intended action**—see section 230;

**object** includes—

- (a) any fixed or non-fixed object; and
- (b) a collection of objects; and
- (c) a shipwreck artefact; and
- (d) an archaeological artefact;

**owner** means—

- (a) in relation to land which has been alienated in fee by the Crown and is under the operation of the **Transfer of Land Act 1958**, other than land in an identified folio under that Act—the person who is registered or entitled to be registered as proprietor of an estate in fee simple in the land; or
- (b) in relation to land which has been alienated in fee by the Crown and is under the **Transfer of Land Act 1958**, being land in an identified folio under that Act—the person who is the owner of the fee or equity of redemption; or
- (c) in relation to land which has been alienated in fee by the Crown but is land not under the operation of the **Transfer of Land Act 1958**—the person who is the owner of the fee or equity of redemption; or
- (d) in relation to Crown land reserved under the **Crown Land (Reserves) Act 1978** and managed or controlled by a committee of management—the Minister administering that Act; or

- (e) in relation to any other Crown land—  
the Minister or public authority that  
manages or controls the land; or
- (f) in relation to land affected by an  
owners corporation—
  - (i) any owner of affected lots; and
  - (ii) the owners corporation in relation  
to any common property for  
which the owners corporation is  
responsible;

*place* includes—

- (a) an archaeological site; and
- (b) an area of land covered with water; and
- (c) a building; and
- (d) a garden; and
- (e) a landscape; and
- (f) a precinct; and
- (g) a shipwreck; and
- (h) a site; and
- (i) a tree; and
- (j) land associated with any thing specified  
in paragraphs (a) to (i);

*place of worship* means a place used for  
religious activities, including a chapel,  
church, mosque, synagogue or temple;

*planning scheme* means a planning scheme  
approved under the **Planning and  
Environment Act 1987**;

*possess*, in relation to an item, includes—

- (a) having the custody or control of the  
item by any means; and

- (b) controlling access to the item, either alone or in the company or with the assistance of others;

***protected zone*** means a place included in the Heritage Register as a protected zone;

***public authority*** means any body corporate or unincorporate established by or under an Act for a public purpose, but does not include a municipal council;

***rectification order*** means an order issued under Division 3 of Part 8;

***registered archaeological artefact*** means an object included in the Heritage Register as a registered archaeological artefact;

***registered archaeological place*** means a place included in the Heritage Register as a registered archaeological place;

***registered object*** means an object included in the Heritage Register;

***registered place*** means a place included in the Heritage Register;

***registered shipwreck*** means—

- (a) a shipwreck included in the Heritage Register under section 49; or

**Note**

***place*** is defined to include a shipwreck—see paragraph (g) of that definition.

- (b) a historic shipwreck that has been included in the Heritage Register; or
- (c) a place appearing to be a shipwreck provisionally registered under section 68;

***registered shipwreck artefact*** means—

- (a) a shipwreck artefact included in the Heritage Register under section 49; or

**Note**

***object*** is defined to include a shipwreck artefact—see paragraph (c) of that definition.

- (b) a historic shipwreck artefact that has been included in the Heritage Register; or
- (c) an object appearing to be a shipwreck artefact provisionally registered under section 68;

***relevant survey purpose*** means the purpose of—

- (a) finding an archaeological site; or
- (b) preparing a cultural heritage management plan; or
- (c) acting in accordance with a cultural heritage permit;

***repair order*** means an order made under Division 2 of Part 8;

***residence*** means a building or part of a building ordinarily used as a residence;

***responsible authority*** has the meaning given by section 13 of the **Planning and Environment Act 1987**;

***sea*** includes any waters within the ebb and flow of the tide;

***sea-bed*** means any land temporarily or permanently covered by Victorian waters;

***ship*** includes any vessel used in navigation by water;

***shipwreck*** means—

- (a) the remains or any part of the remains of a ship; and
- (b) any marine concretions and accretions that have become attached to the remains or any part of the remains of the ship;

***shipwreck artefact*** means—

- (a) an artefact associated with a shipwreck, including an artefact appearing to have formed part of a ship or appearing to have been installed or carried on a ship; and
- (b) any marine concretions and accretions that have become attached to the artefact;

***site card***, in relation to an investigation or survey of land, means a summary of information prepared in the prescribed form by the person undertaking the investigation or survey;

***State-level cultural heritage significance*** means cultural heritage significance which is important to the history and development of the State;

***statement of recommendation***—see section 40;

***stop order*** means an order issued under Division 4 of Part 8;

***underwater cultural heritage regulations*** means regulations made under section 256;

***vehicle*** has the same meaning as in the **Road Safety Act 1986**;

***Victorian coastal waters*** has the same meaning as the expression "coastal waters of the State" has in relation to Victoria under the Coastal Waters (State Powers) Act 1980 of the Commonwealth;

***Victorian waters*** means Victorian coastal waters and waters within the limits of the State;

***works*** includes—

- (a) any physical intervention, excavation or action that may result in a permanent or temporary change to the appearance or physical nature of a place or object; and
- (b) any change to the natural or existing condition or topography of land; and
- (c) any removal or destruction of trees; and
- (d) any removal of vegetation or topsoil;

***World Heritage Environs Area*** means an area declared to be a World Heritage Environs Area under Part 9;

***World Heritage List*** has the same meaning as in the Environment Protection and Biodiversity Conservation Act 1999 of the Commonwealth;

***world heritage values*** has the same meaning as in the Environment Protection and Biodiversity Conservation Act 1999 of the Commonwealth.

- (2) A reference in this Act to a shipwreck or to a shipwreck artefact being situated in any waters includes a reference to a shipwreck or shipwreck artefact—

- (a) being situated in or forming part of the sea-bed or the sub-soil of the sea-bed beneath those waters; or
  - (b) being situated in or forming part of a reef in those waters.
- (3) A reference in this Act to a shipwreck or to a shipwreck artefact being no longer situated in any waters includes a reference to a shipwreck or shipwreck artefact being situated on or forming part of land or the sub-soil of land.
- (4) An item must not be taken not to be a shipwreck or shipwreck artefact for the purposes of this Act by reason only that it is attached to a shipwreck, a reef, the sea-bed, land or the sub-soil of the sea-bed or land.

#### 4 Meaning of *historic shipwreck*

- (1) Subject to subsection (5), a *historic shipwreck* is a shipwreck that has been situated in Victorian waters—
- (a) for 75 years or more; or
  - (b) for the number of years specified under proclamation under section 6 (a *proclaimed number of years*).
- (2) Subsection (1) applies whether or not the existence or location of the shipwreck is presently known.
- (3) In addition but subject to subsection (5), a shipwreck that has been removed from Victorian waters at any time becomes a *historic shipwreck*—
- (a) 75 years after the likely date that the shipwreck first came to rest on the sea-bed; or

- (b) if there is a number of years specified under proclamation under section 6, the proclaimed number of years after the likely date the shipwreck first came to rest on the sea-bed.
- (4) Subsection (3) does not apply to a shipwreck that has been salvaged or recovered if the salvage or recovery was not contrary to any law in force at the time it occurred.
- (5) A shipwreck is not a **historic shipwreck** if it is—
  - (a) a shipwreck specified under proclamation under subsection (6); or
  - (b) a shipwreck of a class specified under proclamation under subsection (6).
- (6) The Governor in Council, by proclamation published in the Government Gazette, may specify a shipwreck, or a shipwreck of a specified class, is not a historic shipwreck.

#### **5 Meaning of *historic shipwreck artefact***

- (1) Subject to subsection (5), a **historic shipwreck artefact** is a shipwreck artefact that has been situated in Victorian waters—
  - (a) for 75 years or more; or
  - (b) for the number of years specified under proclamation under section 6 (a **proclaimed number of years**).
- (2) Subsection (1) applies whether or not the existence or location of the object is presently known.
- (3) In addition but subject to subsection (5), a shipwreck artefact that has been removed from Victorian waters at any time becomes a **historic shipwreck artefact**—
  - (a) 75 years after the likely date that the object first came to rest on the sea-bed; or

- (b) if there is a number of years specified under proclamation under section 6, the proclaimed number of years after the likely date the object first came to rest on the sea-bed.
- (4) Subsection (3) does not apply to an object that has been salvaged or recovered if the salvage or recovery was not contrary to any law in force at the time it occurred.
- (5) A shipwreck artefact is not a *historic shipwreck artefact* if it is—
  - (a) an object specified under proclamation under subsection (6); or
  - (b) an object of a class specified under proclamation under subsection (6).
- (6) The Governor in Council, by proclamation published in the Government Gazette, may specify an object, or an object of a specified class, is not a historic shipwreck artefact.

## **6 Specification of period of years for determining a historic shipwreck or historic shipwreck artefact**

- (1) The Governor in Council, by proclamation published in the Government Gazette, may specify a period of years for the purpose of section 4(1)(b) or 5(1)(b).
- (2) A period of years specified under subsection (1) cannot be—
  - (a) less than 10 years; or
  - (b) 75 years or more.

## **7 Crown to be bound**

This Act binds the Crown, not only in right of the State of Victoria but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

## **8 Application of Act**

This Act does not apply to a place or object that is of cultural heritage significance only on the ground of its association with Aboriginal tradition.

## **Part 2—Heritage administration**

### **Division 1—Heritage Council**

#### **9 Establishment of the Heritage Council**

- (1) The Heritage Council is established.
- (2) The Heritage Council—
  - (a) is a body corporate with perpetual succession; and
  - (b) has a common seal; and
  - (c) may sue and be sued in its corporate name; and
  - (d) may acquire, hold and dispose of real and personal property; and
  - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) The common seal of the Heritage Council must be kept as directed by the Heritage Council.
- (4) All courts must take judicial notice of the seal of the Heritage Council on a document and, until the contrary is proved, must presume that the document was properly sealed.

#### **10 Members of the Heritage Council**

- (1) The Heritage Council consists of 10 members appointed by the Governor in Council on the recommendation of the Minister.
- (2) Of the persons appointed as members of the Heritage Council—
  - (a) 7 persons must have recognised skills or expertise in one of each of the following areas—
    - (i) archaeology;

- (ii) architectural conservation or architectural history;
  - (iii) engineering or building construction;
  - (iv) heritage law, planning law or property law;
  - (v) financial management;
  - (vi) history;
  - (vii) urban or regional planning; and
- (b) one person must be appointed from a list of 3 names submitted to the Minister by the National Trust; and
  - (c) one person must be an Aboriginal person who has relevant experience or knowledge of cultural heritage; and
  - (d) one person must have a demonstrated understanding, expertise or interest in the State's heritage or in the management of heritage places.
- (3) If the National Trust does not submit a list of names to the Minister under subsection (2)(b) within one month after receiving a written request by the Minister, the Governor in Council may appoint a suitable person nominated by the Minister to fill the vacancy.

## **11 Functions and powers of the Heritage Council**

- (1) The functions of the Heritage Council are—
  - (a) 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
  - (b) to make and publish guidelines in relation to the conservation of cultural heritage; and

- (c) to promote public understanding of the State's cultural heritage and develop and conduct community information and education programs; and
- (d) to advise government departments and agencies, municipal councils and other responsible authorities on matters relating to the protection and conservation of cultural heritage; and
- (e) to liaise with other bodies responsible for matters relating to the protection, conservation, management and promotion of cultural heritage; and
- (f) to initiate and undertake programs of research related to the identification, conservation or interpretation of cultural heritage; and
- (g) to include places or objects in the Heritage Register; and
- (h) to remove places or objects from the Heritage Register, or to amend the registration of a place or object; and
- (i) to remove sites from the Heritage Inventory; and
- (j) to conduct reviews of decisions of the Executive Director in relation to nominations, permits and consents; and
- (k) to develop, revise and publish the assessment criteria to be used in considering the cultural heritage significance of places and objects and determining whether those places or objects should or should not be included in the Heritage Register; and

- (l) to adopt, and forward to the Minister, World Heritage Strategy Plans and amendments to World Heritage Strategy Plans; and
  - (m) to determine criteria for assessing whether a place has archaeological value; and
  - (n) to advise the Minister administering the **Planning and Environment Act 1987** on proposed amendments to planning schemes which may affect the protection or conservation of cultural heritage; and
  - (o) to manage the Heritage Fund; and
  - (p) to perform any other functions conferred on the Heritage Council under this Act or any other Act.
- (2) Subject to this Act, the Heritage Council has the power to do all things necessary or convenient to be done for, in connection with or incidental to, the performance of its functions.

## **12 Assessment criteria regarding cultural heritage significance**

In determining assessment criteria for inclusion of places and objects in the Heritage Register under section 11(1)(k), the Heritage Council must have regard to the following matters—

- (a) historical importance, association with or relationship to the State's history;
- (b) good design or aesthetic characteristics;
- (c) scientific or technical innovations or achievements;
- (d) social or cultural associations;
- (e) potential to educate, illustrate or provide further scientific investigation in relation to the State's cultural heritage;

- (f) importance in exhibiting a richness, diversity or unusual integration of features;
- (g) rarity or uniqueness of a place or object;
- (h) the representative nature of a place or object as part of a class or type of places or objects;
- (i) methods of establishing the extent to which land or objects nominated for inclusion in the Heritage Register in association with a registered place or a place nominated for inclusion are integral to the State-level cultural heritage significance of the place;
- (j) any other matter which is relevant to the determination of State-level cultural heritage significance.

### **13 Committees**

- (1) For the purposes of this Act, the Heritage Council may appoint committees consisting of at least 3 members of the Heritage Council and any other persons as the Heritage Council considers necessary.
- (2) A committee may—
  - (a) make recommendations to the Heritage Council on any matter referred to it by the Heritage Council; and
  - (b) perform any other function, duty or power given to it under this Act.

### **14 Consultation and advice**

- (1) In performing its functions or duties or exercising its powers under this Act, the Heritage Council or a committee may do any of the following—
  - (a) consult with any person or body;
  - (b) perform any investigation it considers appropriate;

- (c) prepare, commission the preparation of or adopt any guidelines, statements of policy, reports, studies and conservation plans it considers appropriate;
  - (d) have regard to any information it considers relevant.
- (2) The Heritage Council may engage persons with suitable qualifications and experience as consultants.
  - (3) An engagement under subsection (2) may be on any terms and conditions that the Heritage Council considers appropriate.

#### **15 Delegation of powers—Heritage Council**

- (1) Subject to subsection (2), the Heritage Council, by instrument, may delegate any of its functions, duties or powers under this Act to the Executive Director or the executive officer, other than—
  - (a) the power to review the Executive Director's refusal of a nomination; or
  - (b) the power to determine that a place or object should or should not be included in the Heritage Register; or
  - (c) the power to approve sites of archaeological value; or
  - (d) the power to remove sites from the Heritage Inventory; or
  - (e) the power to review determinations of the Executive Director in relation to consents; or
  - (f) the power to review determinations of the Executive Director in relation to permits.
- (2) The Heritage Council cannot delegate any of its functions, duties or powers in relation to the management of the Heritage Fund to the Executive Director.

- (3) The Heritage Council, by instrument, may delegate any of its functions, duties or powers under this Act to a committee.

**Note**

Under section 42A(1)(aa) of the **Interpretation of Legislation Act 1984**, the power to delegate under this section cannot be delegated.

**16 Immunity from liability**

- (1) A member of the Heritage Council or a member of a committee is not liable for anything done or omitted to be done in good faith—
- (a) in performing any function, duty or power under this Act, the regulations or any other Act; or
  - (b) in the reasonable belief that the act or omission was in the performance of a function, duty or power under this Act, the regulations or any other Act.
- (2) Any liability resulting from an act or omission that would, but for subsection (1), attach to a member of the Heritage Council or a member of a committee, attaches instead to the Heritage Council.

**17 Further heritage administration**

Schedule 1 has effect.

**Division 2—Executive Director**

**18 Executive Director**

An Executive Director must be employed under Part 3 of the **Public Administration Act 2004** for the purposes of this Act.

## **19 Functions and powers of Executive Director**

- (1) The functions of the Executive Director are—
- (a) to establish and maintain the Heritage Register; and
  - (b) to recommend to the Heritage Council the registration of any place or object in the Heritage Register; and
  - (c) to recommend to the Heritage Council the removal of places or objects from the Heritage Register, or the amendment of the Heritage Register; and
  - (d) to establish and maintain the Heritage Inventory; and
  - (e) to determine applications for permits and consents under this Act; and
  - (f) to make and publish—
    - (i) guidelines in relation to the nomination of places and objects, applications for permits, applications for consents, the assessment of applications, and the assessment of sites of archaeological value under this Act; and
    - (ii) forms and other materials relating to the nomination of places and objects, applications for permits, applications for consents, and reporting requirements under this Act; and
  - (g) to report to the Heritage Council on all actions or decisions taken by the Executive Director in relation to nominations for registration, permits and any other matters on which the Heritage Council requires a report; and

- (h) to regulate the investigation and documentation of registered places and registered objects and other cultural heritage in the State; and
  - (i) to manage the enforcement of this Act; and
  - (j) to prepare World Heritage Strategy Plans; and
  - (k) to perform any other functions conferred on the Executive Director under this Act or any other Act.
- (2) Subject to this Act, the Executive Director has the power to do all things necessary or convenient to be done for, in connection with or incidental to, the performance of the Executive Director's functions.

## **20 Delegation of powers—Executive Director**

The Executive Director, by instrument, may delegate to an officer or employee employed under section 21 the Executive Director's functions, duties or powers under this Act.

### **Note**

Under section 42A(1)(aa) of the **Interpretation of Legislation Act 1984**, the power to delegate under this section cannot be delegated.

## **21 Staff**

Any employees that are necessary for the purposes of this Act may be employed under Part 3 of the **Public Administration Act 2004**.

## **Division 3—Executive officer of Heritage Council**

### **22 Executive officer of the Heritage Council**

- (1) An executive officer of the Heritage Council may be employed under Part 3 of the **Public Administration Act 2004**.

- (2) The functions of the executive officer are—
  - (a) to assist the Heritage Council perform its functions; and
  - (b) to perform any other functions conferred on the executive officer under this Act.
- (3) The executive officer has the power to do all things necessary or convenient to be done for, or in connection with or incidental to, the performance of the executive officer's functions.

## **Part 3—Victorian Heritage Register**

### **Division 1—Establishment and content of Victorian Heritage Register**

#### **23 Establishment of the Victorian Heritage Register**

The Executive Director must establish and maintain a register called the Victorian Heritage Register.

#### **24 Content of the Heritage Register**

The Executive Director must record in the Heritage Register—

- (a) all places and objects of State-level cultural heritage significance that are registered under this Part; and
- (b) all objects integral to registered places that are registered under this Part; and
- (c) any place in the State that is included in the World Heritage List; and
- (d) all historic shipwrecks and historic shipwreck artefacts to the extent they are known; and
- (e) all places and objects included in the Heritage Register under the **Heritage Act 1995** immediately before the commencement of section 257.

#### **25 Categories of registration**

- (1) A place or object must be recorded in the Heritage Register in one or more of the following categories—
  - (a) a registered place;
  - (b) a registered object;

- (c) a registered object integral to a registered place;
  - (d) a registered archaeological place;
  - (e) a registered archaeological artefact;
  - (f) a registered shipwreck;
  - (g) a registered shipwreck artefact;
  - (h) a protected zone;
  - (i) a place included in the World Heritage List.
- (2) The Executive Director must specify the category or categories of the Heritage Register in which a place or object is to be registered.

## **26 Details included in the Heritage Register**

- (1) The Executive Director must include in the Heritage Register sufficient details to identify a place or object included in the Heritage Register.
- (2) The Executive Director is not required to include the name or exact location of a shipwreck or shipwreck artefact in the Heritage Register if the name or exact location of the shipwreck or shipwreck artefact is unknown.
- (3) If the Heritage Council determines that a place or object may be harmed if it is fully identified in the Heritage Register, the Heritage Council may direct the Executive Director to limit the identifying details in the Heritage Register to those specified by the Heritage Council.

## **Division 2—Nominations for registration**

### **27 Nominations for inclusion in the Heritage Register**

- (1) A person or body may nominate a place or object for inclusion in the Heritage Register.
- (2) A nomination under subsection (1) must be made to the Executive Director in the prescribed form.

- (3) The Executive Director may nominate a place or object for inclusion in the Heritage Register.
- (4) A nomination under this section must include—
  - (a) reasons why the place or object should be included in the Heritage Register, being reasons based on the assessment criteria published by the Heritage Council; and
  - (b) any other prescribed information.

**28 Certain nominations cannot be accepted**

- (1) Subject to subsection (2), the Executive Director cannot accept a nomination of a place or object under this Division if—
  - (a) the Executive Director, in the preceding 5 years, has refused a nomination in relation to the place or object on the grounds that the nominated place or object has no reasonable prospect of inclusion in the Heritage Register; or
  - (b) the Heritage Council, in the preceding 5 years—
    - (i) has refused to register the place or object; or
    - (ii) has removed the place or object from the Heritage Register; or
  - (c) the Minister, in the preceding 5 years, has refused to register the place or object.
- (2) If the Executive Director receives new information relating to a place or object which was not available to the Executive Director, the Heritage Council or the Minister in making a decision referred to in subsection (1), and the Executive Director considers the information to be of significance, the Executive Director may accept a nomination relating to—

- (a) a place or object referred to in subsection (1)(a) or (b); or
- (b) with the consent of the Minister, a place or object referred to in subsection (1)(c).

**29 Executive Director may refuse nominations in certain circumstances**

- (1) The Executive Director may refuse a nomination of a place or object under this Division if the Executive Director considers that the nominated place or object has no reasonable prospect of inclusion in the Heritage Register.
- (2) The Executive Director must give the nominator of the place or object written notice of the Executive Director's refusal of the nomination as soon as practicable after the refusal.
- (3) The written notice must include—
  - (a) reasons why the nomination has been refused; and
  - (b) a statement that the nominator has the right to request a review of the refusal of the nomination.
- (4) In addition to the notice under subsection (2), the Executive Director must give notice of the refusal of a nomination to the responsible authority for the area in which the place or object is situated and, if the responsible authority is not a municipal council, the relevant municipal council.

**30 Requests for review of the Executive Director's refusal of nomination**

- (1) The nominator of a place or object whose nomination has been refused by the Executive Director under section 29 may make a written request to the Heritage Council to review the Executive Director's decision refusing that nomination.

- (2) A request under subsection (1) must—
  - (a) be lodged within 28 days after the nominator receives written notice of the Executive Director's decision refusing the nomination; and
  - (b) be accompanied by the prescribed fee (if any).
- (3) The Heritage Council may request the Executive Director to provide any information in relation to the decision refusing the nomination.
- (4) The Executive Director must provide any information requested under subsection (3).
- (5) In determining a review, the Heritage Council may—
  - (a) affirm the decision under review; or
  - (b) set aside the decision under review and make another decision in substitution for it; or
  - (c) subject to subsection (6), set aside the decision under review and remit the matter for reconsideration by the Executive Director in accordance with any directions or recommendations.
- (6) The Heritage Council must remit a matter for reconsideration under subsection (5)(c) if the applicant has provided new information and the Heritage Council considers the information to be material.
- (7) The Heritage Council must determine a review of a decision by the Executive Director within 40 days of receiving a request for review.
- (8) The Heritage Council must give the nominator written notice of the outcome of a review within 7 days of the review, including a written statement of reasons for its decision.

- (9) In addition to the notice under subsection (8), the Heritage Council must give written notice of the outcome of a review to the responsible authority for the area in which the place or object is situated and, if the responsible authority is not a municipal council, the relevant municipal council.

### **31 Nominations of objects integral to places**

- (1) A person or body, or the Executive Director, may nominate for inclusion in the Heritage Register an object that is integral to understanding the cultural heritage significance of—
- (a) a registered place; or
  - (b) a place nominated for inclusion in the Heritage Register.
- (2) A nomination under subsection (1) may be made—
- (a) in respect of an object whether or not the object is located at the place or under the place; or
  - (b) in respect of all archaeological artefacts associated with the place whether or not the number, nature or exact location of the archaeological artefacts is known; or
  - (c) without the extraction of the object from the place.

### **32 Nominations of additional land**

- (1) A person or body, or the Executive Director, may nominate for inclusion in the Heritage Register land as part of a registered place if the Executive Director considers that—
- (a) the State-level cultural heritage significance of the place would be substantially less if the land or any part of the land which is or has

been used in conjunction with the place were developed; or

(b) land surrounding the place is important to the protection or conservation of the place or contributes to the understanding of the place.

(2) A nomination may be accepted under this section whether or not the land is in the same ownership as the place.

### **33 Requests for further information regarding nominations**

(1) The Executive Director may make a written request to a person or body nominating a place or object for inclusion in the Heritage Register for further information to assist the consideration of the nomination.

(2) The person or body nominating a place or object must provide any information requested by the Executive Director within 30 days after the request or a longer period agreed to by the Executive Director.

(3) If the person or body does not provide the requested information within the period referred to in subsection (2), the nomination is taken to have been withdrawn.

### **34 Notice of nominations**

(1) The Executive Director, within 14 days after accepting a nomination of a place or object under this Division, must give written notice of the acceptance to—

(a) the nominator of the place or object; and

(b) the owner of the place or object; and

- (c) the responsible authority for the area in which the place or object is situated and, if the responsible authority is not a municipal council, the relevant municipal council.
- (2) If the Executive Director considers that it is not practicable in a particular case to give notice to an owner under subsection (1), the Executive Director may apply to the Minister to exempt the Executive Director from the requirements of that subsection.
- (3) If the Minister exempts the Executive Director from the requirement to give notice under subsection (1), the Executive Director must give notice to the affected owners in any manner the Minister specifies in the exemption.
- (4) The details of any exemption must be included in the Department's report of operations under the **Financial Management Act 1994**.

### **35 Deferral of consideration for nomination**

If any place or object which is the subject of a nomination has been offered for sale or is offered for sale within 60 days after the making of the nomination, the Executive Director, with the agreement of the owner of the land or object, may defer the consideration of a nomination until after completion of that sale.

### **36 Owner to notify purchaser of nomination and deferral**

- (1) The owner of a place or object which is the subject of a nomination under this Division, before entering into a contract for the sale of the place or object, must inform the purchaser of the nomination and of any deferral of consideration of the nomination.

- (2) If the owner of a place or object which is the subject of a nomination under this Division fails to comply with subsection (1), the contract of sale is not invalid, but is voidable at the option of the purchaser.

### **Division 3—Recommendations of registration**

#### **37 Executive Director recommendations in respect of nominations**

- (1) After considering the nomination of a place or object and any further information provided under section 33, the Executive Director must—
- (a) recommend to the Heritage Council that the place or only part of the place, or object, should be included in the Heritage Register, and the category or categories in which it should be included; or
  - (b) recommend to the Heritage Council that the place or object should not be included in the Heritage Register.
- (2) If the Executive Director makes a recommendation that a place or a part of a place should not be included in the Heritage Register, the Executive Director may refer the nomination to the relevant planning authority or the Minister administering the **Planning and Environment Act 1987** for inclusion of the place or part of the place in a planning scheme in accordance with the objectives set out in section 4(1)(d) of that Act.

#### **38 Executive Director recommendations for exempted works or activities**

- (1) If the Executive Director makes a recommendation to the Heritage Council that a place or object should be included in the Heritage Register, the Executive Director may include in the recommendation categories of works or

activities which may be carried out in relation to the place or object without the need for a permit under Part 5.

- (2) The Executive Director must not make a recommendation referred to in subsection (1) in relation to any categories of works or activities if the Executive Director considers that the works or activities may harm the cultural heritage significance of the place or object.
- (3) The Executive Director may consult with the owner of the place or object before making the recommendation.

### **39 Executive Director recommendations for protected zones**

- (1) The Executive Director may recommend to the Heritage Council that a place, being an area of land covered with water and any associated land, be included in the Heritage Register as a protected zone if the place contains—
  - (a) a registered shipwreck; or
  - (b) a registered shipwreck artefact; or
  - (c) a registered archaeological place; or
  - (d) a registered archaeological artefact.
- (2) An area initially recommended under this section must not be greater than 100 hectares.
- (3) In addition, any subsequent recommendation under this section recommending an expansion of the area of an existing protected zone must not result in that protected zone being greater than 100 hectares.

#### 40 Statement of recommendation

- (1) Subject to subsection (2), on making a recommendation to the Heritage Council that a place or object should or should not be included in the Heritage Register, the Executive Director must give a statement (a *statement of recommendation*) to—
  - (a) the owner of the place or object; and
  - (b) the nominator of the place or object; and
  - (c) the responsible authority for the area in which the place or object is situated and, if the responsible authority is not a municipal council, the relevant municipal council.
- (2) If a place that is a shipwreck or protected zone or an object that is a shipwreck artefact is recommended for inclusion in the Heritage Register, the Executive Director may give notice of the recommendation in any manner the Executive Director considers fit.
- (3) A statement of recommendation must be in writing and contain the following information—
  - (a) the terms of the recommendation;
  - (b) sufficient information to identify the place or object, whether by reference to maps or diagrams or otherwise;
  - (c) the reasons for the recommendation, including an assessment of the State-level cultural heritage significance of the place or object;
  - (d) information advising that the Heritage Council will consider the recommendation after a period of 60 days from the date the notice of recommendation is published under section 41;

- (e) information advising the owner of the place or object that the owner, within that period of 60 days, may make a submission to the Heritage Council regarding the recommendation and request a hearing in relation to that submission;
  - (f) information advising the owner and nominator of the place or object of sections 46 and 49;
  - (g) a summary of the rights and obligations under this Act of the owners of registered places and registered objects of that type.
- (4) In addition, a statement of recommendation must contain the following information if the Executive Director recommends that a place or object should be included in the Register—
- (a) a summary of the State-level cultural heritage significance of the place or object and the category or categories in which it should be included;
  - (b) any recommendations made under section 38 in relation to the works or activities with respect to the place or object and an invitation of submissions from the owner in relation to those recommendations.
- (5) Despite subsection (3)(b), the Executive Director may determine that some details of identification should not be included in the statement of recommendation if the Executive Director considers that, if the details were known, there is a real danger that a person may harm the object or place.

#### **41 Notice of recommendation to be published**

The Heritage Council, after receiving a recommendation by the Executive Director that a place or object should or should not be

---

included in the Heritage Register, must cause notice of the recommendation to be published—

- (a) in a newspaper circulating generally in the area in which the place or object is located; and
- (b) on the Internet site of the Heritage Council.

#### **42 Obligations of owners of places and objects**

- (1) The owner of a place or object to whom a statement of recommendation has been given must advise the Executive Director in writing of—
  - (a) any works or activities that are being carried out in relation to the place or object at the time the statement is given; and
  - (b) any application for a planning permit or a building permit, or for an amendment to that permit, that has been made in relation to the place but not determined at the time the statement is given; and
  - (c) any works or activities that are proposed to be carried out in relation to the place or object at the time the statement is given.
- (2) An advice under subsection (1) must be given within 10 days after the statement of recommendation is given under section 40.
- (3) The owner of a place to whom a statement of recommendation has been given must advise the Executive Director in writing of an application, permit or amendment if, before a determination under section 49 or 52 in respect of a place—
  - (a) an application for a planning permit or a building permit or for an amendment to that permit in relation to the place is made; or

- (b) a planning permit or building permit or an amendment to that permit in relation to the place is granted.
- (4) An advice under subsection (3) must be given within 10 days after the making of the application or the grant of the permit or amendment.
- (5) The owner of a place or object to whom a statement of recommendation has been given must advise the Executive Director in writing of the following activities or proposals if, before a determination is made under section 49 or 52 in respect of a place or object—
  - (a) any activities are carried out in relation to the place or object that could harm the place or object;
  - (b) any activities are proposed to be carried out in relation to the place or object that could harm the place or object.
- (6) An advice under subsection (5) must be given within 10 days after the owner becomes aware of the activity or the proposal, as the case requires.
- (7) If, before a determination is made under section 49 or 52 in respect of a place or object, a proposal is made to dispose of the whole or any part of the place or object, the owner of the place or object must advise the Executive Director in writing of that proposal.
- (8) An advice under subsection (7) must be given at least 10 days before entering into the contract for the disposal of the place or object.
- (9) The owner of a place or object who proposes to dispose of the whole or any part of the place or object before a determination is made under section 49 or 52 in respect of the place or object must, before entering into a contract for that disposal, give a copy of the statement of

recommendation to the person who, under the proposed contract, is to acquire the place or object or part of the place or object.

#### **43 Owners of places and objects must comply with obligations**

An owner of a place or object to whom section 42 applies must comply with that section.

Penalty: In the case of a natural person,  
120 penalty units;

In the case of a body corporate,  
240 penalty units.

### **Division 4—Determinations of registration**

#### **44 Submissions to the Heritage Council**

- (1) Any person or body may make a written submission to the Heritage Council in relation to a recommendation of the Executive Director that a place or object should or should not be included in the Heritage Register.
- (2) A submission under subsection (1) must be made in the prescribed form.
- (3) A submission must be made within 60 days after the date on which a notice of recommendation in relation to the place or object is published under section 41.
- (4) A submission must relate to—
  - (a) the issue of whether or not a place or object is of State-level cultural heritage significance; or
  - (b) any recommendation under section 37, 38 or 39 in relation to the place or object.
- (5) A submission may include a request for a hearing before the Heritage Council in relation to the submission.

**45 Requests for further information regarding submissions**

The Heritage Council may request a person or body making a written submission under section 44 for further information to assist the consideration of the submission.

**46 Consideration of submissions to the Heritage Council**

- (1) The Heritage Council must consider—
  - (a) any written submission made to it under section 44; and
  - (b) any further information provided to the Heritage Council in response to a request under section 45.
- (2) The Heritage Council must conduct a hearing in relation to a submission if—
  - (a) the submission includes a request for a hearing before the Heritage Council; and
  - (b) the submission is made by a person or body with a real or substantial interest in the place or object that is the subject of the submission.
- (3) Despite subsection (2), the Heritage Council may conduct a hearing in relation to a submission in any other circumstances the Heritage Council considers appropriate.

**47 Role of the Executive Director in determination of recommendation**

- (1) The Heritage Council may request the Executive Director to provide any information in relation to a recommendation under section 37, 38 or 39.
- (2) The Executive Director must provide any information requested under subsection (1).

- (3) The Executive Director may appear, be heard or be represented at any hearing into a recommendation under section 37, 38 or 39.

**48 Sale of place or object the subject of recommendation**

- (1) Despite section 49, if any place or object that is the subject of a recommendation under section 37 has been offered for sale by auction, the Heritage Council, with the agreement of the owner of the place or object, may defer the consideration of the recommendation until after the auction.
- (2) The owner of a place or object to which subsection (1) applies must inform the purchaser of the place or object of the deferral of consideration of the recommendation.
- (3) If the owner of a place or object which is the subject of a recommendation under section 37 fails to comply with subsection (2), the contract of sale is not invalid, but is voidable at the option of the purchaser.

**49 Determinations of the Heritage Council**

- (1) After considering a recommendation that a place or object should or should not be included in the Heritage Register and any submissions in respect of the recommendation and conducting any hearing into the submissions, the Heritage Council may—
- (a) determine that the place or part of the place, or object, is of State-level cultural heritage significance and is to be included in the Heritage Register; or
- (b) determine that the place or part of the place, or object, is not of State-level cultural heritage significance and is not to be included in the Heritage Register; or

- (c) in the case of a recommendation in respect of a place, determine that the place is not to be included in the Heritage Register but—
  - (i) refer the recommendation and any submissions to the relevant planning authority for consideration for an amendment to a planning scheme; or
  - (ii) determine that it is more appropriate for steps to be taken under the **Planning and Environment Act 1987** or by any other means to protect or conserve the place; or
- (d) in the case of a recommendation in respect of additional land which has been nominated to be included in the Heritage Register as part of a registered place in accordance with section 32, determine that the land be included in the Heritage Register if—
  - (i) the State-level cultural heritage significance of the place would be substantially less if the land or any part of the land which is or has been used in conjunction with the place were developed; or
  - (ii) the land surrounding the place is important to the protection or conservation of the place or contributes to the understanding of the place; or
- (e) determine that the object is integral to understanding the cultural heritage significance of a registered place or a place the Heritage Council has determined to be included in the Heritage Register.

- (2) The Heritage Council must make a determination under subsection (1)—
  - (a) within 40 days after the date on which written submissions may be made under section 44; or
  - (b) if any hearing is conducted into the written submissions, within 90 days after the completion of the hearing.
- (3) A determination that a place or part of a place, or object, should be included in the Heritage Register may include categories of works or activities which may be carried out in relation to the place or object for which a permit under this Act is not required, if the Heritage Council considers that the works or activities would not harm the cultural heritage significance of the place or object.
- (4) If the Heritage Council determines to include a place in the Heritage Register, with the consent of the owner of the place, the Heritage Council may determine to include in the Heritage Register additional land of the owner that is ancillary to the place.
- (5) If a member of the Heritage Council makes a submission under section 44 in respect of a recommendation, the member must not take part in the consideration or determination of the Heritage Council.
- (6) The Heritage Council must notify the Executive Director of any determination under this section as soon as practicable after the determination.

## **Division 5—Minister's powers regarding registration**

### **50 Minister's call-in powers**

- (1) The Minister may direct the Heritage Council to refer a recommendation to the Minister for determination at any time after notice of the recommendation is published under section 41 but before the Heritage Council makes a determination under section 39.
- (2) The Heritage Council—
  - (a) must comply with a direction under subsection (1); and
  - (b) must not consider the recommendation or make a determination.

### **51 Heritage Council must hear submissions and give report**

- (1) If the Minister gives a direction under section 50 in relation to a recommendation, the Minister may require the Heritage Council to consider any submissions and conduct any hearings in relation to the submissions as if the recommendation were being dealt with under Division 4.
- (2) The Heritage Council must provide a report on the recommendation, including a report on any submissions considered or hearings conducted under subsection (1).
- (3) The Heritage Council must comply with any requirement of the Minister under this section.

### **52 Determination of the Minister**

- (1) After considering a report of the Heritage Council provided under section 51, the Minister may make any determination in relation to a recommendation that the Heritage Council has the power to make under Division 4.

- (2) A determination of the Minister under this section has the same effect as a determination of the Heritage Council under Division 4.

## **Division 6—Effects of registration**

### **53 Notice of registration**

- (1) The Executive Director must publish notice in the Government Gazette of the making of a determination that a place or object is to be included in the Heritage Register.
- (2) A place or object is included in the Heritage Register on publication of the notice in the Government Gazette.
- (3) The notice must specify the category or categories of the Heritage Register or the record of the Heritage Register to which the place or object is included.
- (4) The notice must include sufficient information to provide reasonable identification of the place or object.
- (5) Despite subsection (4), the Heritage Council may determine that some details of identification must not be included in the notice if it considers that if the details were known, there is a real danger that a person may harm the object or place.
- (6) The Executive Director must forward notice of any amendment of the Heritage Register to—
  - (a) the Minister administering the **Planning and Environment Act 1987**; and
  - (b) any responsible authority for a place affected by the amendment and, if the responsible authority is not a municipal council, the relevant municipal council.

#### **54 Notice to the Registrar of Titles**

- (1) The Executive Director must lodge with the Registrar of Titles notice of any matter on the Heritage Register affecting a folio of the Register of land.
- (2) On the amendment of the Heritage Register, the Executive Director must as soon as practicable give notice to the Registrar of Titles of any land, other than unalienated Crown land, affected by the amendment.
- (3) Despite subsections (1) and (2), notice is not required to be given of any place or object which is taken to be included in the Heritage Register under section 144.
- (4) On receipt of a notice under this section, the Registrar of Titles must make any recordings in the Register that are necessary or convenient for the purpose of giving effect to the notice.
- (5) The Registrar of Titles may require any evidence of the identity of any land affected by a notice lodged under this section that the Registrar considers fit.
- (6) If a Crown grant is issued in respect of a registered place that is unalienated Crown land, any matters in the Heritage Register affecting the land must be specified in a notice to the Registrar of Titles accompanying the Crown grant.
- (7) A notice under subsection (1), (2) or (6) must be in a form approved by the Registrar of Titles.

#### **55 Notice to owner**

The Heritage Council must give written notice to the owner or government asset manager of a place or object within 7 days after—

- (a) any determination of the Heritage Council in relation to that place or object under Division 4 or 5; and
- (b) any works or activities which the Heritage Council has determined under Division 4 may be carried out in relation to the place or object without a permit under Part 5.

### **56 Amendment of planning schemes**

- (1) The Minister administering the **Planning and Environment Act 1987** must prepare and approve an amendment to any planning scheme applying to—
  - (a) a place which is included or amended in the Heritage Register to identify the inclusion or amendment of that place in the Heritage Register; or
  - (b) a place which has been removed from the Heritage Register to identify that removal.
- (2) An amendment under subsection (1) must be prepared as soon as practicable after—
  - (a) notice is given under section 53 of the inclusion of a place in the Heritage Register; or
  - (b) the place is removed from the Heritage Register.
- (3) An amendment under subsection (1) may also make any consequential amendments to the planning scheme that are necessary to remove or modify any provisions which are inconsistent with or duplicate the provisions of this Act.

- (4) The **Planning and Environment Act 1987** (except sections 12(1)(a) and (e), 12(2), 12(3), Divisions 1 and 2 of Part 3 and sections 39(1), 39(2), 39(3), 39(4) and 39(5) and any regulations made for the purpose of those provisions) applies to the preparation and approval of amendments under subsection (1).

### **57 Copies of Heritage Register**

An up-to-date electronic copy of the Heritage Register must be kept at the offices of the Heritage Council and the Department for inspection by members of the public during normal office hours free of charge.

### **58 Heritage certificates**

- (1) A person may apply to the Executive Director for a heritage certificate.
- (2) An application under subsection (1) must—
- (a) be in the prescribed form; and
  - (b) state particulars of the place or object in respect of which the heritage certificate is required; and
  - (c) be accompanied by the prescribed fee (if any).
- (3) The Executive Director must give the applicant a signed heritage certificate containing the following information in respect of the place or object described in the application—
- (a) whether or not the place or object is included in the Heritage Register and if so the category or categories in which it is registered;

- (b) whether or not the place is in a World Heritage Environs Area;
- (c) whether or not the place or object is subject to an interim protection order and if so the date of the order;
- (d) whether or not a nomination has been made for inclusion of the place or object in the Heritage Register;
- (e) whether or not the place or object is being considered for inclusion in the Heritage Register;
- (f) whether or not a site is included in the Heritage Inventory;
- (g) whether or not a repair order is in force in respect of the place or object;
- (h) whether or not an order of the Supreme Court under Division 3 of Part 10 is in force in respect of the place or object;
- (i) whether or not any Governor in Council declaration made under section 227 is in force against the owner of the place or object;
- (j) whether or not any court order made under section 229 is in force against a person in respect of the place or object;
- (k) whether or not there are any current proceedings for a contravention of this Act in respect of the place or object;
- (l) whether or not any rectification order has been issued in respect of the place or object.

- (4) The Executive Director must give the applicant a signed heritage certificate within 7 business days after receiving their application.

**59 Notice of intention to sell registered place or registered object**

The owner of a registered place or registered object who enters into a contract of sale of the whole or any part of the place or object must give written notice to the Executive Director in the prescribed form regarding the existence of the contract within 28 days of the date of the contract.

Penalty: In the case of a natural person,  
60 penalty units;

In the case of a body corporate,  
120 penalty units.

**60 Change of owner of registered place or registered object**

- (1) A person who purchases or acquires a registered place or registered object must give written notice to the Executive Director within 28 days of the purchase or acquisition of—

- (a) that person's name and address; and  
(b) in the case of the purchase or acquisition of a building, whether the person intends to occupy the building.

Penalty: In the case of a natural person,  
60 penalty units;

In the case of a body corporate,  
120 penalty units.

- (2) A person who has notified the Executive Director under subsection (1) must give written notice to the Executive Director of any change to the information provided within 28 days of the change.

Penalty: In the case of a natural person,  
60 penalty units;

In the case of a body corporate,  
120 penalty units.

## **Division 7—Amendment of Heritage Register**

### **61 Destroyed places and registered objects**

If an object is registered as an object integral to a registered place and that place is destroyed, the object remains in the Heritage Register until it is amended or removed from the Register under this Division.

### **62 Amendment of the Heritage Register**

- (1) The Heritage Council may amend the Heritage Register by amending or removing an item in the Heritage Register.
- (2) Subject to section 63, Divisions 2 to 6 and this Division apply to an amendment or removal in the same way as those Divisions apply to a registration.

### **63 Expedited amendment of the Heritage Register**

- (1) On the recommendation of the Executive Director, the Heritage Council may amend the Heritage Register by amending or removing an item in the Register if—
- (a) the amendment is for the purposes of correcting any technical or other minor error; or

- (b) the amendment relates to a registered place or registered object which has been destroyed, and the Heritage Council considers that the State-level cultural heritage significance of the place or object is lost; or
  - (c) the amendment relates to an object integral to a registered place, and that place has been removed from the Heritage Register; or
  - (d) the amendment relates to land forming part of a registered place that has been subdivided in accordance with a relevant permit, and the subdivided land has no State-level cultural heritage significance.
- (2) Before amending the Heritage Register, the Heritage Council must give at least 28 days written notice to—
- (a) the owner of the item; and
  - (b) any government asset manager; and
  - (c) the responsible authority for the area in which the item is situated and, if the responsible authority is not a municipal council, the relevant municipal council.
- (3) In this section—
- relevant permit* means—
- (a) a permit issued under Part 5; or
  - (b) a permit granted under Part 4 of the **Planning and Environment Act 1987** that was referred to the Executive Director as a determining referral authority under that Act.

**Division 8—Other provisions relating to  
registered archaeological places and  
associated archaeological artefacts**

**64 Erection of notices**

- (1) The Executive Director or any person authorised by the Executive Director may cause to be erected at suitable places within, on or near the boundaries of a registered archaeological place, notices indicating that the place is a registered archaeological place.
- (2) The fact that a notice is not erected at a place under this section does not affect the liability of any person for a contravention of Part 5 or any regulations relating to registered archaeological places.
- (3) A person must not destroy, damage, remove or interfere with a notice erected under this section.

Penalty: In the case of a natural person,  
60 penalty units;  
In the case of a body corporate,  
120 penalty units.

**65 Archaeological artefacts in a registered  
archaeological place taken to be property of  
the Crown**

All archaeological artefacts within a registered archaeological place are the property of the Crown and under the protection of the Crown.

**66 Museum of Victoria to be place of lodgement**

- (1) The Museum of Victoria is the official place of lodgement of archaeological artefacts which are the property of the Crown.

- (2) The following archaeological artefacts must be entrusted to the care of the Chief Executive Officer of the Museums Board of Victoria to be lodged in the Museum of Victoria unless the Executive Director, after consulting the Chief Executive Officer of the Museums Board of Victoria, otherwise determines—
- (a) artefacts removed from a registered archaeological place;
  - (b) artefacts directed by the Executive Director to be removed to a place of safe storage under section 67;
  - (c) artefacts which are otherwise the property of the Crown.

**67 Power of the Executive Director to direct excavation or examination of place**

- (1) The Executive Director may direct the excavation or examination of a registered archaeological place and the removal of archaeological artefacts from it to a place of safe storage.
- (2) A person must not knowingly obstruct, hinder or otherwise interfere with an excavation or examination being conducted in accordance with subsection (1).

Penalty: In the case of a natural person,  
120 penalty units;

In the case of a body corporate,  
240 penalty units.

## **Part 4—Underwater cultural heritage**

### **Division 1—Provisional registration**

#### **68 Determination of provisional registration**

- (1) The Executive Director, by notice published in the Government Gazette, may determine a place appearing to be a shipwreck, or an object appearing to be a shipwreck artefact, to be provisionally included in the Heritage Register as a registered shipwreck or registered shipwreck artefact if—
  - (a) the place or object is situated in Victorian waters; and
  - (b) the Executive Director considers that the place or object may be of State-level cultural heritage significance.
- (2) The Executive Director, by notice published in the Government Gazette, may determine a place situated underwater appearing to be an archaeological site, or an object situated underwater appearing to be associated with an archaeological site, to be provisionally included in the Heritage Register as a registered archaeological place or a registered archaeological artefact if—
  - (a) the place or object is situated in Victorian waters; and
  - (b) the Executive Director considers that the place or object may be of State-level cultural heritage significance.

- (3) On publication of a notice under subsection (1) or (2), the place or object is provisionally included in the Heritage Register in the category or categories determined by the Executive Director and specified in the notice.
- (4) As soon as practicable after the notice is published, notice must also be published in a newspaper circulating generally in the area in which the item is situated.

### **69 Duration of provisional registration**

- (1) A determination under section 68 remains in force for 12 months from the date the notice is published in the Government Gazette, unless revoked earlier by the Executive Director or by the registration in the Heritage Register of the place or object as—
  - (a) a registered shipwreck; or
  - (b) a registered shipwreck artefact; or
  - (c) a registered archaeological place; or
  - (d) a registered archaeological artefact.
- (2) The Executive Director, by notice published in the Government Gazette, may extend a determination under this section for any further period of 12 months that the Executive Director considers necessary.

## **Division 2—Shipwrecks and shipwreck artefacts**

### **70 Notice of location of registered shipwrecks, historic shipwrecks, registered shipwreck artefacts and historic shipwreck artefacts**

- (1) A person who obtains possession of a registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact must give written notice to the Executive Director

of the item's description and location within 7 days after obtaining possession of the item.

Penalty: In the case of a natural person,  
120 penalty units;

In the case of a body corporate,  
240 penalty units.

- (2) A person who possesses an item which becomes a registered shipwreck or registered shipwreck artefact must give written notice to the Executive Director of the item's description and location within 7 days after the item is registered.

Penalty: In the case of a natural person,  
120 penalty units;

In the case of a body corporate,  
240 penalty units.

- (3) A person who possesses an item which becomes a historic shipwreck or historic shipwreck artefact must notify the Executive Director in writing of the item's description and location within 7 days after the item becomes an historic shipwreck or historic shipwreck artefact.

Penalty: In the case of a natural person,  
120 penalty units;

In the case of a body corporate,  
240 penalty units.

- (4) Subsection (1) or (2) do not apply if the person did not know, and had no reasonable grounds for believing, that the item was included in the Heritage Register.

- (5) Subsection (1) or (3) does not apply if the person did not know, and had no reasonable grounds for believing, that the item was or had become a historic shipwreck or historic shipwreck artefact.

**71 Powers to ascertain location of registered shipwrecks, historic shipwrecks, registered shipwreck artefacts and historic shipwreck artefacts**

- (1) The Executive Director may give written notice to a person if it appears to the Executive Director that—
  - (a) the person may have, or may have had, possession of an item; and
  - (b) the item is, or may be, a registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact.
- (2) A notice under subsection (1) may require the person to whom it is given—
  - (a) to inform the Executive Director whether the person has, or has had, possession of the item; and
  - (b) if the person has ceased to have possession of the item, to give the Executive Director particulars of the circumstances in which the person ceased to have possession of the item; and
  - (c) if the person has transferred possession, custody or control of the item to another person, to give the Executive Director the name and address of the person to whom possession, custody or control of the item was transferred.
- (3) A person to whom notice is given under section (1) must not—
  - (a) refuse or fail to comply with the notice to the extent that the person is capable of complying with it; or

- (b) in purported compliance with the notice, knowingly provide information that is false or misleading.

Penalty: In the case of a natural person,  
120 penalty units;  
In the case of a body corporate,  
240 penalty units.

**72 Directions powers in relation to custody of registered shipwrecks, historic shipwrecks, registered shipwreck artefacts and historic shipwreck artefacts**

- (1) If a person has possession of a registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact, the Executive Director, by notice in writing, may require the person to take any action in relation to the item that is specified in the notice for the purposes of—
  - (a) the conservation of the item; or
  - (b) exhibiting or providing access to the item.
- (2) The action that a person may be required to take in relation to an item by a notice under subsection (1) includes the following—
  - (a) keeping the item in a particular manner or place;
  - (b) removing the item to a particular place within a particular time;
  - (c) doing a particular act in relation to the item within a particular time, being an act designed to assist in the conservation of the item;
  - (d) making the item available for inspection within a particular time and for the periods specified in the notice;

- (e) delivering the item into the custody of a particular person for the purpose of operations designed to conserve the item or for the purpose of public exhibition.
- (3) A notice given under subsection (1) does not prevent the giving of further notices under that subsection in relation to the same item.
- (4) A person to whom a notice is given by the Executive Director under subsection (1) must comply with the notice.  
Penalty: In the case of a natural person,  
240 penalty units;  
In the case of a body corporate,  
480 penalty units.
- (5) A civil action does not lie against a person in respect of any action taken by the person pursuant to a notice given to the person under subsection (1).

**73 Offence to remove registered shipwrecks, historic shipwrecks, registered shipwreck artefacts and historic shipwreck artefacts from the State**

- (1) A person must not remove any registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact from the State otherwise than in accordance with any terms and conditions of a permit issued by the Executive Director under section 77.

Penalty: In the case of a natural person,  
240 penalty units;  
In the case of a body corporate,  
480 penalty units.

- (2) An item removed from the State other than in accordance with a permit issued by the Executive Director under section 77 is forfeited to the Crown.
- (3) Subsection (1) does not apply if the person did not know, and had no reasonable grounds for believing, that the item was a registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact.
- (4) In this section, a reference to an item being removed from the State includes a reference to an item being removed from Victorian coastal waters, but does not include a reference to an item being removed directly from Victorian coastal waters to the State.

**74 Other offences in relation to registered shipwrecks, historic shipwrecks, registered shipwreck artefacts and historic shipwreck artefacts**

- (1) A person must not, without lawful authority, knowingly or recklessly—
  - (a) take, destroy, damage, remove, disturb or otherwise interfere with any registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact; or
  - (b) dispose of a registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact.

Penalty: In the case of a natural person,  
2400 penalty units or imprisonment  
for 5 years or both;  
In the case of a body corporate,  
4800 penalty units.

- (2) A person must not, without lawful authority, negligently—
- (a) take, destroy, damage, remove, disturb or otherwise interfere with any registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact; or
  - (b) dispose of a registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact.

Penalty: In the case of a natural person,  
1200 penalty units or imprisonment  
for 2 years or both;

In the case of a body corporate,  
2400 penalty units.

- (3) A person must not, without lawful authority, knowingly or recklessly—
- (a) buy, offer to buy, agree to buy or offer, or agree to barter or exchange any registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact; or
  - (b) possess a registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact.

Penalty: In the case of a natural person,  
2400 penalty units or imprisonment  
for 5 years or both;

In the case of a body corporate,  
4800 penalty units.

- (4) An offence against subsection (1), (2) or (3) is an indictable offence.

- (5) Subsection (3) does not apply if the person did not know, and had no reasonable grounds for believing, that the item that is the subject of the offence was a registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact.
- (6) A reference in subsection (1) or (2) to the taking or removal of a registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact includes a reference to the taking or removal from a reef, from the sea-bed or the sub-soil of the sea-bed or from land or the sub-soil of land.
- (7) In this section—  
*take* means to gain possession of an item by any means.

**75 Directions to deliver a removed registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact**

- (1) If the Executive Director considers on reasonable grounds that a person has possession of a registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact which has been removed from a place without a permit issued in accordance with section 77, the Executive Director may give written notice to the person requiring them to deliver the item to the Executive Director.
- (2) A person to whom a notice is given by the Executive Director under subsection (1) must comply with the notice.

Penalty: In the case of a natural person,  
240 penalty units;  
In the case of a body corporate,  
480 penalty units.

**76 Offence to be near registered shipwrecks, historic shipwrecks, registered shipwreck artefacts or historic shipwreck artefacts with certain equipment**

- (1) A person must not, without authority or reasonable cause, possess on or near a registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact—
- (a) any salvage or recovery equipment or any equipment that could be readily adapted or used for the salvage or recovery of the registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact; or
  - (b) any explosives, instruments or other equipment that could be used to damage or interfere with the registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact.

Penalty: In the case of a natural person,  
120 penalty units or 12 months  
imprisonment or both;

In the case of a body corporate,  
240 penalty units.

- (2) This section does not apply to the holder of an access licence or general permit under the **Fisheries Act 1995** carrying out an activity under that licence or permit.

**77 Permits for exploration or recovery of registered shipwrecks, historic shipwrecks, registered shipwreck artefacts or historic shipwreck artefacts and in relation to protected zones**

- (1) A person may apply to the Executive Director for a permit authorising that person, and any other person named or described in the permit, to do an act or thing which would otherwise be prohibited

under section 73, 74, 75 or 76 or the underwater cultural heritage regulations.

- (2) An application must be made in the prescribed form and be accompanied by the prescribed fee (if any).
- (3) The Executive Director may grant the permit subject to any conditions the Executive Director considers fit.
- (4) The Executive Director may at any time, by notice in writing to the person to whom a permit has been granted—
  - (a) revoke the permit; or
  - (b) vary any conditions of the permit; or
  - (c) suspend the permit; or
  - (d) cancel a suspension of the permit.
- (5) A suspension of a permit may be of indefinite duration or for a specified period.
- (6) A person must not contravene a condition imposed in respect of a permit that has been granted to the person or is otherwise applicable to the person.

Penalty: In the case of a natural person,  
240 penalty units or imprisonment  
for 2 years or both;

In the case of a body corporate,  
480 penalty units.

### **78 Permits for the use of registered shipwrecks or registered shipwreck artefacts**

- (1) The Executive Director may grant a permit to any person for the use of a registered shipwreck or registered shipwreck artefact in the custody or control of the Executive Director for the purposes of study, conservation or exhibition.

- (2) The Executive Director may impose any conditions on the permit that the Executive Director considers fit.
- (3) A permit under this section remains in force for the period of time specified in the permit.
- (4) An application for a permit must be made in the prescribed form and be accompanied by the prescribed fee (if any).
- (5) A person who is the holder of a permit must comply with the permit.

Penalty: In the case of a natural person,  
10 penalty units;  
In the case of a body corporate,  
20 penalty units.

#### **79 Further exceptions to offences**

Sections 73, 74, 75 or 76 or an offence against the underwater cultural heritage regulations do not apply if the act constituting the offence was done for the purposes of—

- (a) saving human life; or
- (b) securing the safety of a ship, if the ship was endangered by stress of weather or by navigational hazards; or
- (c) dealing with an emergency involving a serious threat to the environment.

#### **80 Discovery of shipwrecks and shipwreck artefacts to be notified**

- (1) A person who finds a shipwreck or shipwreck artefact must within 7 days give to the Executive Director a notice in writing setting out—
  - (a) a description of the shipwreck or shipwreck artefact; and

- (b) a description of the place where the shipwreck or shipwreck artefact is situated which is sufficient to enable the shipwreck or shipwreck artefact to be located.

Penalty: In the case of a natural person,  
120 penalty units;

In the case of a body corporate,  
240 penalty units.

- (2) The notice under subsection (1) must be in the prescribed form and contain any other prescribed details.

- (3) A person must not in a notice purporting to be given to the Executive Director under subsection (1) make a statement that to their knowledge is false or misleading in a material particular.

Penalty: In the case of a natural person,  
120 penalty units;

In the case of a body corporate,  
240 penalty units.

- (4) Subsection (1) does not apply if—

- (a) the person did not know and, in the circumstances, they could not reasonably have been expected to know that the thing which they found was a shipwreck or a shipwreck artefact; or

- (b) a notice was given in accordance with subsection (1) to the Executive Director in respect of the shipwreck or shipwreck artefact by a person who is not the person charged for the offence before it was practicable for the person charged for the offence to give the notice; or

- (c) the person had reasonable grounds for believing that a notice was given to the Executive Director in accordance with

subsection (1) by some other person in respect of the shipwreck or shipwreck artefact before it was practicable for the first-mentioned person to give the notice.

- (5) A person who has found a shipwreck or shipwreck artefact must not knowingly carry out operations designed to conceal the location of the shipwreck or shipwreck artefact.

Penalty: In the case of a natural person,  
120 penalty units;

In the case of a body corporate,  
240 penalty units.

- (6) A prosecution must not be continued in respect of an offence under this section unless the court is provided with a certificate signed by the Executive Director that the shipwreck or shipwreck artefact is of cultural heritage significance.
- (7) A certificate signed by the Executive Director under subsection (6) is conclusive evidence of the facts stated in it.

## **81 Rewards**

- (1) The Executive Director, with the consent of the Heritage Council, may give a person a reward in the form of a plaque, model, replica, medallion or other commemorative item if the person—
- (a) first gives notice of any shipwreck or shipwreck artefact; or
  - (b) gives a description of the location of any shipwreck or shipwreck artefact that enables its discovery; or
  - (c) provides information leading to the conviction of a person for an offence against this Act or the underwater cultural heritage regulations.

- (2) Any funds required to buy an item referred to in subsection (1) must be paid from the Heritage Fund.

**82 Declaration as to Crown ownership of registered shipwrecks or registered shipwreck artefacts**

- (1) The Minister, by notice published in the Government Gazette, may declare a registered shipwreck or registered shipwreck artefact to be vested in the Crown if the Minister is of the opinion that the declaration is necessary to protect the public interest.
- (2) On the publication of a notice under subsection (1), the ownership of the registered shipwreck or registered shipwreck artefact vests in the Crown free of any other interest.

**83 Right to claim compensation for loss on vesting of registered shipwreck or registered shipwreck artefact in the Crown**

- (1) A person who would, but for the publication of a notice under section 82, have been entitled to ownership of a registered shipwreck or registered shipwreck artefact, or to any interest in a registered shipwreck or registered shipwreck artefact, may claim compensation for their loss by action against the Crown in the Supreme Court within 6 months after the date of publication of the notice.
- (2) On a claim under subsection (1), the Supreme Court may award such compensation against the Crown as it considers just in the circumstances.

**84 Official place of lodgement of registered shipwrecks and registered shipwreck artefacts**

The Museum of Victoria is the official place of lodgement of registered shipwrecks and registered shipwreck artefacts which are the property of the Crown unless the Executive Director, after

consulting the Chief Executive Officer of the Museums Board of Victoria, otherwise determines.

### **85 Danger to navigation**

- (1) Nothing in this Part derogates from any power granted under any other Act to any person to deal with a shipwreck that constitutes an obstruction to the safe and convenient navigation of any Victorian waters or that are situated on shore in any port in the State.
- (2) Despite subsection (1), any power referred to in that subsection must not be exercised in relation to a shipwreck unless—
  - (a) at least 60 days have passed from the date on which that person has given to the Executive Director a notice in writing containing the following particulars—
    - (i) that person's intention to exercise the power;
    - (ii) the item in relation to which it is intended to exercise the power;
    - (iii) the location of that item;
    - (iv) the nature and extent of the action which is to be taken; or
  - (b) the item constitutes an imminent danger to the safe navigation of those waters or is likely to cause damage to persons or property in a port.

## **Part 5—Permits**

### **Division 1—General**

#### **86 Scope of Part**

- (1) Subject to subsection (2), this Part has effect despite anything in or authorised by the **Building Act 1993** or any other Act.
- (2) This Act is subject to any regulation or emergency order under the **Building Act 1993** relating to the securing, pulling down or removal of dangerous buildings.

#### **87 Offences in relation to knowingly or recklessly performing certain activities**

- (1) A person must not knowingly or recklessly remove, relocate or demolish, damage or despoil, develop or alter, or excavate, all or any part of a registered place.

Penalty: In the case of a natural person,  
4800 penalty units or imprisonment  
for 5 years or both;

In the case of a body corporate,  
9600 penalty units.

- (2) A person must not knowingly or recklessly remove, relocate or demolish, or damage or despoil, or alter, a registered object.

Penalty: In the case of a natural person,  
4800 penalty units or imprisonment  
for 5 years or both;

In the case of a body corporate,  
9600 penalty units.

- (3) A person must not knowingly or recklessly disturb the position of an object that is a fixed registered object.

Penalty: In the case of a natural person,  
4800 penalty units or imprisonment  
for 5 years or both;

In the case of a body corporate,  
9600 penalty units.

- (4) Subsections (1), (2) and (3) do not apply to works or activities—

(a) carried out in accordance with a permit issued under this Part; or

(b) carried out in accordance with section 90; or

(c) carried out in accordance with section 91; or

(d) for which the Heritage Council or the Executive Director has determined that a permit is not required under this Act.

- (5) An offence against subsection (1), (2) or (3) is an indictable offence.

## **88 Offences in relation to negligently performing certain activities**

- (1) A person must not negligently remove, relocate or demolish, damage or despoil, develop or alter, or excavate, all or any part of a registered place.

Penalty: In the case of a natural person,  
2400 penalty units or imprisonment  
for 2 years or both;

In the case of a body corporate,  
4800 penalty units.

- (2) A person must not negligently remove, relocate or demolish, damage or despoil, or alter, a registered object.

Penalty: In the case of a natural person,  
2400 penalty units or imprisonment  
for 2 years or both;

In the case of a body corporate,  
4800 penalty units.

- (3) A person must not negligently disturb the position of an object that is a fixed registered object.

Penalty: In the case of a natural person,  
2400 penalty units or imprisonment  
for 2 years or both;

In the case of a body corporate,  
4800 penalty units.

- (4) Subsections (1), (2) and (3) do not apply to works or activities—

(a) carried out in accordance with a permit issued under this Part; or

(b) carried out in accordance with section 90; or

(c) carried out in accordance with section 91; or

(d) for which the Heritage Council or the Executive Director has determined that a permit is not required under this Act.

- (5) An offence against subsection (1), (2) or (3) is an indictable offence.

## **89 Offences in relation to performing certain activities**

- (1) A person must not remove, relocate or demolish, damage or despoil, develop or alter, or excavate, all or any part of a registered place.

Penalty: In the case of a natural person,  
48 penalty units;

In the case of a body corporate,  
240 penalty units.

- (2) A person must not remove, relocate or demolish, damage or despoil, or alter, a registered object.

Penalty: In the case of a natural person,  
48 penalty units;

In the case of a body corporate,  
240 penalty units.

- (3) A person must not disturb the position of an object that is a fixed registered object.

Penalty: In the case of a natural person,  
48 penalty units;

In the case of a body corporate,  
240 penalty units.

- (4) Subsections (1), (2) and (3) do not apply to works or activities—

- (a) carried out in accordance with a permit issued under this Part; or
- (b) carried out in accordance with section 90; or
- (c) carried out in accordance with section 91; or
- (d) for which the Heritage Council or the Executive Director has determined that a permit is not required under this Part.

## **90 Exemption for the purposes of religious services or rites**

- (1) Subject to this section, a person may carry out any alterations to the following places or objects for the purposes of religious services or rites without a permit—
  - (a) a registered place which is a place of worship or in the precincts of a place of worship;
  - (b) a registered object which is in a place of worship or in the precincts of a place of worship.
- (2) Subsection (1) does not apply to a place that was built for purposes other than religious services or rites.
- (3) The owner of the place or object must give notice of the proposed alteration to the Heritage Council at least 28 days before the alteration.
- (4) A notice under subsection (3) must—
  - (a) be in the prescribed form; and
  - (b) include a declaration by an officer of the place of worship, authorised by the place of worship for that purpose, that the alteration is required for the purposes of religious services or rites.

## **91 Exemption for certain subdivisions**

A person may carry out any works or activities in relation to a registered place without a permit if the works or activities are carried out in accordance with a permit of subdivision granted under Part 4 of the **Planning and Environment Act 1987** that was referred to the Executive Director as a determining referral authority under that Act.

## **92 Other exemptions from permits**

- (1) The Heritage Council, on the recommendation of the Executive Director, may determine categories of works or activities which may be undertaken in relation to any registered place, registered object or class of registered place or registered object without a permit under this Part.
- (2) The Executive Director must give written notice without delay to the owner of a registered place or registered object affected by a determination made under subsection (1).
- (3) The Executive Director, on the application of the owner of a registered place or registered object, may determine that a permit is not required for particular works or activities in relation to the registered place or registered object.
- (4) If the Heritage Council or Executive Director makes a determination under this section, the specified works or activities may be carried out in relation to the registered place or registered object.
- (5) The Heritage Council or the Executive Director must not make a determination in relation to any works or activities if they consider the works or activities may harm the cultural heritage significance of the registered place or registered object.
- (6) The Heritage Council, on the recommendation of the Executive Director, may amend or revoke a determination made under subsection (1).
- (7) The Executive Director must give written notice without delay to the owner of a registered place or registered object affected by an amendment or revocation under subsection (6).

## **Division 2—Permit applications**

### **93 Permit applications**

- (1) A person may apply to the Executive Director for a permit to carry out works or activities in relation to a registered place or registered object.
- (2) A permit application must—
  - (a) be made in the prescribed form; and
  - (b) be accompanied by the prescribed fee (if any).
- (3) If the applicant is not the owner or government asset manager of the registered place or registered object, the applicant must obtain the written consent of the owner or government asset manager of the place or object.
- (4) An applicant may withdraw a permit application at any time.

### **94 Public display of permit applications in certain circumstances**

- (1) The Executive Director must as soon as practicable after receiving a permit application cause notice of the application to be published in a newspaper circulating generally in the area in which the registered place or registered object is situated, if the Executive Director considers that the proposed works or activities may harm the place or object.
- (2) The Executive Director may require—
  - (a) the owner or government asset manager of the registered place to cause a copy of the notice to be continuously displayed in a conspicuous position at that place for a period not exceeding 14 days; or

- (b) the owner or government asset manager of the registered object to cause a copy of the notice to be continuously displayed in a conspicuous position on or near that object for a period not exceeding 14 days.
- (3) The Executive Director may extend the specified period of display under subsection (2) with the agreement of the applicant and the owner or government asset manager of the registered place or registered object.
- (4) The Executive Director may require the applicant or the owner or government asset manager of the registered place or registered object to cause publication of the notice under subsection (1).
- (5) A person is taken to have complied with subsection (2) if the Executive Director is satisfied that the person took all reasonable steps to ensure that the notice was conspicuously and continuously displayed during the specified period of display.
- (6) If notice of an application is given in accordance with subsection (1), the Executive Director must make a copy of the application available at the offices of the Department during normal office hours for any person to inspect free of charge for at least the specified period of display under subsection (2).
- (7) The Executive Director may require the applicant to provide information regarding compliance with subsection (2) or (4).
- (8) In calculating a period of time under this section, the period from 24 December to 9 January next following is excluded.

## **95 Public submissions in relation to permit applications**

- (1) If notice of a permit application is given under section 94(1) or (4), any person may lodge a written submission with the Executive Director in relation to the application.
- (2) A submission must be lodged within—
  - (a) 14 days after notice is given under section 94(1) or (4); or
  - (b) an extended period of time under section 94(3).

## **96 Amending permit applications**

- (1) An applicant may make a written request to the Executive Director to amend a permit application.
- (2) A request to amend a permit application may be made before or after any notice of the application is publicly displayed under section 94.
- (3) A request must—
  - (a) include any new information in relation to the proposed amendment that was not included in the original application; and
  - (b) be accompanied by the prescribed fee (if any); and
  - (c) if the applicant is not the owner or government asset manager of the land in respect of which the permit application applies, include the written consent of the owner or government asset manager.
- (4) The Executive Director must—
  - (a) agree to the request; or
  - (b) refuse the request if the Executive Director considers that the amendment is so substantial that a new permit application is necessary.

- (5) The Executive Director must as soon as practicable give a copy of any amended permit application to the responsible authority for the area in which the registered place or registered object is situated and, if the responsible authority is not a municipal council, the relevant municipal council.
- (6) Despite section 94, if a request to amend a permit application is made after notice of a permit application is publicly displayed under section 94, the Executive Director may give directions to the applicant in relation to the publication or notification of the amended permit application.

#### **97 Time for determining permit applications**

- (1) Subject to section 99, the Executive Director must determine a permit application within 60 days after receiving the application unless that period is extended in accordance with this section.
- (2) The Heritage Council, on the application of the Executive Director, may extend the period of 60 days by a further period of up to 60 days.
- (3) An application by the Executive Director under subsection (2) must be made before the end of the period of 60 days specified in subsection (1).

#### **98 Requests for additional information in relation to permit applications**

- (1) The Executive Director may request an applicant to provide any additional information that the Executive Director considers necessary to assist the determination of the permit application.
- (2) A request under subsection (1) must be made in writing and include the following information—
  - (a) the information to be provided;

- (b) the date by which the information must be provided, being a date which is at least 30 days after the request;
  - (c) a statement that the application will lapse if the information is not provided by that date.
- (3) The applicant may request the Executive Director to grant an extension of time to provide the requested information.
- (4) The Executive Director must—
- (a) agree or refuse to agree to a request under subsection (3); and
  - (b) give written notice to the applicant of the Executive Director's decision.
- (5) A notice under subsection (4)(b) must state—
- (a) whether the extension of time is agreed to or refused;
  - (b) if the extension of time is agreed to, the date by which the information must be provided;
  - (c) if the extension of time is refused and the date specified in accordance with subsection (2)(b) has passed or is due to pass in 14 days, the date by which the information must be provided, being a date which is at least 14 days after the notice.
- (6) The Executive Director must notify the applicant within 7 days after agreeing or refusing to agree to the extension.

### **99 Stopping of time for permit applications**

The period within which the Executive Director must determine a permit application—

- (a) stops to run on the day when a copy of the notice publicly displayed under section 94(2) is requested by the Executive

- Director under section 94(7) and starts to run when information regarding compliance with that display is provided to the Executive Director; or
- (b) stops to run on the day when notice is caused to be published under section 94(4) and starts to run when information regarding compliance with that notice is provided to the Executive Director under section 94(7); or
  - (c) stops to run on the day when a direction is given to the applicant under section 96(6) and starts to run when information regarding compliance with that direction is provided to the Executive Director; or
  - (d) stops to run on the day when the Executive Director requests additional information under section 98 and starts to run when that information is provided to the Executive Director.

**100 Submissions by responsible authorities and municipal councils in relation to permit applications**

- (1) The Executive Director, within 14 days after receiving a permit application, must give a copy of the application—
  - (a) to the responsible authority for the area in which the registered place or registered object is situated; and
  - (b) if the responsible authority is not a municipal council, the relevant municipal council.
- (2) A responsible authority or a municipal council to which a copy of a permit application is given may make a written submission to the Executive Director in relation to the application.

- (3) A submission must be lodged within—
  - (a) 14 days after notice is given under subsection (1); or
  - (b) an extended period of time under section 94(3).

### **101 Determination of permit applications**

- (1) After considering an application the Executive Director may—
  - (a) approve the application and—
    - (i) issue the permit for the proposed works or activities; or
    - (ii) issue the permit for some of the proposed works or activities specified in the application; or
  - (b) refuse the application.
- (2) In determining whether to approve an application for a permit, the Executive Director must consider the following—
  - (a) the extent to which the application, if approved, would affect the cultural heritage significance of the registered place or registered object;
  - (b) the extent to which the application, if refused, would affect the reasonable or economic use of the registered place or registered object;
  - (c) any submissions made under section 95 or 100;
  - (d) if the applicant is a public authority, the extent to which the application, if refused, would unreasonably detrimentally affect the ability of the public authority to perform a statutory duty specified in the application;

- (e) if the application relates to a listed place or to a registered place or registered object in a World Heritage Environs Area, the extent to which the application, if approved, would affect—
    - (i) the world heritage values of the listed place; or
    - (ii) any relevant Approved World Heritage Strategy Plan;
  - (f) any matters relating to the protection and conservation of the registered place or registered object that the Executive Director considers relevant.
- (3) In determining whether to approve an application for a permit, the Executive Director may consider—
- (a) the extent to which the application, if approved, would affect the cultural heritage significance of any adjacent or neighbouring property that is—
    - (i) included in the Heritage Register; or
    - (ii) subject to a heritage requirement or control in the relevant planning scheme; or
  - (b) any other relevant matter.

### **Division 3—Issue of permits**

#### **102 Issue of permits**

- (1) The Executive Director, within 7 days after making a determination under section 101, must—
- (a) issue the permit to the applicant; or
  - (b) issue the permit for some of the works or activities specified in the application and give the applicant written notice of the

- refusal of the application in respect of the works or activities not approved; or
- (c) give the applicant written notice of the refusal of the application.
- (2) The Executive Director may issue a permit on any terms and conditions the Executive Director considers fit.
- (3) A notice of refusal under subsection (1)(b) or (c) must include—
- (a) the reasons for the refusal; and
  - (b) a statement of the applicant's rights of review under this Part.

### **103 Issue of permits subject to security**

- (1) A permit issued to a person under section 102 may be subject to a condition that a security be given by the person to ensure—
- (a) the satisfactory completion of the works or activities; or
  - (b) compliance with another condition imposed on the permit.
- (2) In determining the form and content of a security required under subsection (1), the Executive Director must have regard to—
- (a) in the case of a security for the purposes of subsection (1)(a), the nature and extent of the works or activities described in the permit; or
  - (b) in the case of a security for the purposes of subsection (1)(b), the nature of the condition to be complied with.

- (3) The Heritage Council must return a security to a person if—
- (a) in the case of a security for the purposes of subsection (1)(a), the works or activities described in the permit are completed; or
  - (b) in the case of a security for the purposes of subsection (1)(b), the condition is complied with.

#### **104 Noncompliance with permit**

A person carrying out works or activities for which a permit is issued under section 102 must ensure that the works or activities comply with the permit and any terms and conditions of the permit.

Penalty: In the case of a natural person,  
120 penalty units;  
In the case of a body corporate,  
600 penalty units.

### **Division 4—Amendment of permits**

#### **105 Amendment of permits**

- (1) The holder of a permit issued under this Part may request the Executive Director to amend the permit.
- (2) A request under subsection (1) must—
  - (a) be made in the prescribed form; and
  - (b) be accompanied by the prescribed fee (if any).
- (3) If a permit holder is not the owner of the registered place or registered object in respect of which the permit is issued, the permit holder must obtain the written consent of the owner before making a request to amend the permit.

- (4) On receiving a request under subsection (1), the Executive Director must notify—
  - (a) any person who made a submission in relation to the permit application; and
  - (b) the responsible authority for the area in which the registered place or registered object in respect of which the permit is issued is situated and, if the responsible authority is not a municipal council, the relevant municipal council.
- (5) The Executive Director must agree to a request to amend a permit, or refuse the request, within 28 days of receiving the request.
- (6) The Executive Director must refuse the request if the Executive Director considers that the requested amendment is so substantial that a new permit application is necessary.
- (7) The Executive Director may refuse a request if the Executive Director considers that the requested amendment, if agreed to, may result in harm to the cultural heritage significance of the registered place or registered object in relation to which the permit was issued.

### **Division 5—Reviews of determinations relating to permits**

#### **106 Review of the Executive Director's determinations relating to permits**

- (1) The applicant for a permit to carry out works or activities in relation to a registered place or registered object, the owner or government asset manager of the place or object, or a person with a real and substantial interest in the place or object, may make a written request to the Heritage Council to review—

- (a) a determination by the Executive Director to refuse an application to issue a permit in respect of the place or object; or
  - (b) a determination by the Executive Director to refuse an application to issue a permit for some of the proposed works or activities in respect of the place or object.
- (2) The applicant or the owner or government asset manager of a registered place or registered object may make a written request to the Heritage Council to review a determination by the Executive Director to impose a condition on a permit in respect of the place or object.
- (3) A request for a review must be accompanied by the prescribed fee (if any).
- (4) A request for a review must be made within 60 days after a notice of refusal of the application is given, or the permit is issued, as the case requires.
- (5) On receiving a request for a review, the Heritage Council must notify—
- (a) the owner or government asset manager of the registered place or registered object if the person requesting the review is not the owner or government asset manager; and
  - (b) the responsible authority for the area in which the registered place or registered object is situated and, if the responsible authority is not a municipal council, the relevant municipal council; and
  - (c) the National Trust if the National Trust has previously lodged a written submission with the Executive Director in relation to the permit application.

### **107 Adjournment of reviews relating to permits**

- (1) An applicant for a review may make a written request to the Heritage Council for an adjournment of the review.
- (2) The Heritage Council may adjourn the review if satisfied that the request is reasonable.
- (3) An application under subsection (1) must include reasons for the request.
- (4) If the Heritage Council adjourns the review, the time within which the Heritage Council must determine the review—
  - (a) stops to run at the time when the decision to adjourn the review is made by the Heritage Council; and
  - (b) starts to run at the earlier of the end of the period of adjournment determined by the Heritage Council or 6 months from the date of adjournment of the review.

### **108 Determination of reviews by the Heritage Council**

- (1) Subject to sections 107 and 109, the Heritage Council must determine a review within 60 days after the request is made.
- (2) The Heritage Council may ask the applicant for any additional information that the Heritage Council considers necessary to assist the determination of the review.
- (3) The time within which the Heritage Council must decide a review—
  - (a) stops to run at the time when a request for the additional information is made; and
  - (b) starts to run only when the information is provided to the Heritage Council.

- (4) The Heritage Council must conduct a hearing into a review—
  - (a) if the hearing is requested by the applicant or the relevant responsible authority; or
  - (b) in any other case, unless the applicant agrees to the determination of the review without a hearing.
- (5) The responsible authority for the area in which the registered place or registered object is situated and, if the responsible authority is not a municipal council, the relevant municipal council, may appear, be heard or be represented at any hearing into the review of an Executive Director's determination relating to a permit.
- (6) The National Trust may be a party to a hearing into the review of a determination in relation to a permit if the National Trust has previously lodged a written submission with the Executive Director in relation to the permit application.
- (7) The Heritage Council may make a determination on the review to—
  - (a) affirm the determination under review; or
  - (b) vary the determination under review; or
  - (c) set aside the determination under review and make another determination in substitution for it.
- (8) In determining a review, the Heritage Council must consider the matters set out in section 101(2).

- (9) The Executive Director, within 7 days after a determination is made under subsection (7), must—
- (a) if the Heritage Council has determined to approve the permit application, issue the permit to the applicant; and
  - (b) give written notice of the determination to—
    - (i) the applicant for the review and, if the applicant is not the owner or government asset manager, the owner or government asset manager of the place and object; and
    - (ii) the responsible authority for the area in which the registered place or registered object is situated and, if the responsible authority is not a municipal council, the relevant municipal council; and
    - (iii) any other person who was a party to any hearing.

**109 Minister's power to call in or refer matter to VCAT**

- (1) At any time after a request for a review has been made to the Heritage Council but before the review is determined, the Minister may direct the Heritage Council—
- (a) to refer the review to the Minister for determination; or
  - (b) if in the Minister's opinion the determination of the review may have a significant effect on the achievement or development of planning and heritage objectives, to refer the request for review to VCAT for review of the determination the subject of the review.

- (2) If the Minister gives a direction under—
  - (a) subsection (1)(a), the Heritage Council must refer the review to the Minister for determination; or
  - (b) subsection (1)(b), the Heritage Council must refer the request for review to VCAT for review of the determination the subject of the review.
- (3) In determining a review, the Minister must consider the matters set out in section 101(2).
- (4) In determining a review of a determination, VCAT must consider the matters set out in section 101(2).

#### **110 Notice of referral to VCAT**

The Minister must give notice of any referral of a matter to VCAT under section 109(2)(b) to—

- (a) the National Trust; and
- (b) the relevant responsible authority and, if the responsible authority is not a municipal council, the relevant municipal council.

#### **111 Powers of VCAT on review**

On a review, VCAT may by order—

- (a) affirm the determination under review; or
- (b) vary the determination under review; or
- (c) set aside the determination under review and make another determination in substitution for it.

### **112 Notice of VCAT's decision**

The Executive Director must give notice of a decision of VCAT under section 111 to—

- (a) the applicant for the review and, if the applicant is not the owner or government asset manager, the owner or government asset manager of the place or object; and
- (b) the relevant responsible authority and, if the responsible authority is not a municipal council, the relevant municipal council; and
- (c) any other person who was a party to a hearing.

### **113 Exercise of call-in power by the Minister**

(1) If a review is referred to the Minister under section 109(2)(a), the Minister—

- (a) may require the Heritage Council to give the applicant or other person requesting the review an opportunity to be heard by the Heritage Council and to make submissions to the Heritage Council; and
- (b) must require the Heritage Council to provide a report on the review, including a report on any submissions considered or hearing conducted under paragraph (a).

(2) The Heritage Council must comply with any requirement of the Minister under subsection (1).

### **114 Powers of the Minister on referral**

(1) After a referral to the Minister under section 109(2)(a), the Minister may make a determination to—

- (a) affirm the determination under review; or
- (b) vary the determination under review; or

- (c) set aside the determination under review and make another determination in substitution for it.
- (2) The Executive Director must, within 7 days after a determination is made under subsection (1)—
- (a) if the Minister has determined to approve the permit application, issue the permit to the applicant; and
  - (b) give written notice of the determination to—
    - (i) the applicant for the review and, if the applicant is not the owner or government asset manager, the owner or government asset manager of the place or object; and
    - (ii) the responsible authority for the area in which the registered place or registered object is situated and, if the responsible authority is not a municipal council, the relevant municipal council; and
    - (iii) any other person who was a party to a hearing.

## **Division 6—Miscellaneous**

### **115 Applications for permits before registration in urgent cases**

- (1) If a place or object has been nominated for inclusion in the Heritage Register, a person may apply to the Executive Director under section 93 for a permit to carry out any works or activities for which a permit would be required if the place or object were registered.
- (2) If the Executive Director considers the matter is urgent, the Executive Director may consider the application before the place or object is registered but must not make a determination in respect of

the application until the place or object is registered.

### **116 Delegation**

- (1) The Executive Director, by instrument, may delegate to the responsible authority for the area in which a registered place or registered object is situated any of the Executive Director's functions, duties or powers under this Part in relation to that place or object.
- (2) A delegation under subsection (1) must be made with the consent of the Minister.
- (3) A responsible authority to which a function, duty or power has been delegated under subsection (1) may sub-delegate that function, duty or power to an officer of the responsible authority if the instrument of delegation authorises its sub-delegation.
- (4) A sub-delegation under subsection (3)—
  - (a) must be made with the written consent of the Executive Director; and
  - (b) is subject to any conditions to which the delegation is subject.
- (5) Sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply to a sub-delegation authorised by this section in the same way as they apply to a delegation.

#### **Note**

Under section 42A(1)(aa) of the **Interpretation of Legislation Act 1984**, the power to delegate under this section cannot be delegated.

## **Part 6—Archaeological heritage**

### **Division 1—Heritage Inventory**

#### **117 Establishment of the Heritage Inventory**

The Executive Director must establish and maintain an inventory called the Heritage Inventory.

#### **118 Content of the Heritage Inventory**

- (1) The Executive Director must record in the Heritage Inventory—
  - (a) all archaeological sites other than any archaeological sites which are determined by the Executive Director to have low archaeological value; and
  - (b) all approved sites of archaeological value; and
  - (c) all sites included in the Heritage Inventory under the **Heritage Act 1995** immediately before the commencement of section 257.
- (2) To avoid doubt, a place that is included in the Heritage Register may also be recorded as a site in the Heritage Inventory.

#### **119 Removing archaeological sites from the Heritage Inventory**

The Heritage Council may remove an archaeological site from the Heritage Inventory if the Executive Director determines that the site has low archaeological value.

#### **120 Notice of removal of sites from the Heritage Inventory**

The Executive Director must give written notice of the removal of a site from the Heritage Inventory to—

- (a) the owner of the land constituting the site;  
and
- (b) the responsible authority for the area in  
which the site is situated; and
- (c) if the responsible authority is not a municipal  
council, the relevant municipal council.

### **121 Public availability of the Heritage Inventory**

An up-to-date electronic copy of the Heritage Inventory must be kept at the offices of the Department for inspection by members of the public during normal office hours free of charge.

## **Division 2—Protection of archaeological heritage**

### **122 Application of Division**

This Division does not apply to any site which has been removed from the Heritage Inventory under section 119.

### **123 Offences in relation to certain sites**

- (1) A person must not, without a consent issued under section 124, knowingly or negligently deface, damage or otherwise interfere with, or carry out an act, likely to endanger—
  - (a) a site recorded in the Heritage Inventory; or
  - (b) an archaeological site which is not recorded in the Heritage Inventory.

Penalty: In the case of a natural person,  
600 penalty units or imprisonment  
for 12 months or both;

In the case of a body corporate,  
1200 penalty units.

- (2) A person must not, without a consent issued under section 124, knowingly uncover or expose, or knowingly disturb or excavate any land for the purposes of uncovering or discovering—
- (a) a site recorded in the Heritage Inventory; or
  - (b) an archaeological site which is not recorded in the Heritage Inventory.

Penalty: In the case of a natural person,  
600 penalty units or imprisonment  
for 12 months or both;

In the case of a body corporate,  
1200 penalty units.

- (3) This section does not apply to a registered archaeological place or a registered archaeological artefact.

**Note**

Offences apply in relation to registered archaeological places and registered archaeological artefacts under sections 87, 88 and 89.

**124 Executive Director may issue consents**

- (1) Subject to this section, a person may apply to the Executive Director for a consent authorising the person—
- (a) to excavate or uncover a site recorded in the Heritage Inventory or an archaeological site which is not recorded in the Heritage Inventory; or
  - (b) to damage or disturb a site recorded in the Heritage Inventory or an archaeological site which is not recorded in the Heritage Inventory; or
  - (c) to damage or disturb an archaeological artefact, including for the purposes of study, conservation or exhibition; or

- (d) to possess an archaeological artefact for the purposes of sale; or
  - (e) to buy or sell an archaeological artefact.
- (2) An application under subsection (1) must—
- (a) be in the prescribed form; and
  - (b) be accompanied by the prescribed fee (if any); and
  - (c) if necessary, include the consent of the owner or government asset manager of the site or archaeological artefact.
- (3) In determining whether to issue a consent under this section, the Executive Director must consider—
- (a) any relevant archaeological, historical or other research; and
  - (b) the potential of the site or archaeological artefact to contribute to such knowledge.
- (4) After considering a consent application, the Executive Director may—
- (a) approve the application and—
    - (i) issue the consent; or
    - (ii) issue the consent for some of the proposed works or activities specified in the application; or
  - (b) refuse the application.
- (5) If the Executive Director determines to refuse the application, the Executive Director must give the applicant written notice of the refusal within 7 days after making the determination.

- (6) A notice under subsection (5) must include—
  - (a) a statement of reasons for the refusal; and
  - (b) a statement of the applicant's rights of review under this Part.
- (7) A consent under this section may be issued subject to the following terms and conditions—
  - (a) that the activity authorised by the consent be supervised by a person with appropriate professional qualifications and experience as specified in the consent;
  - (b) that archaeological artefacts found in the course of the activity authorised by the consent are to be conserved and curated in a way specified in the consent;
  - (c) any other terms and conditions that the Executive Director considers fit.
- (8) This section does not apply to a registered archaeological place or a registered archaeological artefact.

**Note**

A permit or permit exemption under this Act is required to do certain things in relation to registered archaeological places or registered archaeological artefacts.

### **125 Compliance with consents**

A person must comply with the terms and conditions contained in a consent issued under section 124.

Penalty: In the case of a natural person,  
240 penalty units;  
In the case of a body corporate,  
480 penalty units.

## **126 Requests for reviews regarding consents**

- (1) A written request to the Heritage Council to review a determination of the Executive Director to impose terms and conditions on a consent issued in respect of a site included in the Heritage Inventory, an archaeological site not recorded in the Heritage Inventory or an archaeological artefact, or to refuse an application to issue a consent in respect of a site or artefact, may be made by—
  - (a) the person to whom the consent was issued or refused; or
  - (b) the owner of the site or artefact; or
  - (c) a government asset manager in respect of the site or artefact.
- (2) A request under subsection (1) must—
  - (a) be made in writing; and
  - (b) be made within 28 days after the Executive Director determines to approve or refuse the application; and
  - (c) be accompanied by the prescribed fee (if any).
- (3) The Heritage Council may request the Executive Director to provide any information in relation to the terms and conditions of the consent or the refusal of the application.
- (4) The Executive Director must provide any information requested under subsection (3).
- (5) In determining a review, the Heritage Council may make a determination to—
  - (a) affirm the determination under review; or

- (b) set aside the determination under review and makes another determination in substitution for it; or
  - (c) subject to subsection (6), set aside the determination under review and remit the matter for reconsideration by the Executive Director in accordance with any directions or recommendations.
- (6) The Heritage Council must remit a matter for reconsideration under subsection (5)(c) if the applicant has provided new information and the Heritage Council considers the information to be material.
- (7) The Heritage Council must make a determination under subsection (5) within 60 days after receiving a request for review.
- (8) The Heritage Council must give the person requesting the review—
- (a) written notice of the determination within 7 days after the determination; and
  - (b) a written statement of reasons for its determination.

### **127 Reporting of investigations and surveys of land**

- (1) If an archaeological site is discovered during an investigation or survey of land for a relevant survey purpose, the person undertaking the investigation or survey must provide a site card to the Executive Director within 30 days after the discovery.

Penalty: In the case of a natural person,  
120 penalty units;  
In the case of a body corporate,  
240 penalty units.

- (2) If an archaeological site is discovered in the course of any construction or excavation on any land, the person in charge of the construction or excavation must as soon as practicable report the discovery to the Executive Director.

Penalty: In the case of a natural person,  
120 penalty units;

In the case of a body corporate,  
240 penalty units.

- (3) Subsection (1) or (2) do not apply in relation to an archaeological site if the person did not know or could not reasonably have been expected to know that the archaeological site was an archaeological site.

### **128 Actions to protect archaeological artefacts**

- (1) For the purposes of protecting and conserving a registered archaeological artefact, the Heritage Council may—
- (a) purchase or otherwise acquire a registered archaeological artefact on behalf of the Crown; and
  - (b) purchase, on behalf of the Crown, land upon which a registered archaeological artefact may be present.
- (2) For the purpose of protecting and conserving any archaeological artefact, the Executive Director may erect screens, shelters or other structures or take any other action considered reasonably necessary.

- (3) A person must not remove, damage or interfere with a screen, shelter or other structure erected under subsection (2).

Penalty: In the case of a natural person,  
120 penalty units;  
In the case of a body corporate,  
240 penalty units.

**129 Offence to buy, sell or possess archaeological artefacts without consent**

- (1) A person must not, whether as principal or agent, without the consent of the Executive Director—
- (a) knowingly buy or sell an archaeological artefact; or
  - (b) at any time knowingly have in their possession an archaeological artefact for the purposes of sale.

Penalty: In the case of a natural person,  
120 penalty units;  
In the case of a body corporate,  
240 penalty units.

- (2) Subsection (1) does not apply to possession of an archaeological artefact if the person had had possession of the artefact before the commencement of the **Archaeological and Aboriginal Relics Preservation Act 1972**.

**Division 3—Sites of archaeological value**

**130 Recommendation for site of archaeological value**

- (1) The Executive Director may recommend to the Heritage Council that a place be approved as a site of archaeological value if, in the Executive Director's opinion, the place—
- (a) is situated in the State; and

- (b) contains an artefact, deposit or feature which is less than 75 years old; and
  - (c) provides information of past activity in the State; and
  - (d) requires archaeological methods to reveal information about the settlement, development or use of the place; and
  - (e) is not associated only with Aboriginal occupation of the place; and
  - (f) has archaeological value.
- (2) The Heritage Council must determine criteria for assessing whether a place has archaeological value for the purposes of subsection (1)(f).

**131 Notice of recommendation for site of archaeological value**

- (1) After making a recommendation under section 130, the Executive Director must give notice of the recommendation to—
- (a) the owner or government asset manager of a place affected by the recommendation; and
  - (b) the responsible authority for the area in which the place is situated and, if the responsible authority is not a municipal council, the relevant municipal council.
- (2) A notice given under subsection (1) must—
- (a) be in writing; and
  - (b) include the following information—
    - (i) a description of the archaeological value of the place;
    - (ii) a statement that the owner or government asset manager may make a written submission in relation to the recommendation;

- (iii) the date by which a written submission must be made, being within 28 days after the notice.
- (3) If the Executive Director considers that it is not practicable in a particular case to give notice to an owner, the Executive Director may apply to the Minister to exempt the Executive Director from the requirements to give notice.
- (4) If the Minister exempts the Executive Director from the requirement to give notice under this section, the Executive Director must give notice to the affected owners in any manner the Minister specifies in the exemption.
- (5) If the Minister exempts the Executive Director from the requirement to give notice under this section, details of that exemption must be included in the Department's report of operations under the **Financial Management Act 1994**.

**132 Consideration of submissions in relation to a recommendation for a site of archaeological value**

- (1) The Heritage Council must consider a submission in relation to a recommendation for a site of archaeological value that it receives on or before the submission date for the recommendation.
- (2) The Heritage Council may—
  - (a) conduct a hearing in relation to the recommendation; or
  - (b) consider any submissions and the recommendation without a hearing.
- (3) The Heritage Council must only consider a submission relating to the issue of whether or not a place is a site of archaeological value.

**133 Approval of recommendation for a site of archaeological value**

- (1) After considering any submissions in relation to a recommendation for a site of archaeological value and conducting any hearing in relation to the recommendation, the Heritage Council must—
  - (a) approve the recommendation; or
  - (b) approve the recommendation in relation to part of the place recommended; or
  - (c) refuse to approve the recommendation.
- (2) The Heritage Council must make a decision under subsection (1)—
  - (a) within 40 days after the date on which written submissions may be made under section 131; or
  - (b) if any hearing is conducted into the written submissions, within 90 days after the completion of the hearing.
- (3) The Heritage Council must within 7 days after the determination give written notice of the approval of a recommendation for a site of archaeological value to—
  - (a) the owner or government asset manager of the place; and
  - (b) the responsible authority for the area in which the place is situated and, if the responsible authority is not a municipal council, the relevant municipal council.
- (4) The Executive Director must record a place approved as a site of archaeological value under subsection (1) in the Heritage Inventory.

## **Part 7—Covenants**

### **134 Land owner may enter covenant with the Heritage Council**

- (1) An owner of a registered place or land on which a registered place is situated may enter into a covenant with the Heritage Council which binds the owner as to—
  - (a) the development or use of the place or the land; or
  - (b) the conservation of the place and any registered object at the place.
- (2) A covenant under subsection (1) may—
  - (a) be released by the Heritage Council; or
  - (b) be varied by agreement between the Heritage Council and all persons having an interest in the land burdened by the covenant who are bound by the covenant.

### **135 Land owner may enter covenant with the National Trust**

- (1) Subject to subsection (2), the owner of a registered place, land on which a registered place is situated, or land on which a building considered by the National Trust to be of cultural heritage significance is situated, may enter into a covenant with the National Trust which binds the owner as to—
  - (a) the development or use of the place or the land; or
  - (b) the conservation of the place or any registered object at the place.
- (2) A covenant under subsection (1) cannot be entered into without the prior approval of the Heritage Council.

- (3) With the approval of the Heritage Council, a covenant may—
  - (a) be released by the National Trust; or
  - (b) be varied by agreement between the National Trust and all persons having an interest in the land burdened by the covenant who are bound by the covenant.
- (4) If a land owner has agreed to enter into or vary a covenant with the National Trust under this section, the National Trust must give the Heritage Council—
  - (a) details of the proposed covenant or variations of the covenant; and
  - (b) a map of the land concerned and the surrounding area indicating—
    - (i) the names and addresses of the owners of the land in the vicinity of the land concerned; and
    - (ii) the purposes for which the land concerned and the surrounding land is used.

### **136 VCAT may release covenant**

- (1) If a land owner who enters into a covenant with the Heritage Council or the National Trust under section 134 or 135 is unable to reach an agreement for the release of the covenant, the owner may apply to VCAT for an order under subsection (2).
- (2) On an application under subsection (1), VCAT may make any orders or give any directions it considers necessary to resolve the dispute.
- (3) The Heritage Council, the National Trust or the owner (as the case requires) must give effect to any order of VCAT under subsection (2).

### **137 Notice of covenants**

- (1) If a land owner has agreed to enter into or vary a covenant under section 134 or 135, the Heritage Council or the National Trust, as the case requires, must publish a notice to that effect in—
  - (a) the Government Gazette; and
  - (b) a newspaper circulating generally in the area in which the land concerned is situated.
- (2) A notice under subsection (1) must contain the following—
  - (a) the location of the land;
  - (b) details of the proposed covenant or variation of the covenant;
  - (c) a statement that written submissions concerning the proposed covenant or variation of the covenant may be made to the Heritage Council within 28 days after the publication of the notice in the Government Gazette.
- (3) If the Heritage Council considers that owners of land in the vicinity of the land concerned may be affected by the proposed covenant or variation of a covenant, the Heritage Council may—
  - (a) give notice of the details of the proposed covenant or variation of a covenant to those owners; or
  - (b) direct the National Trust to give any notice that the Heritage Council may specify to those owners.
- (4) A notice given under subsection (3) must state that written submissions concerning the proposed covenant or variation of the covenant may be made to the Heritage Council within 28 days after the date of the notice.

**138 Heritage Council to consider submissions and make decisions**

- (1) The Heritage Council must consider any submissions received within the later of—
  - (a) 28 days after the publication of a notice in the Government Gazette under section 137(1); or
  - (b) in the case of a submission received from an owner in response to a notice given under section 137(3), 28 days after the later of the date of that notice or the publication of that notice in the Government Gazette.
- (2) The Heritage Council may—
  - (a) if the land owner proposes to enter into or vary a covenant with the National Trust, approve or refuse to approve the covenant or variation; or
  - (b) if the land owner proposes to enter into or vary a covenant with the Heritage Council, enter or refuse to enter the covenant or agree to or refuse to agree to the variation.
- (3) The Heritage Council must publish notice of its decision under subsection (2) in the Government Gazette.

**139 Covenant affecting Crown land**

If a covenant entered into under this Part affects unalienated land of the Crown, the Executive Director must amend the Heritage Register by entering a memorandum of the effect of the covenant in the item relating to the land.

**140 Recording of notice of covenant or agreement**

The Registrar of Titles, on the application of a land owner, must make any recordings in the Register as are necessary to record notice of an agreement for the entering into or making of—

- (a) any covenant under section 134 or 135; or
- (b) any variation, release or determination of a covenant under this Part.

**141 Effect of recording of notice of covenant or agreement**

If a notice of a covenant has been recorded under section 140—

- (a) any burden of the covenant runs with the land affected; and
- (b) the Heritage Council or the National Trust, as the case requires, may enforce the covenant against persons deriving title from the person who entered into the covenant as if it were a restrictive covenant, despite the fact that the covenant—
  - (i) may be positive in nature; or
  - (ii) is not for the benefit of any land of the Heritage Council or the National Trust.

## **Part 8—Orders**

### **Division 1—Interim protection orders**

#### **142 Scope of Division**

- (1) Subject to subsection (2), this Division applies despite anything in or authorised by the **Building Act 1993** or any other Act.
- (2) This Act is subject to any regulation or emergency order under the **Building Act 1993** relating to the securing, pulling down or removal of dangerous buildings.

#### **143 Heritage Council or Executive Director may make interim protection order**

- (1) The Heritage Council or the Executive Director may make an interim protection order in relation to a place or object if, in the opinion of the Heritage Council or the Executive Director, it is necessary or desirable to do so for the purposes of this Act.
- (2) An interim protection order must be in the prescribed form.
- (3) The Heritage Council or Executive Director must cause the interim protection order or a reproduction of the order to be served on the owner, occupier or person apparently in charge of the place or object.
- (4) The Executive Director must give the order required to be served under subsection (3) to a government asset manager if the place is part of government land or the object is a government object.

#### **144 Effect of interim protection order**

- (1) An interim protection order takes effect on the service of the order under section 143.
- (2) A place or object which is subject to an interim protection order is taken to be included in the Heritage Register in the category or categories specified in the order for the period of the order.

#### **145 Manner of service of interim protection order**

An interim protection order may be served on a person—

- (a) by delivering it to the person; or
- (b) by leaving it at the person's usual or last known place of residence; or
- (c) by forwarding it by post in a prepaid letter addressed to the person at their usual or last known place of residence; or
- (d) by facsimile to the person at the person's usual or last known place of residence or business; or
- (e) by means of electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**; or
- (f) in the case of a place, by displaying it at that place; or
- (g) in the case of an object, by displaying it on or near that object.

#### **146 Additional requirements relating to service of interim protection order**

- (1) This section applies if an interim protection order is served under section 143—
  - (a) on a person other than an owner or government asset manager of a place or object; or

- (b) in the case of a place or object on the owner by displaying it at that place or on or near that object.
- (2) The Heritage Council or Executive Director, as soon as possible after the service of the order, must—
  - (a) cause a copy of the order to be served on the owner in accordance with section 145(a), (b), (c), (d) or (e); or
  - (b) if the address of the owner is unknown, cause a copy of the order to be published in a newspaper circulating generally in Victoria.

#### **147 Display of interim protection order**

- (1) A person who has been served with an interim protection order under section 143 or 146 in relation to a place must cause a notice of the existence of that order to be continuously displayed in a conspicuous position on the place for the period that the order is in force.

Penalty: In the case of a natural person,  
120 penalty units;

In the case of a body corporate,  
240 penalty units.

- (2) A person who has been served with an interim protection order under section 143 or 146 in relation to an object must cause a notice of the existence of that order to be continuously displayed in a conspicuous position on or near the object for the period that the order is in force.

Penalty: In the case of a natural person,  
120 penalty units;

In the case of a body corporate,  
240 penalty units.

- (3) A notice of the existence of an interim protection order must be in the prescribed form.
- (4) A person is taken to have complied with subsection (1) or (2) if the Heritage Council is satisfied that the person took all reasonable steps to ensure that the notice was conspicuously and continuously displayed in accordance with that subsection during the period that the order was in force.

**148 Works or activities while interim protection order is in force**

Despite anything to the contrary in Part 5, while an interim protection order is in force in respect of a place or object, the Executive Director may authorise any reasonable works or activities on the place or object which may assist—

- (a) in determining the cultural heritage significance of the place or object; and
- (b) in the consideration of the place or object for inclusion in the Heritage Register.

**149 Recommendation regarding registration**

The Executive Director must make a recommendation under Part 3 to recommend or not to recommend the inclusion of a place or object in the Heritage Register within 60 days after an interim protection order is served in relation to the place or object.

**150 Revocation of interim protection order**

The Heritage Council may revoke an interim protection order.

### **151 Period of interim protection order**

- (1) An interim protection order relating to a place or object continues in effect until—
  - (a) the Heritage Council determines that the place or object should be included in the Heritage Register; or
  - (b) the Heritage Council determines that the place or object should not be included in the Heritage Register; or
  - (c) the Heritage Council revokes the order.
- (2) If none of the things referred to in subsection (1) occurs, the interim protection order continues in effect for a period of 4 months or for any extended period specified by the Minister under subsection (3).
- (3) The Minister may extend the period for which an interim protection order is in effect.
- (4) An extension under subsection (3) must be served in the same manner as the interim protection order is served.

## **Division 2—Repair orders**

### **152 Disrepair of registered place or registered object**

The owner of a registered place or registered object must not allow that place or object to fall into disrepair.

### **153 Failure to maintain registered place or registered object**

The owner of a registered place or registered object must not fail to maintain that place or object to the extent that its conservation is threatened.

**154 Notices to show cause why works should not be carried out**

- (1) This section applies if the Executive Director considers that a person has contravened section 152 or 153.
- (2) The Executive Director, with the consent of the Heritage Council, may serve written notice on the owner of the registered place or registered object requiring the owner to show cause, within 21 days after the date of the notice, why the Executive Director should not make an order requiring the owner to carry out the works specified in the notice within the period specified in the notice.
- (3) The Executive Director must only specify works in a notice under subsection (2) which, in the Executive Director's opinion, are necessary to prevent further deterioration in the condition of the registered place or registered object.
- (4) A notice under subsection (2) must inform the owner on whom it is served of the provisions of sections 155 to 157.

**155 Repair orders for the carrying out of works**

- (1) This section applies if the owner of a registered place or registered object on whom notice is served under section 154 fails to show cause in respect of any of the works specified in the notice.
- (2) The Executive Director, with the consent of the Minister, may order the owner to carry out those works within a period specified in the order.
- (3) The Executive Director must cause a copy of a repair order to be served on the owner of the registered place or registered object.

### **156 VCAT review of repair order to carry out works**

- (1) An owner of a registered place or registered object may apply to VCAT for review of a repair order served on the owner under section 155.
- (2) The application must be made within 28 days after the service of the order.
- (3) VCAT may grant an extension of time for compliance with the repair order pending the hearing of the application.
- (4) An extension under subsection (3) may be subject to any conditions VCAT considers fit.
- (5) On a review of an order, VCAT must set aside the order if satisfied that the owner of the registered place or registered object has not—
  - (a) allowed it to fall into disrepair; or
  - (b) failed to maintain it to the extent that its conservation is threatened.
- (6) Otherwise, VCAT must confirm the repair order.

### **157 Failure to comply with repair order**

- (1) An owner on whom a repair order is served must comply with that order within the period specified—
  - (a) in that order; or
  - (b) in any extension of that period granted by the Executive Director or VCAT.

Penalty: In the case of a natural person,  
2400 penalty units or imprisonment  
for 5 years or both;

In the case of a body corporate,  
4800 penalty units.

- (2) An offence against subsection (1) is an indictable offence.

### **158 Revocation of repair order**

The Heritage Council may revoke a repair order.

### **159 Executive Director may carry out works**

If an owner on whom a repair order is served fails to comply with that order within the period required under this Division, the Executive Director, with the consent of the Minister, at the end of that period—

- (a) may carry out or cause to be carried out any works which that repair order required to be carried out and which were not carried out within that period; and
- (b) may recover the costs of works carried out under paragraph (a) from the owner on whom the repair order was served as a debt due to the Crown in any court of competent jurisdiction.

## **Division 3—Rectification orders**

### **160 Issue of rectification order**

- (1) The Executive Director may issue a rectification order to a person if—
  - (a) the person has carried out works or activities in relation to a registered place or registered object; and
  - (b) the Executive Director reasonably believes that the works or activities were carried out without a permit or exemption under this Act.
- (2) A rectification order issued to a person may require the person to rectify any works or activities carried out in relation to the registered place or registered object.

- (3) The Executive Director must cause a rectification order to be served on the person to whom it is issued.

**161 Effect of rectification order**

A rectification order takes effect on the service of the order under section 160.

**162 Manner of service of rectification order**

A rectification order may be served on a person—

- (a) by delivering it to the person; or
- (b) by leaving it at the person's usual or last known place of residence; or
- (c) by forwarding it by post in a prepaid letter addressed to the person at their usual or last known place of residence; or
- (d) by facsimile to the person at the person's usual or last known place of residence or business; or
- (e) by means of electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.

**163 Compliance with rectification orders**

A person on whom a rectification order has been served must comply with the requirements of the rectification order.

Penalty: In the case of a natural person,  
48 penalty units;  
In the case of a body corporate,  
240 penalty units.

#### **164 VCAT review of rectification order**

- (1) A person on whom a rectification order has been served may apply to VCAT for a review of the Executive Director's decision to issue the rectification order.
- (2) An application for review must be made within 28 days after the rectification order is served.

### **Division 4—Stop orders**

#### **165 Issue of stop orders**

- (1) The Executive Director may issue a stop order to a person if—
  - (a) the person proposes to carry out, or is carrying out, works or activities in relation to a registered place or registered object; and
  - (b) the works or activities must be carried out with a permit or exemption under this Act; and
  - (c) the Executive Director is satisfied there are reasonable grounds for believing that the registered place or registered object could be harmed unless a stop order is issued.
- (2) A stop order issued to a person may—
  - (a) require the person to stop immediately the works or activities specified in the stop order; or
  - (b) prohibit the person from carrying out the works or activities specified in the stop order.

- (3) The Executive Director must cause a stop order to be served on the person to whom it is issued.

#### **166 Service of stop orders**

- (1) A stop order must be served to the person to whom it applies—
- (a) in person; or
  - (b) if it is not reasonably practicable to deliver it in person, by affixing it to a prominent position at the place where the works or activities in relation to a registered place or registered object are being carried out or are to be carried out; or
  - (c) if the person is a body corporate, by giving it to the person apparently supervising or in charge of the works or activities to which the stop order relates.
- (2) An inspector may enter any land or premises at any time for the purpose of serving a stop order in accordance with this section.

#### **167 Period of stop orders**

A stop order served to a person in relation to the carrying out of works or activities continues in effect until—

- (a) a permit is issued in relation to the works or activities; or
- (b) an exemption is granted in relation to the works or activities; or
- (c) the stop order is revoked by the Executive Director.

### **168 Compliance with stop orders**

A person on whom a stop order has been served must comply with the requirements of the stop order.

Penalty: In the case of a natural person,  
4800 penalty units;  
In the case of a body corporate,  
9600 penalty units.

## **Part 9—World Heritage**

### **Division 1—World Heritage Environs Areas**

#### **169 Declaration of World Heritage Environs Area**

- (1) The Minister, as soon as practicable after a place is recorded in the Heritage Register in accordance with section 24(c), must consider whether an area in the vicinity of that place should be declared a World Heritage Environs Area in order to protect the world heritage values of that place.
- (2) If the Minister considers that an area should be declared to be a World Heritage Environs Area, the Minister may recommend to the Governor in Council that the area be declared a World Heritage Environs Area.
- (3) On the recommendation of the Minister, the Governor in Council, by Order published in the Government Gazette, may declare the area a World Heritage Environs Area.

### **Division 2—World Heritage Strategy Plans**

#### **170 Preparation of World Heritage Strategy Plan**

- (1) The Executive Director must prepare a draft World Heritage Strategy Plan for a World Heritage Environs Area as soon as practicable after the World Heritage Environs Area is declared.
- (2) A World Heritage Strategy Plan must—
  - (a) set out the world heritage values of the listed place to which the World Heritage Environs Area relates; and
  - (b) set out strategies for the appropriate use and development of that area in order to ensure that the world heritage values of the listed place are protected and managed.

- (3) On completing a draft World Heritage Strategy Plan, the Executive Director must provide a copy of the draft plan to the Heritage Council for consideration.

**171 Notice of draft World Heritage Strategy Plan**

- (1) On completing a draft World Heritage Strategy Plan, the Executive Director must cause a notice of the preparation of the draft plan to be published—
- (a) in a newspaper circulating generally in the World Heritage Environs Area to which the draft plan relates; and
  - (b) in a daily newspaper circulating generally throughout the State.
- (2) A notice under subsection (1) must state—
- (a) the address at which the draft plan is available for inspection; and
  - (b) the submission date for the draft plan, being at least 60 days after the date of the notice; and
  - (c) that any person may make a written submission to the Heritage Council on the draft plan on or before the submission date.
- (3) The Executive Director must ensure that an up-to-date electronic copy of a draft World Heritage Strategy Plan is kept at the offices of the Heritage Council and the Department for inspection by members of the public during normal office hours free of charge until the submission date for the draft plan.

### **172 Submissions on draft World Heritage Strategy Plan**

- (1) Any person or body may make a written submission to the Heritage Council in relation to a draft World Heritage Strategy Plan on or before the submission date for the draft plan.
- (2) A written submission may include a request for a hearing before the Heritage Council in relation to the submission.

### **173 Procedure of the Heritage Council where no submissions**

If the Heritage Council does not receive any submissions under section 172, the Heritage Council must consider the draft World Heritage Strategy Plan as soon as practicable after the submission date for the draft plan.

### **174 Heritage Council to consider submissions**

- (1) The Heritage Council must consider a submission in relation to a draft World Heritage Strategy Plan that is received on or before the submission date for the draft plan.
- (2) The Heritage Council may—
  - (a) request the person or body making the submission for more information relating to the submission; or
  - (b) conduct a hearing in relation to the draft plan; or
  - (c) consider any submissions and the draft plan without a hearing.

### **175 Decision of the Heritage Council**

- (1) After considering a draft World Heritage Strategy Plan, any submissions and any other matters it considers relevant, and conducting any hearing, the Heritage Council must adopt the draft plan with or without amendments.

- (2) The Heritage Council must give a copy of the draft plan to the Minister for approval as soon as practicable after adopting the draft plan.

**176 Approval of World Heritage Strategy Plan**

- (1) The Minister, by notice published in the Government Gazette, may—
- (a) approve a World Heritage Strategy Plan adopted by the Heritage Council; or
  - (b) approve the World Heritage Strategy Plan as amended by the Minister.
- (2) An Approved World Heritage Strategy Plan comes into operation—
- (a) on the date on which the notice under subsection (1) is published in Government Gazette; or
  - (b) on any later date specified in the notice.

**177 Amendments to Approved World Heritage Strategy Plans**

- (1) The Executive Director may propose an amendment to an Approved World Heritage Strategy Plan.
- (2) Sections 170 to 176 apply to a proposed amendment to an Approved World Heritage Strategy Plan as if the proposed amendment were a draft World Heritage Strategy Plan.

**178 Public availability of Approved World Heritage Strategy Plans**

The Executive Director must ensure that an up-to-date electronic copy of each Approved World Heritage Strategy Plan is kept at the offices of the Heritage Council and the Department for inspection by members of the public during normal office hours free of charge.

### **179 Notice of Approved World Heritage Strategy Plan**

The Minister must cause notice of the approval of a World Heritage Strategy Plan to be given to—

- (a) the Minister administering the **Planning and Environment Act 1987**; and
- (b) the responsible authority in which the World Heritage Environs Area is situated and, if the responsible authority is not a municipal council, the relevant municipal council.

### **180 Amendment of planning schemes**

- (1) The Minister administering the **Planning and Environment Act 1987** must prepare and approve an amendment to any planning scheme applying to an area that has been declared to be a World Heritage Environs Area—
  - (a) to identify that area as a World Heritage Environs Area; and
  - (b) to give effect to the Approved World Heritage Strategy Plan for that area.
- (2) An amendment under subsection (1) must be prepared as soon as practicable after the approval of the World Heritage Strategy Plan for the World Heritage Environs Area.
- (3) An amendment under subsection (1) may also make any consequential amendments to the planning scheme that are necessary to remove or modify any provisions which are inconsistent with the Approved World Heritage Strategy Plan.
- (4) The **Planning and Environment Act 1987** (except sections 12(1)(a) and (e), 12(2), 12(3), Divisions 1 and 2 of Part 3 and sections 39(1), 39(2), 39(3), 39(4) and 39(5) and any regulations made for the purposes of those provisions) applies to the preparation and approval of amendments under subsection (1).

- (5) The Minister administering the **Planning and Environment Act 1987** must not approve an amendment to a planning scheme applying to an area that has been declared to be a World Heritage Environs Area if the amendment is inconsistent with the Approved World Heritage Strategy Plan for that area.

### **Division 3—World Heritage Management Plans**

#### **181 Steering Committees for listed places**

- (1) The Minister must appoint a Steering Committee for each listed place.
- (2) The Steering Committee for a listed place consists of—
- (a) the Executive Director who is the Chairperson; and
  - (b) if the listed place is Crown land or land vested in a Minister or public authority, any persons who are responsible for the management of the listed place and who are appointed by the Minister; and
  - (c) in the case of any listed place on other land, any person who is the owner or occupier or is concerned in the management of the listed place and who is appointed by the Minister; and
  - (d) any other persons that the Minister considers appropriate.
- (3) A quorum of a Steering Committee is constituted by a majority of its members.
- (4) Subject to this Part, a Steering Committee may regulate its own proceedings.

## **182 Functions of Steering Committees**

The functions of the Steering Committee for a listed place are—

- (a) to prepare a World Heritage Management Plan for the listed place; and
- (b) to assist in the implementation of an Approved World Heritage Management Plan for the listed place; and
- (c) to report as required by the Minister on the carrying out of its activities.

## **183 Preparation of World Heritage Management Plan**

- (1) The Steering Committee for a listed place must prepare a draft World Heritage Management Plan for that place.
- (2) A World Heritage Management Plan must—
  - (a) state the world heritage values of the listed place; and
  - (b) set out policies designed to ensure that the world heritage values of the listed place are identified, conserved, protected, presented, transmitted to future generations and, if appropriate, rehabilitated; and
  - (c) set out mechanisms designed to deal with the impacts of actions that individually or cumulatively degrade, or threaten to degrade, the world heritage values of the listed place; and
  - (d) provide for management actions for values (other than world heritage values) that are consistent with the management of the world heritage values of the listed place; and

- (e) state that the processes for public consultation set out in Division 3 of Part 9 of the **Heritage Act 2017** apply to the World Heritage Management Plan; and
- (f) not be inconsistent with Australia's obligations under the World Heritage Convention within the meaning of the Environment Protection and Biodiversity Conservation Act 1999 of the Commonwealth; and
- (g) not be inconsistent with the Australian World Heritage management principles within the meaning of the Environment Protection and Biodiversity Conservation Act 1999 of the Commonwealth.

#### **184 Notice of draft World Heritage Management Plan**

- (1) On completion of a draft World Heritage Management Plan for a listed place, the Steering Committee for that place must cause a notice of the draft plan to be published—
  - (a) in a newspaper circulating generally in the area in which the listed place is located; and
  - (b) in a daily newspaper circulating generally throughout Victoria.
- (2) A notice under subsection (1) must state—
  - (a) the Steering Committee's intention to submit the draft World Heritage Management Plan to the Minister for approval; and
  - (b) the address at which the draft plan is available for inspection; and
  - (c) the submission date for the draft plan, being at least 60 days after the date of the notice; and

(d) that any person may make a written submission to the Steering Committee on the draft plan on or before that submission date.

(3) The Executive Director must ensure that a draft World Heritage Management Plan is kept at the offices of the Department for inspection by members of the public during normal office hours free of charge until the submission date for the draft plan.

#### **185 Submissions on draft World Heritage Management Plan**

(1) Any person or body may make a written submission to a Steering Committee in relation to a draft World Heritage Management Plan on or before the submission date for the draft plan.

(2) A written submission may include a request for a hearing before the Steering Committee in relation to the submission.

#### **186 Steering Committee to consider submissions**

(1) The Steering Committee for a listed place must consider a submission in relation to a draft World Heritage Management Plan that is received on or before the submission date for the draft plan.

(2) The Steering Committee may—

- (a) request the person making the submission for more information relating to the submission; or
- (b) conduct a hearing in relation to the draft plan; or
- (c) consider the draft plan and submissions without a hearing.

### **187 Decision of the Steering Committee**

- (1) After considering a draft World Heritage Management Plan for a listed place, any submissions and any other matters it considers relevant, and conducting any hearing, the Steering Committee for that place must adopt the draft plan with or without amendments.
- (2) The Steering Committee must give a copy of the draft plan to the Minister for approval as soon as practicable after adopting the draft plan.

### **188 Approval of World Heritage Management Plan**

- (1) The Minister, by notice published in the Government Gazette, may—
  - (a) approve a World Heritage Management Plan for a listed place adopted by the Steering Committee for that place; or
  - (b) approve the World Heritage Management Plan as amended by the Minister.
- (2) An Approved World Heritage Management Plan comes into operation—
  - (a) on the date on which the notice under subsection (1) is published in the Government Gazette; or
  - (b) on any later date specified in the notice.

### **189 Amendments to Approved World Heritage Management Plans**

- (1) The Steering Committee for a listed place may propose an amendment to an Approved World Heritage Management Plan for that listed place.
- (2) Sections 183 to 188 apply to a proposed amendment to an Approved World Heritage Management Plan as if the proposed amendment were a draft World Heritage Management Plan.

**190 Public availability of Approved World Heritage Management Plans**

A copy of each Approved World Heritage Management Plan must be kept at the offices of the Department for inspection by members of the public during normal office hours free of charge.

**191 Review of Approved World Heritage Management Plan**

The Steering Committee for a listed place must undertake a review of the Approved World Heritage Management Plan for the listed place every 7 years from the date on which the plan was first approved under this Part.

**192 Offence to fail to comply with Approved World Heritage Management Plan**

- (1) A person who is the owner or occupier of a listed place or part of a listed place must comply with the Approved World Heritage Management Plan relating to the listed place in carrying out any works or activities in relation to the listed place.

Penalty: In the case of a natural person,  
2400 penalty units;

In the case of a body corporate,  
10 000 penalty units.

- (2) Subsection (1) does not apply to works or activities—
- (a) carried out in accordance with a permit issued under Part 5; or
  - (b) for which the Executive Director or Heritage Council has determined that a permit is not required under Part 5.

- (3) An offender is not liable to be punished for an offence under this section if—
- (a) an act or omission constitutes an offence under this section and the Environment Protection and Biodiversity Conservation Act 1999 of the Commonwealth; and
  - (b) the offender has been punished for that offence under that Act.

**193 Annual report on condition of property**

- (1) The Minister may direct the Executive Director to prepare an annual report on the condition of a listed place.
- (2) The Executive Director must comply with a direction made under subsection (1).

## **Part 10—Enforcement and legal proceedings**

### **Division 1—Appointment and powers of inspectors**

#### **194 Appointment of inspectors**

- (1) The Executive Director may appoint the following persons to be an inspector for the purposes of this Act—
  - (a) a person employed under Part 3 of the **Public Administration Act 2004**;
  - (b) any other person with the consent of the Minister.
- (2) An appointment under subsection (1) must be in writing and signed by the Executive Director.

#### **195 Identity cards**

- (1) The Executive Director must issue an identity card to an inspector, other than an inspector who is a police officer.
- (2) An identity card must contain a photograph of the inspector and be in the prescribed form.
- (3) A person who ceases to be an inspector must immediately return their identity card to the Executive Director.  
Penalty: 1 penalty unit.
- (4) In this Division a reference to an identity card in relation to an inspector who is a police officer is a reference to written evidence of the fact that the person is a police officer.

#### **196 Inspector must show identity card**

- (1) An inspector other than a police officer in uniform must produce their identity card on demand and, if practicable, on each occasion before proceeding to act under this Part.

- (2) An inspector who is a police officer in uniform must produce their identity card on demand.
- (3) An inspector is not required to produce their identity card on demand if doing so would endanger the health or safety of the inspector, but must in that case produce their identity card as soon as practicable after the demand is made.

**197 Inspector may demand name and address**

- (1) An inspector may require a person to give their name and address to the inspector if the inspector reasonably believes the person has committed, or is committing, an offence against this Act or the regulations.
- (2) Before requiring a person to give their name and address, an inspector must—
  - (a) state the inspector's name and, unless the inspector is a police officer, produce their identity card for inspection; and
  - (b) inform the person of the grounds for the inspector's belief that the person has committed or is committing an offence, in sufficient detail to allow the person to understand the nature of the offence; and
  - (c) inform the person that the inspector is making the requirement under this section.
- (3) An inspector who has complied with subsection (2) may also require the person to produce any document the person is carrying that contains the person's name and address.
- (4) A person—
  - (a) must comply with any requirement lawfully made under this section; and

(b) must not knowingly provide information that is false or misleading.

Penalty: In the case of a natural person,  
50 penalty units;  
In the case of a body corporate,  
100 penalty units.

### **198 Offence to hinder inspector or authorised person**

A person must not, without reasonable excuse, hinder or obstruct an inspector or authorised person exercising a power under this Part.

Penalty: 60 penalty units or imprisonment for 6 months or both.

### **199 Offence to impersonate inspector**

A person must not impersonate an inspector acting in the inspector's official capacity.

Penalty: 30 penalty units or imprisonment for 3 months or both.

### **200 Police officers must assist inspectors**

On the request of an inspector, a police officer must assist in the performance of the inspector's functions, if it is practicable to assist the inspector as requested.

## **Division 2—Powers of entry, search and seizure**

### **201 General powers of entry**

- (1) Subject to this section, an inspector may enter any building or land at any reasonable time for the purposes of—
  - (a) investigating the cultural heritage significance of the building or land, or an object located in, at or under the building or land; or

- (b) in the case of a registered place, determining whether or not this Act has been complied with in relation to the registered place; or
  - (c) in the case of a registered object, determining whether or not this Act has been complied with in relation to the registered object.
- (2) In addition to subsection (1), the Heritage Council may authorise a person in a particular case to enter any building or land at any reasonable time for the purposes of investigating the cultural heritage significance of the building or land, or an object located in, at or under the building or land.
- (3) An authorisation under subsection (2) must—
  - (a) be in writing; and
  - (b) signed by the Heritage Council.
- (4) An inspector or authorised person must not enter a residence unless the occupier of the residence has given written consent to the entry.
- (5) An inspector or authorised person must not enter any other building or land—
  - (a) unless the occupier of the building or land has given written consent to the entry; or
  - (b) in the absence of written consent, unless 2 days' clear notice is given to any occupier of the building or land.
- (6) An inspector or authorised person acting in accordance with this section may—
  - (a) take photographs and make video recordings; and
  - (b) make measurements and sketches; and

- (c) take samples of water, soil, vegetation or other similar substances for the purposes of analysis; and
- (d) use any other means of recording information necessary for the purposes of this Act.

## **202 Search warrant for any premises**

- (1) An inspector may apply to a magistrate for the issue of a search warrant in relation to any premises if the inspector believes on reasonable grounds that there is, or may be within the next 72 hours, on the premises a particular thing that may be evidence of the commission of an offence against this Act or the regulations.
- (2) A magistrate may issue a search warrant if the magistrate is satisfied that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, on the premises a particular thing that may be evidence of the commission of an offence against this Act or the regulations.
- (3) The search warrant may authorise an inspector named in the warrant and any assistants the inspector considers necessary—
  - (a) to enter the place or the part of the place named or described in the warrant; and
  - (b) to search for a thing named or described in the warrant.
- (4) An inspector executing a search warrant issued under this section may seize a thing that is not named or described in the search warrant if the inspector considers on reasonable grounds that—
  - (a) the thing is connected with the offence or connected with another offence against this Act; and

- (b) seizing the thing is necessary to prevent its concealment, loss or destruction.
- (5) In addition to any other requirement, the search warrant must state—
  - (a) the offence suspected; and
  - (b) the premises to be searched; and
  - (c) a description of the thing for which the search is to be made; and
  - (d) any conditions to which the warrant is subject; and
  - (e) whether entry is authorised to be made at any time or during stated hours; and
  - (f) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (6) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.
- (7) The rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

### **203 Announcement before entry of premises on warrant**

- (1) Before executing a search warrant, the inspector named in the warrant or any person assisting the inspector must—
  - (a) announce their authorisation by the warrant to enter the place; and
  - (b) give any person at the place an opportunity to allow entry to the place.

- (2) Subsection (1) does not apply if the inspector or any person assisting the inspector believes on reasonable grounds that immediate entry to the place is required to ensure—
- (a) the safety of any person; or
  - (b) the effective execution of the search warrant is not frustrated.

**204 Copy of warrant to be given to occupier**

If the occupier of a place, or other person who apparently represents the occupier, is present at the place when a search warrant is being executed, the inspector must—

- (a) produce the inspector's identity card for inspection by that person; and
- (b) give to that person a copy of the execution copy of the warrant.

**205 Powers of inspectors on entry on warrant**

A person exercising a power of entry of a place under section 202 may during the search—

- (a) take photographs and make video recordings; and
- (b) make measurements and sketches; and
- (c) inspect and make copies of, or take extracts from, the thing if it is a document; and
- (d) take samples of water, soil, vegetation or other similar substances for the purposes of analysis; and
- (e) use any other means of recording information necessary for the purposes of this Act.

**206 Court order for entry to residence for cultural heritage significance reasons**

- (1) An inspector or a person authorised by the Heritage Council may apply to a magistrate for an order permitting entry to a residence other than a registered place for the purposes of investigating the cultural heritage significance of the residence or an object at the residence if—
  - (a) the occupier of the residence refuses to give written consent to entry under section 201(4); or
  - (b) after reasonable efforts by the inspector or authorised person to locate the occupier, the inspector or authorised person is satisfied the residence is unoccupied.
- (2) An inspector or authorised person must serve a copy of an application under subsection (1) on the occupier of the residence at least 14 days before the day for hearing the application.
- (3) A magistrate may make an order under this section if the magistrate is satisfied—
  - (a) by evidence on oath, whether oral or by affidavit, of the matters set out in subsection (1); and
  - (b) that entry is warranted in all the circumstances.
- (4) An order under this section—
  - (a) must state a day up to 28 days after the making of the order on which the order ceases to have effect; and
  - (b) may authorise an inspector or authorised person named in the order and any assistants the inspector or authorised person considers necessary to enter the residence described in the order.

- (5) An order made under this section has effect and may be enforced as if it were an order or judgment made by the Magistrates' Court under the **Magistrates' Court Act 1989**.

**207 Announcement before entry of residence using order**

- (1) Before entering a residence under an order under section 206, an inspector, authorised person or person assisting the inspector or authorised person—
- (a) must announce their authorisation by the order to enter the residence; and
  - (b) must give any person at the residence an opportunity to allow entry to the residence.
- (2) If the occupier or another person who apparently represents the occupier is present at a residence when an inspector or authorised person enters the residence under an order under section 206, the inspector or authorised person must—
- (a) identify themselves to the person by producing for inspection—
    - (i) an identity card in the case of an inspector; or
    - (ii) an authorisation of the Heritage Council in the case of an authorised person; and
  - (b) give the person a copy of the order.

**208 Powers on entry using order**

An inspector or authorised person, or a person assisting the inspector or authorised person, acting in accordance with an order under section 206 may—

- (a) take photographs and make video recordings; and
- (b) make measurements and sketches; and
- (c) take samples of water, soil, vegetation or other similar substances for the purposes of analysis; and
- (d) use any other means of recording information necessary for the purposes of this Act.

**209 Powers of inspectors—archaeological artefacts**

- (1) An inspector may for the purpose of the administration and enforcement of this Act in relation to archaeological artefacts—
  - (a) request information from any person in relation to the situation of any archaeological artefact; and
  - (b) inspect or examine any archaeological artefact; and
  - (c) require any person in a place damaging or reasonably suspected of damaging or being likely to damage an archaeological artefact to leave the place.
- (2) Subject to subsection (3), subsection (1)(c) does not apply to a person who holds a permit or a consent in respect of that place.
- (3) An inspector may under subsection (1)(c) require a person who holds a permit or consent to leave a place if the person fails to produce the permit or consent to the inspector on being requested to do so.

- (4) A person must comply with a request or requirement made under subsection (1) to the extent that the person is capable of complying with it.

Penalty: In the case of a natural person,  
10 penalty units;

In the case of a body corporate,  
20 penalty units.

- (5) A person must not knowingly provide under this section information that is false or misleading.

Penalty: In the case of a natural person,  
10 penalty units;

In the case of a body corporate,  
20 penalty units.

#### **210 Seizure and forfeiture—archaeological artefacts**

- (1) If an inspector has reasonable grounds for believing that an offence has been or is being or is about to be committed against this Act in relation to an archaeological artefact the inspector may impound and detain that artefact.
- (2) Subsection (1) does not authorise the detention of an artefact for more than 4 months.
- (3) On conviction for an offence against this Act in relation to an archaeological artefact, in addition to imposing the penalty under this Act in respect of the offence, the court which convicted the person may order that the archaeological artefact be forfeited to the Crown.

#### **211 Powers of inspectors—underwater cultural heritage**

- (1) If an inspector has reasonable grounds for believing that it is necessary for the purpose of ascertaining whether an offence against this Act in respect of underwater cultural heritage or the underwater cultural heritage regulations has

been or is being committed, or that by doing so evidence in relation to the commission of such an offence may be obtained, the inspector, with or without persons and equipment to assist, may do the following—

- (a) stop and board a ship;
- (b) require a person in charge of a ship to take steps to facilitate boarding;
- (c) open, or require a person to open, any cabins, cargo holds, compartments or containers on any ship boarded in accordance with paragraph (a) and inspect the contents of those cabins, cargo holds, compartments or containers;
- (d) require any person found in or on a ship boarded in accordance with paragraph (a) to produce any permit in force under this Act that is in their possession;
- (e) stop and search any vehicle;
- (f) require any person found in or near any vehicle stopped in accordance with paragraph (e) to produce any permit in force under this Act that is in their possession;
- (g) require a person to produce any document that the inspector reasonably believes might be relevant to the commission of an offence against this Act or the underwater cultural heritage regulations;
- (h) search any parcel, basket, bag, box or other receptacle;
- (i) search any premises that are not a residence or any tent, land or caravan, other than a caravan in a caravan park within the meaning of the **Residential Tenancies Act 1997**.

- (2) A person must not, without reasonable excuse, fail to comply with a requirement made of the person by an inspector in the exercise of a power under subsection (1).

Penalty: 50 penalty units.

- (3) For the purpose of exercising a power under this section, an inspector may do anything that a person holding a permit under this Act may do.

**212 Arrest without warrant—underwater cultural heritage**

- (1) An inspector, without a warrant, may arrest a person if the inspector reasonably believes—
- (a) that the person has committed an offence against section 74, 76, 197 or 211 or against the underwater cultural heritage regulations; and
  - (b) that a proceeding against the person by summons for the offence would not be effective.
- (2) If an inspector arrests a person under subsection (1), the inspector must produce their identity card for inspection by the person arrested.
- (3) If a person is arrested under subsection (1), an inspector must immediately bring the person, or cause the person to be brought, before the Magistrates' Court to be dealt with in accordance with law.
- (4) Nothing in this section prevents the arrest of a person in accordance with any other law.

**213 Search warrants—registered shipwrecks, historic shipwrecks, registered shipwreck artefacts and historic shipwreck artefacts**

- (1) An inspector may apply to a magistrate for the issue of a search warrant in relation to a particular place if the inspector believes on reasonable grounds that a registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact is being held in contravention of this Act at the place to be searched.
- (2) A magistrate may issue a search warrant if the magistrate is satisfied that there are reasonable grounds for suspecting that an item referred to in subsection (1) is being held in contravention of this Act at the place.
- (3) The search warrant may authorise an inspector named in the warrant and any assistants the inspector considers necessary—
  - (a) to enter the place, or part of the place, named or described in the warrant; and
  - (b) to search for and seize a thing named or described in the warrant.
- (4) In addition to any other requirement, a search warrant issued under this section must state—
  - (a) the offence suspected; and
  - (b) the place to be searched; and
  - (c) a description of the thing searched for; and
  - (d) any conditions to which the warrant is subject; and
  - (e) whether entry is authorised to be made at any time or during stated hours; and

- (f) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (5) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.
- (6) The rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

#### **214 Seizure and forfeiture—underwater cultural heritage**

- (1) An inspector may—
  - (a) seize any ship, vehicle, equipment or other thing the inspector reasonably believes to have been used or otherwise involved in the commission of an offence against this Act in respect of underwater cultural heritage or the underwater cultural heritage regulations; and
  - (b) detain the ship, vehicle, equipment or thing—
    - (i) until the expiration of a period of 60 days after the seizure; or
    - (ii) if a proceeding for an offence against this Act in respect of underwater cultural heritage or the underwater cultural heritage regulations the commission of which the ship, vehicle, equipment or thing may have been used or otherwise involved is commenced within that period, until the proceeding (including any appeal) is finally determined.

- (2) The Minister may authorise any ship, vehicle, equipment or thing seized under subsection (1) to be released to its owner, or to the person from whose possession it was seized, either unconditionally or on any conditions that the Minister considers fit, including conditions as to the giving of security for payment of its value if it is forfeited.
- (3) If a court convicts a person of an offence against this Act in respect of underwater cultural heritage or the underwater cultural heritage regulations, the court may order the forfeiture to the Crown of any ship, vehicle, equipment or thing used or otherwise involved in the commission of the offence.
- (4) A ship, vehicle, equipment or thing forfeited under this section may be sold or otherwise dealt with as the Minister considers fit.
- (5) A reference in this section to a thing involved in the commission of an offence includes a reference to a registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact to which the offence relates.

### **Division 3—Orders of the Supreme Court**

#### **215 Definitions**

In this Division—

*contravention* includes a threatened or an apprehended contravention;

*this Act* includes a permit, consent or exemption under this Act or the conditions of a permit, consent or exemption under this Act.

### **216 Remedy or restraint of contraventions of this Act**

The Heritage Council, the Executive Director, the Director of Public Prosecutions or any other person may bring proceedings in the Supreme Court for an order to remedy or restrain a contravention of this Act.

### **217 Orders of the Supreme Court**

- (1) The Supreme Court may make any order it considers fit to remedy or restrain a contravention of this Act if the Supreme Court is satisfied that—
  - (a) this Act has been contravened; or
  - (b) this Act will be contravened unless restrained by order of the Court.
- (2) Without limiting the powers of the Supreme Court under subsection (1), an order made under that subsection may—
  - (a) if the contravention of this Act comprises the construction of a building or the carrying out of works or activities, require the demolition or removal of the building or works; or
  - (b) if the contravention of this Act has the effect of altering the appearance or physical nature of a place or object, or the state of land on which there is a registered place or registered object, require the restoration or reinstatement, so far as is possible, of the place or object to the condition it was in immediately before the contravention.
- (3) An order made under subsection (1) has effect and may be enforced as if it were an order or judgment made by the Supreme Court under the **Supreme Court Act 1986**.

### **Division 4—Infringement notices**

#### **218 Infringement notices—general**

- (1) An inspector may serve an infringement notice under this section on any person that the inspector has reason to believe has committed a prescribed offence against this Act or the regulations.
- (2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) For the purposes of subsection (1), an infringement notice must be in the form required by the **Infringements Act 2006** and may contain any additional prescribed details.

#### **219 Infringement notices—additional steps**

- (1) An inspector may serve an infringement notice under this section on any person that the inspector has reason to believe has committed a prescribed offence against this Act or the regulations.
- (2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) For the purposes of subsection (1), an infringement notice—
  - (a) must be in the form required by the **Infringements Act 2006**; and
  - (b) must include details of the additional steps (if any) required to expiate the offence; and
  - (c) may contain any additional prescribed details.
- (4) Additional steps required to expiate an offence may include, but are not limited to, the following—

- (a) taking any action if failure to take that action constitutes the offence;
  - (b) stopping any activity that constitutes the offence.
- (5) If an infringement notice requires additional steps to be taken to expiate an offence, and, before the end of the remedy period set out in the notice, or if the inspector allows, at any time before the service of a summons in respect of the offence, the person served with the notice informs the inspector that those steps have been taken—
- (a) the inspector must, without delay, find out whether or not those steps have been taken; and
  - (b) serve on the person a notice stating whether or not those steps have been taken.
- (6) A statement in a notice under subsection (5) that additional steps have been taken is for all purposes conclusive proof of that fact.

## **Division 5—Evidence and legal proceedings**

### **220 Service of documents**

- (1) A document to be served on or given to a person under this Act or the regulations may be served on or given to the person by—
- (a) delivering the document to the person; or
  - (b) leaving the document at the person's usual or last known place of residence or business with a person apparently not less than 16 years of age and apparently residing or employed at that place; or
  - (c) sending the document by post addressed to the person at the person's usual or last known place of residence or business or in any other prescribed manner; or

- (d) by facsimile to that person at the person's usual or last known place of residence or business; or
  - (e) by means of electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.
- (2) If a document is to be served on or given to the owner or occupier of any land and the name of that person is not known, the document may be addressed to "the owner" or "the occupier".
  - (3) If a document is to be served on or given to the owner or occupier of any land, the document may be displayed in a conspicuous position on the land if the name and address of the owner are not known and there is no occupier of the land.

#### **221 Prosecutions of offences**

- (1) Despite anything in any Act, a proceeding for an offence under this Act may be commenced within a period of 3 years after the commission of the alleged offence.
- (2) This section does not apply to any indictable offence under this Act.

#### **222 Persons who may prosecute**

- (1) A proceeding for an offence against this Act may be commenced by the Executive Director, an inspector or the Director of Public Prosecutions.
- (2) A proceeding commenced under subsection (1) may be taken over and continued at any time by any other person authorised by subsection (1) to commence a proceeding.
- (3) All courts and tribunals must take judicial notice of the fact that any person purporting to be authorised by subsection (1) is authorised to commence a proceeding.

### 223 Certificates to be evidence

In a proceeding for an offence against this Act or the regulations, the following certificates are evidence of the matters stated in the relevant certificate—

- (a) a certificate signed by the Executive Director stating that a person named in the certificate is an inspector under this Act;
- (b) a certificate signed by the Executive Director stating that a place or object is included in the Heritage Register;
- (c) a certificate signed by the Executive Director stating that a permit has not been issued under Part 5 in relation to a particular place or object;
- (d) a certificate signed by the Executive Director stating that no consent under section 124 has been given in a particular case;
- (e) a certificate signed by the Minister administering the **Conservation, Forests and Lands Act 1987** to the effect that any land is Crown land;
- (f) a certificate signed by the Executive Director to the effect that an item is an archaeological artefact;
- (g) in the case of a proceeding for an offence against this Act or the regulations, a certificate signed by the Executive Director stating—
  - (i) that a place specified in a certificate is a place in Victorian waters or in a specified protected zone; or

- (ii) that a shipwreck or shipwreck artefact is a registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact.

#### **224 Statement of inspector is evidence**

In a proceeding for an offence against this Act or the underwater cultural heritage regulations, a statement of an inspector as to the following is evidence of that fact—

- (a) the place where an offence against this Act or the underwater cultural heritage regulations occurred;
- (b) the accuracy of any map, photograph or document;
- (c) any distance or direction or the height of any land or navigational aid calculated by the use of any mechanical, electronic or other device or means.

#### **225 Possession of certain items is evidence of contravention**

- (1) Evidence that a person had possession of a registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact at a relevant place without a permit under this Act is evidence, and in the absence of evidence to the contrary, is proof, that the person took the item in contravention of this Act or the underwater cultural heritage regulations.

- (2) In this section—

*at a relevant place* means—

- (a) in or near a registered shipwreck or protected zone; or

- (b) in or on a vessel or vehicle on or in proximity to Victorian waters; or
- (c) on a jetty, dock, wharf, beach, landing or similar place or in an area next to such a place.

## **Division 6—Additional enforcement provisions**

### **226 Scope of Division**

- (1) Subject to subsection (2), this Division applies despite anything in or authorised by the **Building Act 1993** or any other Act.
- (2) This Act is subject to any regulation or emergency order under the **Building Act 1993** relating to the securing, pulling down or removal of dangerous buildings.

### **227 Declaration by the Governor in Council**

- (1) This section applies if the owner of a registered place or registered object has been convicted of an offence against section 87, 88, 157 or 168.
- (2) The Governor in Council, by Order published in the Government Gazette, may declare that the place or object, or the place and the object to which the offence related, must not be developed, altered or used during a period not exceeding 10 years that is specified in the Order.

### **228 Effect of Governor in Council declaration**

- (1) While an Order under section 227 is in effect, a person must not—
  - (a) carry out any works on the place or object; or
  - (b) cause or permit any development of the place; or
  - (c) alter that place or object.

- (2) While an Order under section 227 is in effect, any planning permit, building permit, demolition permit or any other permit or authority relating to the development or use of that place or object or the land on which a place or object may be situated (whether issued or granted before or after the making of the Order) is of no force or effect.
- (3) Subsection (2) applies despite any other Act.

### **Division 7—Miscellaneous**

#### **229 Powers of court with respect to contravention**

- (1) If, in a proceeding for an offence under this Act, a person is found guilty or convicted of that offence, the court may do one or more of the following—
  - (a) make any order that it considers appropriate to remedy or restrain the contravention that constitutes the offence;
  - (b) order the person to do any of the following—
    - (i) take any action specified by the court to publicise the offence, any consequences arising or resulting from the offence and any penalties imposed, or other orders made, as a result of the commission of the offence;
    - (ii) take any action specified by the court to notify one or more persons or classes of person of the matters listed in subparagraph (i);

#### **Example**

To publish a notice in an annual report or to distribute a notice to persons affected by the offence.

- (iii) carry out, or provide funding for, a specified project for the restoration or enhancement of another place or object for the public benefit, even if the project is unrelated to the offence.
- (2) Without limiting the powers of the court under subsection (1), an order made under that subsection may—
    - (a) if the contravention constituting the offence comprises the construction of a building or the carrying out of works or activities, require the demolition or removal of the building or structure; or
    - (b) if the contravention constituting the offence has the effect of altering the appearance or physical nature of a place or object, or the state of land on which there is a registered place or registered object, require the restoration or reinstatement, so far as is possible, of the place or object to the condition it was in immediately before the contravention.
  - (3) The court may make any order under this section on the application of the Executive Director, or on its own motion.
  - (4) In making an order, the court may specify by when specified actions must be taken and may also impose any other requirement that it considers necessary to make the order effective.
  - (5) An order made under this section may be enforced in the court by which it was made by any means available to that court of enforcing an order made by it in a civil proceeding.
  - (6) This section does not affect the operation of section 217.

**230 Powers of the Executive Director with respect to contravention**

- (1) If a person is found in contempt of court for failing to comply with an order under section 229, the Executive Director—
  - (a) may do anything that is necessary or expedient to carry out any action that remains to be done under the order and that it is still practicable to do; and
  - (b) may publicise the failure of the person to comply with the order.
- (2) If a person fails to comply with an order made under section 229(1) or (2), the Executive Director may give the person a written notice (a *notice of intended action*).
- (3) A notice of intended action must advise the person that the Executive Director intends to carry out specified actions that remain to be done under the order unless the person can, within 14 days after being given the notice, satisfy the Executive Director that the person will carry out those actions within a period of time acceptable to the Executive Director.
- (4) If a person who has been given a notice of intended action fails to give the Executive Director a satisfactory response within the 14 days, or fails to comply with any undertaking given to the Executive Director in response to a notice under that subsection, the Executive Director—
  - (a) may do anything that is necessary or expedient to carry out any action that remains to be done under the order and that it is still practicable to do; and
  - (b) may publicise the failure of the person to comply with the order.

- (5) Nothing in subsections (2), (3) and (4) prevents contempt of court proceedings from being started or continued against a person who has failed to comply with a court order.
- (6) The Executive Director may recover from a person against whom an order was made under section 229 in a court of competent jurisdiction as a debt due to the Crown any cost the Executive Director incurs in taking action under subsection (1) or (4).

### **231 Confidentiality**

An inspector must not give to any person, whether directly or indirectly, any information gained in the exercise of the inspector's powers, except to the extent necessary—

- (a) to perform functions or duties or exercise powers under this Act or the regulations; or
- (b) in connection with the administration or enforcement of this Act or the regulations; or
- (c) to give any information the inspector is authorised, permitted or required to give under this Act or any other Act or the regulations under this Act.

Penalty: 20 penalty units.

### **232 Criminal liability of officers of bodies corporate— failure to exercise due diligence**

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.

- (2) For the purposes of subsection (1), the following sections are specified—
- (a) section 43;
  - (b) section 74(1), (2) and (3);
  - (c) section 87(1), (2) and (3);
  - (d) section 88(1), (2) and (3);
  - (e) section 104;
  - (f) section 123(1) and (2);
  - (g) section 125;
  - (h) section 157(1);
  - (i) section 163;
  - (j) section 168;
  - (k) section 192(1).
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to—
- (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
  - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
  - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
  - (d) any other relevant matter.
- (4) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence
-

with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.

(5) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.

(6) In this section—

*body corporate* has the same meaning as corporation has in section 57A of the Corporations Act;

*officer* in relation to a body corporate means—

- (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

**233 Criminal liability of officers of bodies corporate—  
accessorial liability**

(1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer—

- (a) authorised or permitted the commission of the offence by the body corporate; or
- (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the body corporate.

- (2) For the purposes of subsection (1), the following provisions are specified—
- (a) section 59;
  - (b) section 60(1) and (2);
  - (c) section 64(3);
  - (d) section 67(2);
  - (e) section 70(1), (2) and (3);
  - (f) section 71(3);
  - (g) section 72(4);
  - (h) section 73(1);
  - (i) section 75(2);
  - (j) section 76(1);
  - (k) section 77(6);
  - (l) section 78(5);
  - (m) section 80(1), (3) and (5);
  - (n) section 89(1), (2) and (3);
  - (o) section 127(1) and (2);
  - (p) section 128(3);
  - (q) section 129(1);
  - (r) section 147(1), (2) and (3);
  - (s) section 197(4);
  - (t) section 209(4) and (5).
- (3) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.

- (4) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.
- (5) In this section—
- body corporate* has the same meaning as corporation has in section 57A of the Corporations Act;
- officer* in relation to a body corporate means—
- (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
  - (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.
- (6) This section does not affect the operation of section 323 or 324 of the **Crimes Act 1958**.

## **Part 11—Heritage Fund**

### **234 Heritage Fund**

- (1) There is established a fund called the Heritage Fund.
- (2) The Heritage Council must—
  - (a) open and maintain any accounts with an ADI approved by the Treasurer for the purposes of the Heritage Fund; and
  - (b) maintain one of those accounts for the purposes of holding any security received under section 103.

### **235 Payments into the Heritage Fund**

- (1) There must be paid into the Heritage Fund—
  - (a) any fees paid under this Act; and
  - (b) any money borrowed by the Heritage Council; and
  - (c) any other money received by the Heritage Council.
- (2) The Heritage Council, with the consent of the Minister, may invest money credited to the Heritage Fund that it does not immediately require in any securities approved by the Treasurer.
- (3) Any interest earned on money in the Heritage Fund, including on any security held, must be credited to the Heritage Fund.

### **236 Payments out of the Heritage Fund**

The Heritage Council may pay out of the Heritage Fund any money—

- (a) to provide assistance generally for the conservation and management of cultural heritage; or

- (b) to provide assistance generally for the conservation and management of any listed place; or
- (c) in the making of loans and grants under this Act; or
- (d) in payment of any expenses incurred in the administration of this Act; or
- (e) in payment of remuneration and allowances payable to members of the Heritage Council and committees under this Act; or
- (f) in payment of money borrowed by the Heritage Council under this Act and any charges or interest on that borrowing; or
- (g) in payment of money standing to the credit of the Heritage Council in the acquisition of places, land or objects authorised under this Act; or
- (h) in any other way authorised by this Act.

### **237 Power of the Heritage Council to borrow money**

The Heritage Council may obtain financial accommodation subject to and in accordance with the powers conferred on it under the **Borrowing and Investment Powers Act 1987**.

### **238 Heritage Council may accept gifts**

- (1) The Heritage Council may—
  - (a) acquire by gift, grant, bequest or demise a registered place, registered object or the land on which a registered place is situated; and
  - (b) agree to carry out any conditions of that gift, grant, bequest or demise.
- (2) A registered place, registered object or land acquired under subsection (1) is vested in the Crown.

- (3) In accepting a gift, grant, bequest or demise under this section, the Heritage Council must—
- (a) take into account the cultural heritage significance of the registered place, registered object or land; and
  - (b) take into account any relevant requirements for the future management of the registered place, registered object or land.

**239 Making of loans and grants from the Heritage Fund**

- (1) The Heritage Council may make a grant or loan from the Heritage Fund for the purposes of assisting the conservation of any part of the State's cultural heritage.
- (2) Without limiting subsection (1), the Heritage Council may make a grant or loan—
- (a) to assist the owner or government asset manager of a place or object which has been nominated for inclusion in the Heritage Register, or is a registered place or registered object, to prepare appropriate analyses and plans for the conservation of the place or object; or
  - (b) to provide financial and other assistance to owners, government asset managers and other managers of registered places or registered objects for the purpose of conserving any part of the State's cultural heritage.
- (3) Subject to section 240, the Heritage Council, in making a grant or loan, may impose any conditions it considers appropriate to assist the conservation of the part of the cultural heritage in respect of which the grant or loan is made.

#### **240 Rates of interest on loans made from the Heritage Fund**

A loan made from the Heritage Fund must be at any rate of interest approved by the Treasurer in respect of that loan or generally for the purposes of this Part.

#### **241 Acquisition of places by the Heritage Council**

- (1) The Heritage Council, with the consent of the Minister, may acquire a registered place or the land on which a registered place is situated by lease, purchase, exchange or compulsory acquisition for the purposes of protecting and conserving cultural heritage.
- (2) Subsection (1) does not apply to Crown land.
- (3) If a place is acquired under subsection (1), the **Land Acquisition and Compensation Act 1986** applies to this Act and for the purposes of the acquisition—
  - (a) the **Heritage Act 2017** is the special Act; and
  - (b) the Heritage Council is the Authority.
- (4) Any change in the market value of an interest in land arising from the inclusion of land or a place in the Heritage Register must be considered in determining compensation payable in respect of the acquisition of that interest.

#### **242 Sale of places and objects by the Heritage Council**

- (1) The Heritage Council, with the consent of the Minister, may do any of the following in respect of a place or object acquired under this Part—
  - (a) sell, lease, exchange, dispose or otherwise deal with the place or object;
  - (b) grant easements or rights of way over any land or any part of the land.

- (2) If acquired land is leased, the rental or other consideration fixed by the Heritage Council must produce an amount not less than the percentage the Treasurer directs in respect of that lease, or of leases of the class to which the lease belongs, of the fair market value of the property.
- (3) This section does not apply to an archaeological artefact, shipwreck or shipwreck artefact.

### **243 Special assistance**

- (1) The Heritage Council, with the consent of the Minister, may provide special assistance to the owner of a registered place for the purpose of conserving that place.
- (2) If the Heritage Council decides to provide special assistance under subsection (1), it may do any of the following—
  - (a) by resolution remit or defer the payment of the whole or any part of the tax payable by the owner under the **Land Tax Act 2005** that is attributable to the registered place or the land on which the registered place is situated;
  - (b) by resolution remit or defer the payment of the whole or any part of any relevant rates payable in respect of the registered place or the land on which a registered place is situated.
- (3) The Heritage Council must not make a resolution—
  - (a) under subsection (2)(a) without the consent of the Treasurer; or

- (b) under subsection (2)(b) without the consent of the relevant rating authority or the Minister administering the Act under which the authority is constituted.
- (4) If the Heritage Council by resolution remits or defers the payment of any rates or taxes under this section, the rates or taxes are remitted or deferred for the period that the Minister on the recommendation of the Heritage Council and with the approval of the Treasurer or the relevant Minister (as the case requires) may specify.
- (5) The Heritage Council may by resolution revoke or vary a resolution made under subsection (2) in the same manner as that resolution was made.
- (6) The Commissioner for State Revenue and any rating authority concerned must comply with any resolution made by the Heritage Council under this section.

**244 Remitted taxes and rates become immediately payable on occurrence of certain events**

- (1) This section applies if—
  - (a) any of the following events occur—
    - (i) a registered place is removed from the Heritage Register on the application of the owner of the place (a *de-registration event*); or
    - (ii) a permit under Part 5 is granted to the owner of a registered place to remove or demolish the place (a *demolition permit event*); or
    - (iii) a permit under Part 5 is granted to the owner of a registered place to alter the place (an *alteration permit event*); and

- (b) land tax or a rate has been remitted under section 243 (or any corresponding previous provision) in respect of the place or the land on which the place is situated during the 5 years preceding the occurrence of the relevant event.
- (2) On the occurrence of a de-registration event or a demolition permit event, the remitted land tax or rate becomes immediately payable by the owner unless the Minister, after considering a report from the Heritage Council, otherwise directs.
- (3) On the occurrence of an alteration permit event, the remitted land tax or rate becomes immediately payable by the owner if the Minister, after considering a report from the Heritage Council, so directs.
- (4) The Heritage Council, in making a report to the Minister under this section which relates to a demolition permit event or alteration permit event, must consider whether the granting of the permit will have resulted in a substantial increase in the value of the registered place or the land on which the registered place is situated.

#### **245 Payment of deferred taxes or rates**

All rates or taxes deferred under section 243 (or any corresponding previous provision), with any interest specified by the Minister on the recommendation of the Heritage Council, become payable by the owner immediately on the expiry of the period of deferment.

## **Part 12—Hearings**

### **246 Application of Part**

This Part applies to a hearing under this Act.

### **247 Directions about hearings**

- (1) The Heritage Council may give directions in relation to—
  - (a) the times and places of hearings; and
  - (b) matters preliminary to hearings; and
  - (c) the conduct of hearings.
- (2) The Heritage Council may refuse to hear any person who fails to comply with a direction of the Heritage Council.

### **248 Hearings to be public**

The Heritage Council must conduct its hearings in public unless any person making a submission objects to making the submission in public and the Heritage Council is satisfied that the submission is of a confidential nature.

### **249 General procedure for hearings**

- (1) In hearing submissions, the Heritage Council—
  - (a) must act in accordance with general procedure, equity and good conscience; and
  - (b) is bound by the rules of natural justice; and
  - (c) is not required to conduct the hearing in a formal manner; and
  - (d) may inform itself in any other way it sees fit without notice to any person who has made a submission.
- (2) The Heritage Council may hear evidence and submissions from any person this Act requires the Heritage Council to hear.

- (3) Submissions and evidence may be given to the Heritage Council orally or in writing or partly orally and partly in writing.

**250 Persons who may appear before the Heritage Council**

A person who has a right to appear and be heard by the Heritage Council may—

- (a) appear and be heard in person; or
- (b) be represented by any other person.

**251 Failure to attend hearing**

If a person fails to attend a hearing the Heritage Council may make a determination without hearing that person.

**252 Heritage Council may hear submissions together**

The Heritage Council may consider 2 or more submissions together if the submissions concern the same place or object or the same or a related matter.

**253 Adjournment of hearings**

The Heritage Council may adjourn a hearing to any times and places and for any purposes it considers necessary.

**254 Heritage Council may regulate its own proceedings**

The Heritage Council may regulate its own proceedings.

## **Part 13—General**

### **255 Regulations—general**

- (1) The Governor in Council may make regulations for or with respect to the following—
  - (a) prescribing information to be included in a nomination for inclusion in the Heritage Register;
  - (b) prescribing forms for the purposes of this Act;
  - (c) the control and conservation of archaeological sites and archaeological artefacts;
  - (d) the keeping of records necessary or expedient for the purposes of this Act;
  - (e) any fees to be charged for applications for—
    - (i) requests for reviews under this Act; and
    - (ii) permits, consents and certificates under this Act;
  - (f) charging fees for admission to archaeological sites;
  - (g) applications for permits and consents and conditions on permits and consents;
  - (h) prescribing particulars to be included in an infringement notice under Division 4 of Part 10;
  - (i) prescribing the manner and place of payment of any penalty under Division 4 of Part 10;
  - (j) prescribing offences against this Act or the regulations for the purposes of Division 4 of Part 10;

- (k) prescribing penalties not exceeding 20 penalty units for the offences prescribed under paragraph (j);
  - (l) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
- (a) may be of general or limited application;
  - (b) may differ according to differences in time, place or circumstances;
  - (c) may require matters affected by the regulations to be—
    - (i) in accordance with specified standards or specified requirements; or
    - (ii) approved by or to the satisfaction of a specified person or body or a specified class of persons or bodies; or
    - (iii) as specified in both subparagraphs (i) and (ii);
  - (d) may apply, adopt or incorporate any matter contained in any document whether—
    - (i) wholly or partially or as amended by the regulations; or
    - (ii) as in force at a particular time or as amended from time to time;
  - (e) may confer a discretionary authority or impose a duty on a specified person or body or class of persons or bodies;

- (f) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a specified person;
  - (g) may provide in a specified case or class of cases for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations whether unconditionally or on specified conditions and either wholly or to such an extent as is specified;
  - (h) subject to section 256, may impose penalties not exceeding 20 penalty units for a contravention of the regulations.
- (3) Regulations relating to fees—
- (a) may prescribe different fees for different permitted or consent activities; or
  - (b) may prescribe different fees for different classes of permit or consent holder; or
  - (c) may exempt particular classes of people from certain fees imposed by the regulations; or
  - (d) may authorise the Heritage Council to waive fees in particular cases or classes of cases.

**256 Regulations—underwater cultural heritage**

- (1) In addition to section 255, the Governor in Council may make regulations for or with respect to the conservation and good management of registered shipwrecks, historic shipwrecks, registered shipwreck artefacts, historic shipwreck artefacts and protected zones including regulations for or in relation to prohibiting or restricting the following—

- (a) entry into or remaining in a protected zone;
- (b) the bringing into a protected zone of—
  - (i) equipment constructed or adapted for the purpose of diving or salvage or recovery operations, whether on land or on or under water; or
  - (ii) any explosives, instruments or tools the use of which would be likely to damage or interfere with a registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact situated within that protected zone;
- (c) the use within a protected zone of any equipment, explosives, instruments or tools referred to in paragraph (b);
- (d) the causing of a ship or other vehicle carrying equipment, explosives, instruments or tools to enter or remain within a protected zone;
- (e) cultivating, mining, quarrying or other activity on or below land within a protected zone;
- (f) trawling, fishing, diving or other underwater activity within a protected zone;
- (g) the mooring or use of ships or the parking or use of vehicles within a protected zone;
- (h) any other activities within a protected zone which would be likely to damage or interfere with a registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact within that zone.

- (2) Regulations made under this section may prescribe penalties not exceeding 50 penalty units for a contravention of a provision of any regulations made for the purposes of subsection (1) other than any provision in respect of underwater cultural heritage that is not a shipwreck or shipwreck artefact.
- (3) The provision that may be made by regulations made for the purposes of this section for or in relation to regulations restricting the doing of an act includes a provision prohibiting the doing of that act except in accordance with a permit.

## **Part 14—Repeal, savings and transitional provisions**

### **Division 1—Repeal of the Heritage Act 1995**

#### **257 Repeal of the Heritage Act 1995**

The **Heritage Act 1995** is repealed.

### **Division 2—Savings and transitional provisions**

#### **258 Definitions**

In this Division—

*commencement day* means the day on which section 257 comes into operation;

*old Act* means the **Heritage Act 1995**;

*old Heritage Council* means the Heritage Council established under Part 2 of the old Act;

*old Heritage Fund* means the Heritage Fund established under Part 7 of the old Act;

*old Heritage Inventory* means the Heritage Inventory established under Part 6 of the old Act;

*old Heritage Register* means the Victorian Heritage Register established under Part 3 of the old Act;

#### **259 General transitional provisions**

- (1) This Part does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) If this Part provides that a provision of an Act continues to apply to any matter or thing, then any regulation or other instrument having effect under that Act for the purposes of that provision also continues to apply to that matter or thing.

- (3) If, by virtue of this Part, a provision of an Act or a regulation or instrument continues to apply to a matter or thing, it continues to apply as in effect immediately before the provision was repealed or revoked.
- (4) This Part applies despite anything to the contrary in any other provision of this Act.

## **260 Heritage Council**

On the commencement day—

- (a) the old Heritage Council is taken to be the Heritage Council established under Division 1 of Part 2 of this Act; and
- (b) a person appointed as a member of the old Heritage Council under section 7 of the old Act and whose appointment is in effect immediately before that day is taken to be appointed as a member of the Heritage Council under section 10 of this Act; and
- (c) a person appointed as an alternate member of the Heritage Council under clause 5 of Schedule 1 to the old Act and whose appointment is in effect immediately before that day is taken to be appointed as an alternate member of the Heritage Council under clause 4 of Schedule 1 to this Act.

## **261 Committees**

On the commencement day—

- (a) a committee appointed under section 9 of the old Act that is in effect immediately before that day is taken to be a committee established under section 13 of this Act; and

- (b) a person appointed to a committee appointed under section 9 of the old Act and whose appointment is in effect immediately before that day is taken to be appointed to that committee under section 13 of this Act.

## **262 Executive Director**

On the commencement day, the Executive Director employed under Part 2 of the old Act and whose employment is in effect immediately before that day is taken to be the Executive Director employed under section 18 of this Act.

## **263 Heritage Register**

On the commencement day—

- (a) the old Heritage Register is taken to be the Heritage Register established under Division 1 of Part 3 of this Act; and
- (b) a place recorded in the old Heritage Register as a heritage place is taken to be recorded in the Heritage Register as a registered place; and
- (c) an object recorded in the old Heritage Register as a heritage object is taken to be recorded in the Heritage Register as a registered object; and
- (d) a place recorded in the old Heritage Register as a place included in the World Heritage List is taken to be recorded in the Heritage Register as a place included in the World Heritage List; and
- (e) a place recorded in the old Heritage Register as an archaeological place is taken to be recorded in the Heritage Register as a registered archaeological place; and

- (f) an object recorded in the old Heritage Register as an archaeological relic is taken to be recorded in the Heritage Register as a registered archaeological artefact; and
- (g) a place recorded in the old Heritage Register as a historic shipwreck is taken to be recorded in the Heritage Register as a registered shipwreck; and
- (h) an object recorded in the old Heritage Register as a historic shipwreck relic is taken to be recorded in the Heritage Register as a registered shipwreck artefact; and
- (i) a place recorded in the old Heritage Register as a protected zone is taken to be recorded in the Heritage Register as a protected zone.

**264 Nominations in respect of which recommendations have not been made**

On the commencement day—

- (a) a nomination made under section 23 of the old Act in respect of which the Executive Director has not made a recommendation under section 32 of that Act before that day is taken to be a nomination under section 27 of this Act; and
  - (b) a nomination made under section 26 of the old Act in respect of which the Executive Director has not made a recommendation under section 32 of that Act before that day is taken to be a nomination under section 31 of this Act; and
  - (c) a nomination made under section 27 of the old Act in respect of which the Executive Director has not made a recommendation under section 32 of that Act before that day is taken to be a nomination under section 32 of this Act.
-

**265 Nominations in respect of which recommendations have been made**

- (1) This section applies if a recommendation has been made under section 32 of the old Act but the Heritage Council has not made a decision under section 42 of that Act in respect of the recommendation before the commencement day.
- (2) Despite the repeal of the old Act, on and after the commencement day, the old Act continues to apply to the recommendation as if the old Act had not been repealed.
- (3) However, this Act applies to a decision of the Heritage Council as if it were a determination of the Heritage Council under section 49 of this Act, and the item is taken to be the applicable item in section 263.

**266 Decisions of the Heritage Council**

On the commencement day a decision under section 42 of the old Act that is in effect immediately before that day is taken to be a determination under section 49 of this Act.

**267 Heritage certificates**

On the commencement day—

- (a) an application under section 50 of the old Act in respect of which the Executive Director has not made a decision under that section before that day is taken to be an application under section 58 of this Act; and
- (b) a certificate under section 50 of the old Act that is in effect immediately before that day is taken to be a heritage certificate under section 58 of this Act.

**268 Exemptions for liturgical purposes**

On the commencement day, a notice given to the Heritage Council in accordance with section 65 that is in effect immediately before that day is taken to be a notice under section 90 of this Act.

**269 Other exemptions from permits**

On the commencement day, a determination made under section 66 of the old Act that is in effect immediately before that day is taken to be a determination under section 92 of this Act.

**270 Permit applications in respect of which determinations have not been made**

- (1) This section applies if a permit application has been made under section 67 of the old Act but the Executive Director has not made a determination under section 74 of that Act in respect of the application before that day.
- (2) Despite the repeal of the old Act, on and after the commencement day, the old Act continues to apply to the permit application as if the old Act had not been repealed.
- (3) However, this Act applies to a determination of the Heritage Council as if it were a determination of the Executive Director under section 101 of this Act.

**271 Permits**

On the commencement day, a permit issued under section 74 of the old Act that is in effect immediately before that day is taken to be a permit issued under section 102 of this Act.

**272 Appeals to the Heritage Council in respect of which determinations have not been made**

- (1) This section applies if an appeal has been lodged under section 75 of the old Act but the Heritage Council has not made a determination under section 76 of that Act in respect of the appeal before the commencement day.
- (2) Despite the repeal of the old Act, on and after the commencement day, the old Act continues to apply to the appeal as if the old Act had not been repealed.
- (3) However, this Act applies to a determination of the Heritage Council as if it were a determination of the Heritage Council under section 108 of this Act.

**273 Determinations of the Heritage Council in respect of appeals**

On the commencement day, a permit issued under section 76 of the old Act that is in effect immediately before that day is taken to be a permit issued under section 108 of this Act.

**274 Matters called in or referred to VCAT**

- (1) This section applies if an appeal to the Heritage Council has been referred to—
  - (a) the Minister under section 78 of the old Act but the Minister has not made a determination under section 80 or 81 of that Act in respect of the appeal before the commencement day; or
  - (b) VCAT under section 78 of the old Act for review of the determination the subject of the appeal but VCAT has not made an order under section 79 of that Act in respect of the determination before the commencement day.

- (2) Despite the repeal of the old Act, on and after the commencement day, the old Act continues to apply to the appeal as if the old Act had not been repealed.
- (3) However, this Act applies to a determination of the Minister or an order of VCAT as if it were a determination under section 114 of this Act or an order under section 111 of this Act, as the case requires.

### **275 Covenants**

On the commencement day, a covenant entered into by a land owner with the Heritage Council or the National Trust under Division 2 of Part 4 of the old Act that is in effect immediately before that day is taken to be a covenant entered into under Part 7 of this Act.

### **276 Recommendations relating to remains of ships and articles in respect of which determinations have not been made**

- (1) This section applies if a recommendation has been made under section 97 of the old Act but the Heritage Council has not made a determination under section 98 of that Act in respect of the recommendation before the commencement day.
- (2) Despite the repeal of the old Act, on and after the commencement day, the old Act continues to apply to the recommendation as if the old Act has not been repealed.
- (3) However, this Act applies to a determination of the Heritage Council as if it were a determination of the Heritage Council under section 49 of this Act, and the item is taken to be the applicable item in section 263.

**277 Determinations relating to remains of ships and articles**

On the commencement day, a determination made under section 98 of the old Act that is in effect immediately before that day is taken to be a determination under section 49 of this Act.

**278 Provisional registration**

On the commencement day, a determination made under section 102 of the old Act that is in effect immediately before that day is taken to be determination under section 68 of this Act.

**279 Recommendations for protected zones in respect of which determinations have not been made**

- (1) This section applies if a recommendation has been made under section 103 of the old Act but the Heritage Council has not made a determination under that section in respect of the recommendation before the commencement day.
- (2) Despite the repeal of the old Act, on and after the commencement day, the old Act continues to apply to the recommendation as if the old Act had not been repealed.
- (3) However, this Act applies to a determination of the Heritage Council as if it were a determination of the Heritage Council under section 49 of this Act, and the item is taken to be the applicable item in section 263.

**280 Protected zones**

On the commencement day, a determination made under section 103 of the old Act that is in effect immediately before that day is taken to be a determination under section 49 of this Act.

**281 Permit applications relating to shipwrecks in respect of which determinations have not been made**

- (1) This section applies if a permit application has been made under section 113 of the old Act but the Executive Director has not made a determination under that section in respect of the application before the commencement day.
- (2) Despite the repeal of the old Act, on and after the commencement day, the old Act continues to apply to the application as if the old Act had not been repealed.
- (3) However, this Act applies to a determination of the Executive Director as if it were a determination of the Executive Director under section 77 of this Act.

**282 Permits relating to shipwrecks**

On the commencement day, a permit granted under section 113 of the old Act that is in effect immediately before that day is taken to be a permit under section 77 of this Act.

**283 Notice of discovery of shipwrecks and articles**

A notice given to the Executive Director in relation to the remains of a ship, or of part of a ship, or an article associated with a ship in accordance with section 115 of the old Act that is in effect immediately before the commencement day is taken to be a notice given to the Executive Director in relation to a shipwreck or shipwreck artefact under section 80 of this Act.

**284 Permits for the use of historic shipwreck relics**

- (1) This section applies if a permit application has been made under section 118A of the old Act but the Executive Director has not made a decision under that section in respect of the application before the commencement day.

- (2) Despite the repeal of the old Act, on and after the commencement day, the old Act continues to apply to the application as if the old Act has not been repealed.
- (3) However, this Act applies to a decision of the Executive Director as if it were a determination of the Executive Director under section 78 of this Act.

### **285 Heritage Inventory**

On the commencement day, the old Heritage Inventory is taken to be the Heritage Inventory established under Division 1 of Part 6 of this Act.

### **286 Permits for the use of archaeological relics**

On the commencement day, a permit granted under section 126A of the old Act that is in effect immediately before that day is taken to be a permit issued under section 102 of this Act.

### **287 Consent applications in respect of which determinations have not been made**

- (1) This section applies if a consent application has been made under section 129 of the old Act but the Executive Director has not made a determination under that section in respect of the application before the commencement day.
- (2) Despite the repeal of the old Act, on and after the commencement day, the old Act continues to apply to the application as if the old Act had not been repealed.
- (3) However, this Act applies to a determination of the Executive Director as if it were a determination of the Executive Director under section 124 of this Act.

### **288 Consents**

On the commencement day, a consent issued under section 129 of the old Act that is in force immediately before that day is taken to be a consent under section 124 of this Act.

### **289 Orders for the carrying out of works**

An order made under section 162 of the old Act that is in effect immediately before the commencement day is taken to be a repair order under section 155 of this Act.

### **290 Reviews of orders to carry out works**

- (1) This section applies if an application for review has been made under section 163 of the old Act but VCAT has not made an order under that section in respect of the application before the commencement day.
- (2) Despite the repeal of the old Act, on and after the commencement day, the old Act continues to apply to the review as if the old Act had not been repealed.
- (3) However, this Act applies to an order of VCAT as if it were an order of VCAT under section 156 of this Act.

### **291 Heritage Fund**

On the commencement day, the old Heritage Fund is taken to be the Heritage Fund established under Part 11 of this Act.

### **292 Inspectors**

On the commencement day, any inspector appointed under Part 8 of the old Act and whose appointment is in effect immediately before that day is taken to be an inspector appointed under Part 10 of this Act.

**293 Governor in Council declarations**

On the commencement day, a declaration made by the Governor in Council under section 182 of the old Act that is in effect immediately before that day is taken to be a declaration under section 227 of this Act.

S. 294 expired  
by force of  
No. 7/2017  
s. 294(5).

\* \* \* \* \*

Heritage Act 2017  
No. 7 of 2017

---

\* \* \* \* \*

**Pt 15  
(Heading and  
ss 295–309)  
repealed by  
No. 7/2017  
s. 309.**

## **Schedule 1—Further heritage administration**

### **Division 1—Membership and procedure**

#### **1 Chairperson and Deputy Chairperson**

- (1) The Minister must appoint one of the members of the Heritage Council as the Chairperson of the Heritage Council.
- (2) The Minister must appoint one of the members of the Heritage Council as the Deputy Chairperson of the Heritage Council.
- (3) If the Chairperson is absent or unable to perform their functions, the Deputy Chairperson must act as Chairperson and, while acting, has all the functions, duties and powers of the Chairperson.

#### **2 Terms of appointment of members of the Heritage Council**

- (1) A member of the Heritage Council holds office for a period of up to 3 years specified in the member's instrument of appointment.
- (2) A member of the Heritage Council is eligible for re-appointment.
- (3) The instrument of appointment of a member of the Heritage Council may specify terms and conditions of appointment.
- (4) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member of the Heritage Council in respect of the office of that member.

#### **3 Resignation and removal of members of the Heritage Council**

- (1) A member of the Heritage Council may resign from office by giving written notice to the Governor in Council.

- (2) The Governor in Council, on the recommendation of the Minister, may at any time remove a member of the Heritage Council from office and appoint another person in their place.

#### **4 Alternate members of the Heritage Council**

- (1) The Governor in Council, on the recommendation of the Minister, may appoint an alternate member for a member of the Heritage Council.
- (2) An alternate member must be appointed in the same manner as the member of the Heritage Council for whom the person is the alternate member.
- (3) An alternate member may act in place of the member of the Heritage Council for whom the person is the alternate member if—
- (a) the member is absent or unable to perform the duties of office; or
  - (b) the member and the alternate member agree that the alternate member is to act in the member's place; or
  - (c) the member's position is vacant.
- (4) If subclause (3)(c) applies, the alternate member must not act in that position for more than 6 months.
- (5) An alternate member has all the functions, duties and powers of a member of the Heritage Council when acting in the place of the member.

#### **5 Terms of appointment for alternate members of the Heritage Council**

- (1) An alternate member of the Heritage Council holds office for a period of up to 3 years specified in their instrument of appointment.
- (2) An alternate member is eligible for re appointment.

- (3) An alternate member may resign from office by giving written notice to the Governor in Council.
- (4) The Governor in Council, on the recommendation of the Minister, may at any time remove an alternate member from office and appoint another person in their place.

### **Division 2—Meetings**

#### **6 Procedure at Heritage Council meetings**

- (1) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson, must preside at a meeting of the Heritage Council.
- (2) If the Chairperson and the Deputy Chairperson are absent, the members of the Heritage Council present may elect a member to preside at a meeting.
- (3) At a meeting of the Heritage Council, a majority of members present at the meeting constitutes a quorum.
- (4) A question arising at a meeting of the Heritage Council must be determined by a majority of votes of members present and voting on that question.
- (5) In the event of an equality of votes on any question arising at a meeting of the Heritage Council, the person presiding at the meeting has a deliberative vote and a second or casting vote.
- (6) An act or decision of the Heritage Council is not invalid merely because of a defect or irregularity in connection with the qualification or appointment of a member of the Heritage Council or, in the case of a person qualified or appointed to act as an alternate member, because the occasion for the person acting as an alternate member had not arisen or had ceased.

- (7) Subject to this Act, the Heritage Council may regulate its own proceedings.

#### **7 Minutes of meetings**

The Heritage Council must keep minutes of the proceedings and decisions of each of its meetings.

### **Division 3—Operations**

#### **8 Procedure at committee meetings**

- (1) A quorum of a committee is constituted by 3 members of the Heritage Council.
- (2) The Heritage Council must appoint one of its members as Chairperson of the committee who must preside at all meetings of the committee at which the Chairperson is present.
- (3) If the Chairperson is not present, the members present must elect another member of the committee who is also a member of the Heritage Council to preside at the meeting.
- (4) Subject to this Act, a committee may regulate its own proceedings.

#### **9 Corporate plan**

- (1) The Heritage Council must prepare a corporate plan for each financial year.
- (2) The Heritage Council must give a copy of a proposed corporate plan to the Minister on or before 31 May in each year, or by another date specified by the Minister.
- (3) The proposed corporate plan must include—
  - (a) the Heritage Council's objectives and priorities over the next financial year; and
  - (b) the main undertakings of the Heritage Council; and

- (c) the nature and scope of the activities to be undertaken by the Heritage Council; and
  - (d) estimates of the Heritage Council's revenue and expenditures and overall financial position for each of the next 3 financial years, and for the end of that period; and
  - (e) the performance targets and other measures by which the performance of the Heritage Council may be assessed in relation to its stated objectives; and
  - (f) such other matters as may be agreed on by the Minister and the Heritage Council.
- (4) The Minister may specify—
- (a) the type and format of the information required to be included in a proposed corporate plan under subclause (3)(d); and
  - (b) the kind of information to be provided to the Minister by the Heritage Council during the course of each of the next 3 financial years, including the information to be included in each report of operations under the **Financial Management Act 1994**.
- (5) The Heritage Council must consider any comments on a proposed corporate plan made by the Minister within one month of the plan being provided to the Minister under subclause (2).
- (6) The Heritage Council must—
- (a) consult in good faith with the Minister following any comments made by the Minister in respect of a proposed corporate plan; and
  - (b) make any changes to the plan as are agreed between the Minister and the Heritage Council; and

(c) give the completed plan to the Minister for approval within 3 months of giving the proposed plan to the Minister.

(7) An approved corporate plan may be amended at any time by agreement of the Heritage Council and the Minister.

#### **10 Public availability of corporate plan**

(1) The Heritage Council must publish a copy of its current corporate plan on its website.

(2) The Heritage Council must ensure that the corporate plan is included in its report of operations under the **Financial Management Act 1994**.

#### **11 Changes to corporate plan at the direction of the Minister**

(1) The Minister, by written notice to the Heritage Council, may direct the Heritage Council to include any specified matters in or omit any specified matters from a corporate plan.

(2) Before giving the direction under subclause (1) the Minister must consult with the Heritage Council as to the matters to be referred to in the notice.

(3) The Heritage Council must comply with a direction under this clause.

#### **12 Report of operations**

The Heritage Council must ensure that its report of operations under the **Financial Management Act 1994** includes—

(a) the performance of its functions under this Act, including its performance in relation to the objectives and priorities set out in its current corporate plan; and

- (b) a report on the state of Victoria's cultural heritage; and
- (c) any other information required by the Minister.

#### **Division 4—Miscellaneous**

### **13 Fees and allowances for members, alternate members and committee members of the Heritage Council**

- (1) A member or alternate member of the Heritage Council is entitled to receive the fees, travelling and other allowances fixed by the Minister in respect of the member.
- (2) A committee member of the Heritage Council is entitled to receive the fees, travelling and other allowances approved by the Minister in respect of the member.

### **14 Disclosure of interests**

- (1) A person to whom this clause applies must disclose at a meeting of the Heritage Council the nature of any direct or indirect pecuniary interest in—
  - (a) a contract or proposed contract with the Heritage Council; or
  - (b) a matter being considered or proposed to be considered by the Heritage Council.
- (2) A disclosure made under subclause (1) must be made as soon as practicable after the relevant facts have come to the person's knowledge.

- (3) A person who makes a disclosure must not—
  - (a) take any further part in any consideration or discussion of the contract, proposed contract or other matter; or
  - (b) take part in any vote on the contract, proposed contract or other matter; or
  - (c) be counted for the purposes of a quorum.
- (4) A person who makes a full and accurate disclosure under subclause (1) and complies with subclause (3)(a) and (b) is not in breach of any duty owed by the person to the Heritage Council by reason of the person's pecuniary interest in the contract, proposed contract or other matter in respect of which the disclosure was made.
- (5) A disclosure must be recorded in the minutes of the meeting at which it is made.
- (6) This clause does not apply to a pecuniary interest which is held as a member in common with other members of a company which has at least 20 members.
- (7) In this clause—

*a person to whom this clause applies* means—

  - (a) a member of the Heritage Council; or
  - (b) a member of a committee of the Heritage Council; or
  - (c) the Executive Director.

### **15 No pecuniary interest in certain circumstances**

A member of the Heritage Council does not have any direct or indirect pecuniary interest by reason only of the fact that—

- (a) the member has been appointed from a list of names submitted by a body; and

- (b) that body has a direct or indirect pecuniary interest in a place or object which is the subject of a contract or proposed contract with the Heritage Council or in any other matter being considered or proposed to be considered by the Heritage Council.
- 
-

## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

*Minister's second reading speech—*

*Legislative Assembly: 9 November 2016*

*Legislative Council: 24 November 2016*

The long title for the Bill for this Act was "A Bill for an Act to re-enact with amendments the **Heritage Act 1995** to provide for the protection and conservation of places and objects of cultural heritage significance, to establish a Victorian Heritage Register and a Heritage Inventory, to establish a Heritage Council, to create offences and other enforcement measures to protect and conserve cultural heritage and to establish a Heritage Fund and for other purposes."

The **Heritage Act 2017** was assented to on 15 March 2017 and came into operation on 1 November 2017: section 2(2).

### INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

#### Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

#### References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

#### Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

## 2 Table of Amendments

This publication incorporates amendments made to the **Heritage Act 2017** by Acts and subordinate instruments.

---

### **Heritage Act 2017, No. 7/2017**

<i>Assent Date:</i>	15.3.17
<i>Commencement Date:</i>	Ss 294(5), 309 on 1.11.17: s. 2(2)
<i>Note:</i>	S. 309 repealed Pt 15 (ss 295–309) on 1.11.18; s. 294(5) provided that s. 294 expired on 1.11.19
<i>Current State:</i>	This information relates only to the provision/s amending the <b>Heritage Act 2017</b>

### **Local Government Act 2020, No. 9/2020**

<i>Assent Date:</i>	24.3.20
<i>Commencement Date:</i>	S. 390(Sch. 1 item 53) on 6.4.20: Special Gazette (No. 150) 24.3.20 p. 1
<i>Current State:</i>	This information relates only to the provision/s amending the <b>Heritage Act 2017</b>

---

### **3 Amendments Not in Operation**

This version does not contain amendments that are not yet in operation.

#### **4 Explanatory details**

No entries at date of publication.