



Australian
Institute of
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Australian Institute of Architects

Response to:

Review of *Heritage Act 1995* Discussion Paper

**Submission to
Victorian Dept.
Environment, Land,
Water and Planning**

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SUBMISSION BY

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PURPOSE

This submission is made by the Victorian Chapter of the Australian Institute of Architects (the Institute) to the Department of Environment, Land, Water and Planning in response to an invitation to comment on the Review of the Heritage Act 1995 Discussion Paper.

At the time of the submission the office bearers of the Victorian Chapter are: Peter Malatt (President), Jon Clements (Immediate Past-President), Amy Muir, Clare Cousins, Stuart Harrison, Robert Goodliffe, Shelley Roberts, Anne Lau, Kim Irons, Rowan Opat, Tim Leslie and Mercedes Mambort.

The Manager of the Victorian Chapter is Alison Cleary. This submission was prepared by the Victorian Chapter Heritage Committee, for Victorian Chapter Council. The committee membership is: Anne-Marie Treweeke (Chair); Peter Johnson; Suzanne Dance; John Henry; Louise Honman; Stuart Harrison; and Ruth Redden.

INFORMATION

The Australian Institute of Architects (the Institute) is an independent voluntary subscription-based member organization with approximately 12,200 members who are bound by a Code of Conduct and Disciplinary Procedures. The Institute's Victorian Chapter has approx. 3,000 members.

The Institute, incorporated in 1929, is one of the 96 member associations of the International Union of Architects (UIA) and is represented on the International Practice Commission.

Introduction

The Australian Institute of Architects (the Institute) is an independent national member organisation with approximately 12,200 members across Australia and overseas. 3,000 of these are based in Victoria. The Institute exists to advance the interests of members, their professional standards and contemporary practice, and expand and advocate the value of architects and architecture to the sustainable growth of our communities, economy and culture. The Institute actively works to maintain and improve the quality of our built environment by promoting better, responsible and environmental design.

We appreciate the opportunity to respond to the *Review of the Heritage Act 1995 Discussion Paper*. The Institute is highly supportive of the ongoing efforts of the Victorian Government, through both the Department of Environment, Land, Water and Planning, and specifically the work of Heritage Victoria and the Victorian Heritage Council, to continue to improve protection of our built heritage.

For ease of reading we have followed the structure of the Discussion Paper and replicated the tables with an additional comments column.

1. Improving Heritage Registration Processes

Proposed Changes	Benefits	Institute Comments
<p><i>1. Streamline heritage registration processes</i></p> <p>There are currently four separate registration processes under the <i>Heritage Act 1995</i>. It is proposed to provide a single heritage registration process.</p>	<ul style="list-style-type: none">• Simple and transparent.• Reasonable timeframes ensure registrations are resolved in a timely manner.	<ul style="list-style-type: none">• This change in process is supported in principle however it should provide for formal input from the local planning authority in municipality the proposed place/object/site is located.
<p><i>2. Reform the heritage nomination process</i></p> <p>Heritage Victoria receives a large number of nominations for places and objects that are unlikely to be of sufficient heritage significance to warrant inclusion on the Register. It is proposed that:</p> <p>a) the Executive Director will have discretion to reject a nomination which has no reasonable case for inclusion in the Register</p> <p>b) a nomination will lapse after 30 days if any requested additional information is not provided by the nominator</p> <p>c) the nominator will be able to appeal against a decision of the</p>	<ul style="list-style-type: none">• Nominations which have no reasonable prospect of success are quickly dismissed without parties incurring costs.• A nominator is given an opportunity to appeal a nomination rejection.	<ul style="list-style-type: none">• Rejection of a nomination should be supported by the grounds under which the nomination was rejected.• A nomination appeal should be heard by a minimum of 3 members of the Heritage Council to ensure an adequate level of expertise can be applied to the specific appeal.• Timeframes should be specified in the Act to provide certainty around the process and deliver timely outcomes.

<p>Executive Director to reject a nomination</p> <p>d) a nomination appeal will to be heard by a committee of the Heritage Council consisting of one or more members</p> <p>e) to specify that places and objects cannot be re-nominated for five years if the nomination has been rejected or if the Heritage Council determines not to register a place or object; an exception will apply if significant new information is presented that was not available at the time the decision was made</p> <p>f) apply timeframes to all steps in the nomination process.</p>		
<p><i>3. Develop a consistent approach to heritage registrations</i></p> <p>There are inconsistencies in the Act relating to the registration process for shipwrecks.</p>	<ul style="list-style-type: none"> • Simple and transparent – one process for all heritage registrations. 	<ul style="list-style-type: none"> • This amendment is supported
<p><i>4. Provide for heritage area designation (cultural landscapes and urban precincts)</i></p> <p>The Act does not adequately provide for the recognition of large-scale heritage areas and cultural landscapes. It is proposed:</p> <p>a) to provide a definition of “heritage area”</p> <p>b) the Heritage Council will develop, revise and publish from time to time, the assessment criteria to be used in considering whether a heritage area is of State level significance</p> <p>c) submissions will be invited on an accepted nomination for a heritage area</p> <p>d) the Executive Director will consider submissions and complete a recommendation to the Heritage Council</p> <p>e) the Heritage Council will determine whether or not to</p>	<ul style="list-style-type: none"> • Legislating for State significant heritage area designation will be a step forward in heritage identification in Victoria without imposing additional regulatory burden on property owners. 	<ul style="list-style-type: none"> • This amendment is supported in principle subject to the following: • The definition of a “heritage area” should be based on what is the significance of the place and on that basis should include the appropriate curtilage to describe the heritage area and not be limited necessarily by other considerations. • The definition of “heritage area” should allow for the inclusion of intangible qualities which it is acknowledged are difficult to incorporate in legislation that is essentially spatially based, but can be the defining area of significance. We note that a toolkit for identifying intangible qualities is currently being developed by ICOMOS

<p>designate a heritage area as being of State significance</p> <p>f) require the decision of the Heritage Council to be referred to the relevant planning authority/authorities for consideration of an amendment to the planning scheme.</p>		<p>Australia and should be taken into consideration.</p> <ul style="list-style-type: none"> The definition of “heritage area” should be carefully compared with and be arrived at in consultation of other statutory controls to avoid potential conflict between local planning and state heritage register controls within a heritage precinct or area.
<p><i>5. Ensure the Heritage Inventory is effective and transparent</i></p> <p>This amendment looks at a number of issues relating to the operation of the Heritage Inventory.</p>	<ul style="list-style-type: none"> Ensures the Inventory is a transparent and useful management tool... 	<ul style="list-style-type: none"> This amendment is supported.
<p><i>6. Provide for the protection of objects that contribute to the significance of a place</i></p> <p>Currently objects and collections can only be included in the Register in their own right. It is proposed to provide for specified moveable objects associated with a place to be registered as part of the place where they contribute to its heritage significance.</p>	<ul style="list-style-type: none"> Objects that are integral to the heritage significance of a place are protected as part of the registration. 	<ul style="list-style-type: none"> This amendment is supported subject to the following: That objects will include industrial machinery That the existing inventory and existing statements of significance are updated to reflect where objects may have been previously omitted or not given the level of protection necessary.
<p><i>7. Specify a significance threshold for the Heritage Register</i></p> <p>The Act does not specifically identify a level of significance that a place or object must reach to warrant inclusion in the Register.</p>	<ul style="list-style-type: none"> Provides clarity around the types of places and objects that are included in the Register. 	<ul style="list-style-type: none"> This amendment is supported in principle.
<p><i>8. Streamline the amendment or removal of a place or object from the Heritage Register</i></p> <p>The Act currently allows a place or object to be amended or removed from the Register in the same manner it was registered. A streamlined process is proposed for the Heritage Council, on the recommendation of the Executive Director, to:</p> <p>a) remove a registration as part of a permit issued under the Act for</p>	<ul style="list-style-type: none"> Ensures that the Register accurately reflects the heritage fabric sought to be protected and managed under the Act. Ensures land does not continue to be encumbered by a registration when a 	<ul style="list-style-type: none"> This amendment is supported subject to the following: The amendment needs to ensure that a place or object cannot be easily removed The intention to remove a place or object should be publically disseminated Include an understanding that destruction by accident

<p>the total demolition of a place, once that permit has been executed and all conditions satisfied</p> <p>b) amend a registration in accordance with a subdivision permit issued for the place once that permit has been executed and all conditions satisfied, and where (1) no heritage fabric remains within the land proposed to be removed from the Register, and (2) development of the land proposed to be removed from the Register is unlikely to negatively impact on the heritage values of the remaining registered place</p> <p>c) remove a registration where a place or object has been totally destroyed accidentally or by a natural event and where the identified heritage values of the lost place can no longer be appreciated.</p>	<p>place no longer exists.</p>	<p>or a natural event does not necessarily remove the heritage values and that there are other Charters e.g. Nara Charter, which accept that renewal, is a justified way of maintaining heritage significance for a place or object. The local example is the rebuilding of the St Kilda Pier Kiosk that due to local community support was replicated not replaced due to the intangible qualities it still embodied despite the loss of the built fabric by fire.</p>
<p>9. Clarify exemptions in new registrations</p> <p>Currently permit exemptions for works or activities to a place or object can be granted at the time of registration.</p>	<ul style="list-style-type: none"> • Ensures appropriate assessment of works and activities proposed to a place or object included in the Register. 	<ul style="list-style-type: none"> • This amendment is supported.

Questions

How effective are the current registration and nomination processes for the Victorian Heritage Register? What other improvements could be made?

It often appears that current registration and nomination processes are occurring in a reactive manner rather than proactively establishing what places and object should be included in the State Heritage Register. The Institute is aware that there is a considerable backlog of nominations that extend back a considerable period arising out of a number of local government and targeted studies. While the initiatives above to streamline, simplify and improve the process for places and objects to be included in the register is supported, it is also important that appropriate resources are also provided to enable this process to occur. While this is outside the purview of the amendments to the Act we would support the Act including minimum annual targets or benchmarks. Although Heritage Victoria has acknowledged in discussions with the Institute that it would be desirable to have a clear framework for the manner in which proactive review of what is included on the register occurs, including a programme to identify historical themes, typologies and eras for review and assessment, this is largely outside the proposed amendments. Unless successive Governments treat the upkeep of a Heritage Register with

due seriousness and diligence and resource the statutory authority appropriately our fear is that the amendments to the Act will have little real benefit.

What other ways could the nomination and registration process be made simpler, clearer and fairer?

Although there have been changes to the nomination forms in recent times it should always be remembered that the process for nomination and registration is something that relies on the actions and interest of the entire community. On this basis all nominations and processes should be clear, and enable the interested layperson as much as the trained professional to engage. Having specific and reasonable timeframes for the process is also very important as it will remove a sense of frustration and despair that the process is currently subject to with many nominations languishing unprocessed for years. In our view the timeframe from the date of nomination to either acceptance or rejection should not take longer than 12 months.

It should also be noted that where nominations have arisen out of a structured and detailed process of analysis at a local government level and has included providing information in the format and based on the criteria established by Heritage Victoria no further adjustment to the statements of significance should be included in the process unless a specific error or omission can be identified.

2. Simplifying Heritage Permit and Consent Processes

Proposed Changes	Benefits	Institute Comments
<p><i>1. Provide a greater role for local government in permit processes</i></p> <p>The capacity for local government to be involved in the permit process is currently limited. It is proposed to:</p> <p>a) require the Executive Director of Heritage Victoria to provide a copy of a permit application and any further information requested of the applicant to the relevant local government within a prescribed time</p> <p>b) provide an opportunity for the relevant local government authority to comment on the application</p> <p>c) provide for the permit 'clock' to be stopped when the permit information is sent to local government, and reactivated when comments are received, or the prescribed time expires</p> <p>d) require the Executive Director to consider comments made by the relevant local government when determining a permit application</p>	<ul style="list-style-type: none"> Ensures local heritage concerns and issues are appropriately considered in permit decisions. 	<ul style="list-style-type: none"> Support this amendment in principle recognising that many local governments and authorities know their heritage well and are active in the retention of significance of heritage places and precincts. It is also acknowledged that where this is not the case the ability for Heritage Victoria to actively encourage engagement is supported. An issue of concern will be the provision of a timely response by the relevant local government authority in the face of the removal of state government funding to support heritage advisors, particularly to regional councils. This proposed amendment relies on all local government authorities having the available

<p>e) allow the relevant local government authority to be heard in any permit appeal hearing.</p>		<p>resources to respond to the request for comment, which is currently under real threat.</p>
<p><i>2. Provide for a “one-stop-shop” for subdivision applications</i> An application for the subdivision of a place included on the Register requires a permit from both Heritage Victoria and the relevant local government authority. It is proposed to make the Executive Director a determining referral authority under the <i>Planning and Environment Act 1987</i> for subdivision applications for places on the Register.</p>	<ul style="list-style-type: none"> • Owners are only required to obtain one permit for subdivision but heritage issues are appropriately considered, where applicable, through referral to the Executive Director. 	<ul style="list-style-type: none"> • This amendment is NOT supported on the following basis: • Heritage Victoria when considering a subdivision application is bound to consider the impact on retention of heritage significance of a place or site. This should remain the only basis on which Heritage Victoria assesses a subdivision. • Issues of urban design, site infrastructure within the local context including roads and public utilities should properly remain within the purview of the local planning authority. • There is the ability through the process for referrals to occur and this is supported, as it will ensure both statutory bodies have an awareness of the issues of importance to each and enables the local council to input into the consideration of heritage issues. • We maintain that the <i>status quo</i> of needing two separate permits works well as it ensures sufficient checks and balance are maintained while enabling the relevant statutory authority to address the issues specific to their area of expertise and interest.
<p><i>3. Remove “undue financial hardship” considerations in permit determinations</i> The ‘undue financial hardship’ provision in respect to permit</p>	<ul style="list-style-type: none"> • Avoids permit outcomes determined on the basis of transient information. 	<ul style="list-style-type: none"> • This amendment is supported.

determinations is inconsistent with other legislation and problematic in its application.		
<p><i>4. Ensure a clear role for the National Trust in permit matters</i></p> <p>The National Trust has a long-standing and important role in advocating for the protection and management of Victoria's heritage.</p>	<ul style="list-style-type: none"> Removes confusion around when the National Trust can be heard in a permit appeal. 	<ul style="list-style-type: none"> This amendment is supported.
<p><i>5. Introduce appeal rights for archaeological consents</i></p>	<ul style="list-style-type: none"> Creates a fair, open and consistent system. 	<ul style="list-style-type: none"> This amendment is supported.
<p><i>6. Clarify issues arising from registered places in multiple ownership</i></p> <p>There are issues relating to permits when a registered place is in multiple ownership such as flats. It is necessary to clarify that the "owner of a registered place" means the owner of the portion of the place for which the permit is needed, and in some circumstances, this may be an Owners' Corporation.</p>	<ul style="list-style-type: none"> Provides clarity and increased certainty to owners of registered places. 	<ul style="list-style-type: none"> This amendment is supported. The issue of ownership at the time of registration should be included in the certificate and clarity provided around what works to the place or site would require what level of approval (e.g. individual or Owners' Corporation) much as permit exemptions on registrations provide clarification.
<p><i>7. Remove the capacity for the Heritage Council to determine permit applications</i></p> <p>Currently the Heritage Council can direct the Executive Director to refuse to issue a permit or to issue a permit with specified conditions for certain classes of permit applications.</p>	<ul style="list-style-type: none"> Repeals an unused provision and provides clarity around who is responsible for assessing and determining permit applications. 	<ul style="list-style-type: none"> This amendment is supported.
<p><i>8. Prescribe information to accompany a permit or consent application and implement timeframes for further information requests</i></p>	<ul style="list-style-type: none"> Clarifies what information is required from applicants. 	<ul style="list-style-type: none"> This amendment is supported.
<p><i>9. Provide for amendment of permit applications and permits</i></p> <p>The Act provides for minor amendments to permit applications.</p>	<ul style="list-style-type: none"> Provides transparency in the amendment of permits and permit applications. 	<ul style="list-style-type: none"> This amendment is supported.
<p><i>10. Ensure the Victorian Civil and Administrative Tribunal (VCAT) has</i></p>	<ul style="list-style-type: none"> Ensures VCAT has the appropriate 	<ul style="list-style-type: none"> The intent of this amendment is supported

<p><i>appropriate expertise to consider referred matters</i></p> <p>The Act allows for the Minister to Planning to call in and refer a permit to VCAT for determination in certain circumstances. It is proposed in such circumstances to require the tribunal to consist of a member or members with an in-depth and up-to-date knowledge of heritage legislation and practice.</p>	<p>expertise to consider and determine referred matters.</p>	<p>however it is unclear to us how this would work in practice.</p> <ul style="list-style-type: none"> • <i>A preferred approach would be for the matter to be referred to the Heritage Council, which under the Heritage Act is there to act as the referral authority for all other matters that require appeal or consideration of the determinations of the Executive Director. The members of the Heritage Council are selected on the basis of their in-depth and up-to-date knowledge of heritage practice with some members including legal expertise.</i>
<p><i>11. Provide for consistent decision-making on review</i></p> <p>There is inconsistency in the Act on what matters the Heritage Council, the Minister for Planning and VCAT can consider when reviewing the decision of the Executive Director in respect to a permit. It is proposed to:</p> <ol style="list-style-type: none"> require all review bodies to consider the matters set down in s.73 of the Act (“Matters to be considered in determining applications”) when reviewing a permit decision provide for all review bodies to have the same decision-making powers as the Executive Director when reviewing a permit decision. 	<ul style="list-style-type: none"> • Ensures consistent permit decision-making. 	<ul style="list-style-type: none"> • <i>The intent of this amendment is supported, however as outlined above it is our contention that the Heritage Council should alone be the body to which permit decisions of the Executive Director can be referred.</i>
<p><i>12. Clarify permit exemptions</i></p> <p>There is currently no threshold regarding the types of works or activities that can be exempted from a permit. It is proposed to only allow exemptions that have no detrimental impact on the assessed cultural heritage values of the place or</p>	<ul style="list-style-type: none"> • Reduces the regulatory burden and provides certainty to owners of heritage places and objects. 	<ul style="list-style-type: none"> • The intent of this amendment is supported however clear guidelines around what works constitute exempt works should be developed so that their inclusion on permit registrations is consistent. Too often the issue is of

object, as identified by the Heritage Council.		inconsistency, ambiguity or omissions.
<p><i>13. Clarify liturgical permit exemptions</i></p> <p>The Act provides permit exemptions for alterations of churches and church precincts for liturgical purposes. It is proposed to provide for all places of active religious worship to access the liturgical exemptions.</p>	<ul style="list-style-type: none"> Ensures liturgical permit exemptions are not restricted to Christian churches and church precincts. 	<ul style="list-style-type: none"> The intent of this amendment is supported; however there should be a blanket requirement that objects that might be removed in response to a current liturgical imperative are not lost or destroyed, but should be retained or stored so that future reinstatement may occur.
<p><i>14. Introduce a fee for lodging a permit appeal</i></p> <p>Costs associated with permit appeals are high and there is currently no fee required to lodge an appeal. It is proposed to:</p> <ol style="list-style-type: none"> provide for the introduction of a fee to accompany permit appeal applications require payment of the fee before the 60 day time limit for appeal determination commences include fee waiver provisions in certain circumstances. 	<ul style="list-style-type: none"> Recognises costs associated with appeals. Deters the lodgement of vexatious or opportunistic appeals. Moves operations towards a cost recovery model. 	<ul style="list-style-type: none"> This amendment is supported. The fee needs to be reasonable and in our view not more than 50% of the original permit application fee.
<p><i>15. Introduce a fee for amending permits</i></p> <p>A significant amount of work undertaken by Heritage Victoria relates to amending permits. To recognise costs associated with this work, it is proposed to prescribe a fee for applications to amend a permit.</p>	<ul style="list-style-type: none"> Ensures greater consistency with <i>Planning And Environment Act 1987</i>. 	<ul style="list-style-type: none"> This amendment is supported.

Questions

How effective are current permit and consent processes? How else could they be improved?

The current permit and consent processes are on the whole an effective and efficient process. The areas of concern are where a permit approval issued by Heritage Victoria conflicts with or disregards local planning authority heritage guidelines and controls which is of particular concern in areas where there is considerable heritage collateral such as Bendigo or Ballarat. These concerns will, it appears, be addressed by requiring the local government involvement as noted under item 2.

Of great concern is the way in which the changes appear to be removing the necessary checks and balances the Heritage Council provides within the framework of the Act and likewise the local government authority in relation to subdivisions.

The intent of the Heritage Act is for the recognition and maintenance of **heritage** within our community. The inclusion of consideration of matters outside this parameter is concerning as is the case with the one-stop-shop for subdivisions. Likewise the intent to enable matters to be referred to a legal process at VCAT that may or may not have the expertise to determine matters pertaining to heritage significance is not a change that we can support.

Are there any additional matters that should be considered by the Executive Director in determining permit applications?

There has been a recent move to include consideration of issues such as urban design within the context of ‘other matters the Executive Director may take into consideration’ as an adjunct to consideration of the retention of heritage significance. This is having the effect of blurring the focus of the manner in which a permit is assessed, introducing a subjective element to what should be an objective process. While on the one hand this could be seen as a way to support and encourage design excellence in the alteration and adaptation of existing heritage buildings or sites, or the insertion of new architecture within a heritage place, if this is the intent this should be clearly stated and the process for assessment articulated. Our fear is that this becomes an entirely subjective and stylistic judgement that may not lead to good outcomes. If there is an intent to ‘raise the bar’ in relation to achieving good design, this should be expressed as an intent within the issues to be considered by the Executive Director and allow for this debate to entered into by all parties before either the legislation is changed or it becomes the norm through the permit assessment process undertaken by Heritage Victoria.

Are the proposed changes fair and transparent?

Other than the exceptions noted above the proposed changes are reasonable and fair. In particular the amendments aimed at providing clarity and certainty around permit amendments, permit exemptions and permit appeals including the introduction of fees is supported.

3. Strengthen Compliance and Enforcement Measures

Proposed Changes	Benefits	Institute Comments
<p><i>1. Increase maximum penalties for unauthorised works and infringements notices</i></p> <p>The maximum penalty for unauthorised works to heritage places or objects should be increased to better align with other Australian jurisdictions.</p> <p>It is also proposed to create a new infringement for failure to obtain a permit or exemption before undertaking works and to increase the maximum number of penalty units that can be imposed by infringement notices.</p>	<ul style="list-style-type: none"> • The threat of higher penalties deters damage to heritage places. • The new infringement will reduce the likelihood of works being undertaken without a permit. 	<ul style="list-style-type: none"> • This amendment is supported subject to the ability to differentiate when imposing penalties between and individual and a corporation.
<p><i>2. Consolidate and clarify offence provisions relating to archaeology and shipwrecks</i></p> <p>There is currently duplication of offence provisions relating to archaeological sites and shipwrecks.</p>	<ul style="list-style-type: none"> • Ensures there is clarity and consistency in relation to obligations and compliance at 	<ul style="list-style-type: none"> • This amendment is supported.

	archaeological sites and shipwrecks.	
<p>3. Require Heritage Certificates to identify enforcement matters affecting a place or object</p> <p>The Act provides for certificates to be issued advising whether a place or object is on the Register, and whether there is a repair or Supreme Court order in place.</p>	<ul style="list-style-type: none"> • Future owners of heritage places and objects are fully aware of enforcement matters affecting the place or object. 	<ul style="list-style-type: none"> • This amendment is supported.
<p>4. Minimum standards of repair and maintenance</p> <p>Under the Act owners of a registered place or object must not allow it to fall into disrepair or fail to maintain it to the extent that its conservation is threatened. There is no guidance in relation to this requirement and it is proposed to empower the Heritage Council to issue directions for minimum standards of repair and maintenance.</p>	<ul style="list-style-type: none"> • Increased certainty of owners of places and objects regarding responsibilities to repair and maintain. 	<ul style="list-style-type: none"> • This amendment is supported in principle however the emphasis on punitive actions only is not supported.

Questions

Are current enforcement and compliance measures effective? How else could they be improved?

The enforcement and compliance measures are effective for most. The use of bank guarantees for larger projects is a useful tool to ensure the heritage component is treated with due seriousness and diligence. A potential difficulty is where the heritage practitioner is placed in a *defacto* 'acting for the authority' role, in the execution of permit conditions which appears to be a recent direction driven by the lack of personnel and resources at Heritage Victoria. It is hoped that this will be rectified.

What other measures could be introduced to prevent 'demolition by neglect'?

A balanced approach that includes incentives both in the provision of technical advice and access to substantive and meaningful funding either through tax incentives or reasonably configured loans will be less burdensome and off-putting.

4. Other Changes

Proposed Changes	Benefits	Institute comments
<p>1. Consolidate archaeology and historic shipwreck provisions</p> <p>It is proposed to simplify the Act by removing duplications in the archaeology and shipwrecks provisions.</p>	<ul style="list-style-type: none"> • Increases transparency and useability of the Act by consolidating similar provisions, repealing redundant and conflicting 	<ul style="list-style-type: none"> • This amendment is supported.

	provisions and modernising and simplifying terminology.	
<p>2. Provide for VCAT to hear covenant disputes</p> <p>Currently the Governor in Council is required to arbitrate on disputes relating to a release of a covenant where the owner, the Heritage Council or the National Trust is unable to reach agreement.</p> <p>It is proposed to require VCAT to arbitrate over covenant disputes rather than Governor in Council to be consistent with the <i>Planning and Environment Act 1987</i>.</p>	<ul style="list-style-type: none"> • VCAT offers an appropriate and simplified mechanism for resolving these disputes. 	
<p>3. Improve operation of the Heritage Fund</p> <p>The Heritage Fund is established and maintained by the Heritage Council to support its operational costs, provide assistance for conservation and management of heritage and a range of other purposes.</p>	<ul style="list-style-type: none"> • Increases the transparency of the activities of the Heritage Fund. 	<ul style="list-style-type: none"> • This amendment is supported.
<p>4. Clarify the constitution and role of Heritage Council Registration and Permit Committees</p> <p>The Heritage Council currently delegates permit appeal and registration hearing functions to committees. The Act provides little guidance on how these committees should be constituted and how they should function. It is proposed that the Act includes provisions similar to those contained in the <i>Planning and Environment Act 1987</i> for Planning Panels by:</p> <ol style="list-style-type: none"> a) providing for one or more members to constitute a committee b) clarifying the constitution arrangements and the procedures that will govern the committees within the legislation c) consolidating provisions relating to hearing procedures. 	<ul style="list-style-type: none"> • Creates a more responsive Heritage Council and increases transparency in relation to registration and permit hearings. 	<ul style="list-style-type: none"> • This amendment is supported with the following qualifications: • The committees should be constituted of the right expertise for the issue at hand; and • A minimum of three (3) members should form the committee.

<p><i>5. Other changes</i></p> <p>Other proposed minor changes to the Act include:</p> <p>a) amalgamating and revising definitions and ensuring their consistent use throughout the Act</p> <p>b) requiring that the owner of a registered place or object must advise a prospective purchaser that the place or object is included in the Register and including notification requirements for the purchaser under the Act</p> <p>c) removing the requirement to notify the Executive Director of an intention to sell a registered place or object</p> <p>d) clarifying the functions of the Executive Director,</p> <p>e) updating various provisions to allow for on-line access and availability.</p>	<ul style="list-style-type: none"> • Modernises outdated terms and practices. • Rectifies omissions. 	<ul style="list-style-type: none"> • These amendments are supported.
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Questions

What changes could be made to strengthen the role of the Heritage Council in the delivery of its functions?

The Institute supports the current structure of the Heritage Act, which provides for an independent statutory authority (Heritage Council) to manage the non-indigenous heritage assets that are determined through a rigorous process to have attained a state level of significance in this state. Any amendment or change to the Act that diminishes or removes the Heritage Council from acting in this independent manner would not be supported.

We acknowledge that the management of our State's heritage must take into consideration the views of the community through timely consultation and input from local government and other community advocacy groups. We believe this process will be strengthened through the proposed amendments.

We do not support amendments that result in the Heritage Council taking on roles and responsibilities that conflict with those rightly assumed by local government or other statutory bodies. Nor do we support those that remove from the Heritage Council the independence and responsibility to be the final arbiter in disputes that arise from the administrative activities undertaken by Heritage Victoria.

Are there any other areas of the Act where changes are required?

We would support the introduction of a targeted means of increasing the Heritage Fund through such means as a State Lottery or similar.