

# Heritage Bill

## EXPLANATORY MEMORANDUM

*Summary:* The Bill will provide a framework for heritage protection and conservation in Victoria, repeal the **Historic Buildings Act 1981** and the **Historic Shipwrecks Act 1981**, amend the **Archaeological and Aboriginal Relics Preservation Act 1972** and other Acts and provide for other purposes.

### PART 1—PRELIMINARY

*Clause 1* states the main purposes of the Act.

*Clause 2* provides for commencement.

*Clause 3* defines various words and terms.

*Clause 4* states that the Act binds the Crown in right of the State of Victoria.

*Clause 5* states that the 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 or Aboriginal traditional use.

### PART 2—HERITAGE ADMINISTRATION

*Clause 6* provides for the establishment of the Heritage Council.

*Clause 7* specifies the constitution and membership of the Heritage Council.

*Clause 8* contains the functions of the Heritage Council and the matters which the Heritage Council should have regard to in determining assessment criteria for inclusion of places and objects in the Heritage Register.

*Clause 9* enables the Heritage Council to appoint committees.

*Clause 10* enables the Heritage Council to establish advisory committees.

*Clause 11* allows the Heritage Council, a committee of the Heritage Council or an advisory committee to the Heritage Council to consult with and seek and consider advice from any other person or body and enables the Heritage Council to engage consultants.

*Clause 12* provides a power of delegation of the Heritage Council's functions under the Act.

*Clause 13* provides an immunity from liability to a member of the Heritage Council, a committee or an advisory committee.

*Clause 14* provides for the appointment of an Executive Director.

*Clause 15* contains the functions of the Executive Director.

*Clause 16* provides a power of delegation of the Executive Director's functions under the Act.

*Clause 17* allows staff to be appointed.

### **PART 3—THE VICTORIAN HERITAGE REGISTER**

*Clause 18* requires the Executive Director to establish and maintain the Victorian Heritage Register.

*Clause 19* states what must be recorded in the Heritage Register.

*Clause 20* defines the categories in which a place or object must be recorded.

*Clause 21* states what details are to be included in the Heritage Register.

*Clause 22* restricts the application of Division 2 of this Part of the Act so that it does not apply to shipwrecks etc., to which Part 5 applies.

*Clause 23* allows nominations to be made for inclusion of a place or object in the Heritage Register.

*Clause 24* requires that certain nominations not be accepted.

*Clause 25* restricts objects for which the Executive Director is able to accept nominations.

*Clause 26* allows the Executive Director to accept nominations of certain archaeological relics and places.

*Clause 27* allows the Executive Director to accept nominations of certain land which has a connection with a registered place.

*Clause 28* enables the Executive Director to ask for further information to assist the consideration of a nomination.

*Clause 29* requires the Executive Director to give notice of a nomination to the owner of a nominated place or object.

*Clause 30* allows deferral of the consideration of a nomination.

*Clause 31* requires the owner of land or an object which is the subject of a nomination to inform a purchaser of any deferral of consideration of a nomination.

*Clause 32* enables the Executive Director to make certain decisions about how nominations should be dealt with.

*Clause 33* allows the Executive Director to consult with the owner of a place and make certain recommendations.

*Clause 34* requires the Executive Director to give a statement to the owner, the nominator and the municipal council and sets out requirements relating to such a statement.

*Clause 35* requires the Executive Director to cause the statement to be published in an area where the object or place is located.

*Clause 36* lists the obligations of the owner or a place or object to whom a statement has been given under clause 34.

*Clause 37* limits the application of Division 3 of this Part.

*Clause 38* deals with submissions which may be made in relation to decisions of the Executive Director about recommending or not recommending the registration of a nominated place or object.

*Clause 39* provides for the Heritage Council to make certain decisions if the Executive Director has made a decision not to recommend a place or object for registration.

*Clause 40* contains the procedure to be followed by the Heritage Council in relation to recommendations of the Executive Director regarding the registration of a place or object where no submissions have been received under clause 38.

*Clause 41* contains the procedure to be followed by the Heritage Council in relation to recommendations of the Executive Director regarding the registration of a place or object where submissions have been received within the required time under clause 38.

*Clause 42* provides for the Heritage Council to make a decision in relation to recommendations of the Executive Director regarding the registration of a place or object.

*Clauses 43, 44 and 45* deal with the power for the Minister in certain circumstances to direct the Heritage Council to refer a recommendation to the Minister for determination.

*Clause 46* provides for a place or object to be added to the Heritage Register upon publication of a notice in the Government Gazette by the Executive Director.

*Clause 47* deals with matters relating to certain notices which the Executive Director must give to the Registrar-General and the Registrar of Titles in relation to the Heritage Register.

*Clause 48* deals with amendment of planning schemes to identify the inclusion of a place in the Heritage Register and related matters.

*Clause 49* requires that a copy of the Heritage Register or certain parts of it duly amended be kept at specified offices and be available for public inspection during office hours, and that the Executive Director forward notice of any amendment of the Heritage Register to the Minister and certain bodies.

*Clause 50* contains provisions pertaining to certificates about a place or object which certify whether or not the place or object has a specified status in relation to certain aspects of the Heritage Act.

*Clause 51* requires that the Executive Director must give written notice to the owner of a place or object, of any decision of the Heritage Council under Division 3 of this Part of the Act.

*Clause 52* requires the owner of a registered place or object to give certain notice in specified instances about a contract of sale for that place or object.

*Clause 53* provides for a registered object to remain on the Heritage Register until removed despite the destruction of the place in relation to which the object is registered.

*Clause 54* provides for the amendment of an item in the Heritage Register or its removal.

*Clause 55* limits the scope of Division 6 of this Part, which deals with interim protection orders. This clause also provides for this Division to be subject to certain regulations or emergency orders under the **Building Act 1993**.

*Clause 56* enables the Heritage Council or the Executive Director to make an interim protection order in relation to a place or object for the purposes of the Act and contains provisions relating to the serving of the order and certain other relevant matters.

*Clause 57* deals with the effect of an interim protection order.

*Clause 58* contains provisions dealing with the manner in which an interim protection order may be served and requires the Heritage Council or the Executive Director to take certain actions in specified circumstances of service of the order.

*Clause 59* requires that a notice of the existence of an interim protection order in a prescribed form be displayed while the order is in force.

*Clause 60* enables the Executive Director to authorise certain reasonable works or activities on a place or object while an interim protection order is in force in respect of a place or object, despite anything to the contrary in Part 4 of the Act.

*Clause 61* requires the Executive Director to make a decision to recommend or not recommend registration of a place or object within 60 days after an interim protection order is served.

*Clause 62* contains provisions dealing with the period of an interim protection order, including provisions relating to any extension of the period of an order by the Minister and obligations on the Heritage Council or the Executive Director regarding service of notice of the extension.

#### **PART 4—PERMITS AND COVENANTS**

*Clause 63* limits the scope of Division 1 of this Part of the Act. This Division deals with matters pertaining to permits to undertake activities in relation to a registered place or object and does not apply to shipwrecks.

*Clause 64* prohibits specified activities in relation to a registered place or object unless they are carried out with in accordance with a permit issued under this Part or are exempted under clause 65 or are activities for which the Heritage Council has determined under Part 3 of this Act that a permit is not required.

*Clause 65* allows a person in certain circumstances to carry out alterations for liturgical purposes without a permit.

*Clause 66* enables the Heritage Council to determine works and activities that may be carried out in relation to a registered place or object without a permit under this Part of the Act.

*Clause 67* contains the provisions of the Act pertaining to applications for permits to undertake activities in relation to a registered place or object.

*Clause 68* enables the Executive Director to require the display of applications for permits. The clause also requires the Executive Director in certain circumstances to cause notice of the application to be published and contains other provisions relating to display of applications and the availability of applications for inspection.

*Clause 69* allows any person to lodge a submission within 14 days of a notice being given under clause 68.

*Clause 70* requires the Executive Director to notify certain local authorities of applications for permits within 14 days of their receipt.

*Clause 71* contains the provisions of the Act pertaining to matters that must be considered by the Executive Director in determining applications for permits and the period of time within which applications must be considered, and certain other related matters.

*Clause 72* contains the provisions of the Act pertaining to decisions on the issue of permits, and decisions to refuse to issue the permit or to issue the permit on specified terms and conditions, including the lodging of a financial security, and certain other related matters.

*Clause 73* allows the applicant, the owner of a registered place or object or a person with a real and substantial interest in the registered place or object to appeal to the Heritage Council against specified determinations of the Executive Director under clause 72, and contains provisions pertaining to appeals and certain other relevant matters.

*Clause 74* requires the Heritage Council to determine an appeal within 60 days after the appeal is lodged, subject to the operation of clause 75. This clause also contains provisions relating to the determination of the appeal by the Heritage Council and requires the Executive Director to give certain notice and to issue the permit within 7 days after a determination is made by the Heritage Council.

*Clause 75* enables the Minister after an appeal has been lodged but before it is determined by the Heritage Council to direct the Heritage Council to refer the appeal to the Administrative Appeals Tribunal (AAT) or to the Minister for determination.

*Clause 76* contain provisions pertaining to determination of appeals that are referred to the AAT.

*Clause 77* contain provisions pertaining to determination of appeals where the Minister gives a direction that the appeal should be referred to the Minister for determination.

*Clause 78* allows a person to apply for a permit to undertake works or activities in relation to a place or object that has been nominated for registration and for which a permit would be required if the place or object were registered. The clause also enables the Executive Director to consider the application before the place or object is registered.

*Clause 79* provides a power of delegation of the Executive Director's functions under this Division of the Act.

*Clause 80* provides for covenants which the owner of a registered place or land on which a registered place is situated may enter into with the Heritage Council and certain other related matters.

*Clause 81* provides for covenants which the owner of a registered place, or land on which a registered place is situated or certain other land, may enter into with the National Trust with the prior approval of the Heritage Council, and certain other related matters.

*Clause 82* allows the Governor in Council in certain circumstances to determine whether a covenant which the owner of a place or land has entered into with the Heritage Council or the National Trust should be released.

*Clause 83* requires that certain notice of covenants or changes to covenants be published in a specified manner or given to certain persons and provides for the making of submissions.

*Clause 84* contains requirements relating to submissions on covenants, provides powers to the Heritage Council to make certain decisions and requires the Heritage Council to publish notice of its decisions in the Government Gazette.

*Clause 85* requires that the Heritage Register be amended if a covenant is entered into which affects unalienated land of the Crown.

*Clause 86* deals with the registration of covenants.

*Clause 87* describes the effect of registration of covenants.

## **PART 5—HISTORIC SHIPWRECKS**

*Clause 88* defines various words and terms.

*Clauses 89 to 91* require the Heritage Council to establish the Historic Shipwrecks Advisory Committee, and specify its membership and functions.

*Clause 92* enables the Executive Director to recommend that certain remains of a ship or articles be included in the Heritage Register as historic shipwrecks or historic shipwreck relics.

*Clause 93* enables the Heritage Council to make determinations relating to the registration of historic shipwrecks and historic shipwreck relics.

*Clause 94* requires the Heritage Council to consult with the Historic Shipwrecks Advisory Committee before making a determination under clause 93.

*Clause 95* contains provisions whereby remains of certain ships and certain articles are historic shipwrecks or historic shipwreck relics for the purposes of this Part of the Act.

*Clause 96* enables the Executive Director to recommend that certain articles be provisionally included in the Heritage Register as a historic shipwreck or historic shipwreck relic.

*Clause 97* enables the Heritage Council to make determinations relating to the *provisional* registration of historic shipwrecks and historic shipwreck relics and contains other provisions relating to such determinations.

*Clause 98* deals with matters pertaining to the inclusion of an area in the Heritage Register as a protected zone.

*Clause 99* provides for the remains of a ship or article, an area, an article or articles appearing to be the remains of a ship, or an article to be registered as a historic shipwreck, historic shipwreck relic or protected zone or provisionally registered as a historic shipwreck or historic shipwreck relic upon publication of a notice in the Government Gazette by the Executive Director.

*Clause 100* allows the Executive Director to cause a notice of registration under clause 99 to be published in newspapers etc.

*Clause 101* provides for the amendment or removal of any item relating to a historic shipwreck, historic shipwreck relic or protected zone from the Heritage Register.

*Clause 102* specifies obligations to provide written notice which apply to a person who obtains possession or has possession of certain articles or who finds certain remains of a ship or articles.

*Clause 103* establishes the powers of the Executive Director in relation to a person who may have possession or may have had possession of certain articles and creates related offences.

*Clause 104* enables the Executive Director by notice in writing to require a person who has possession of a historic shipwreck article or relic to take specified action for the purpose of conserving, exhibiting or providing access to the article. The clause also provides that a civil action does not lie against a person in respect of any action taken by the person pursuant to a notice given to him or her under the clause.

*Clause 105* creates an offence of removing certain articles from Victoria as it is defined in the clause.

*Clauses 106* prohibits certain activities in relation to historic shipwrecks or historic shipwreck relics, provides defences to this offence and deals with certain other related matters.

*Clauses 107* creates an offence of possessing certain equipment on or near a historic shipwreck or historic shipwreck relic in the absence of other specified circumstances.

*Clause 108* enables the Executive Director to issue permits to do specified things which would otherwise be prohibited under the Heritage Act or the shipwrecks regulations, and provides for certain matters relating to permits.

*Clause 109* allows defences to prosecution of specified offences under this Division of the Heritage Act or under the shipwrecks regulations.

*Clause 110* requires a person who finds certain articles or remains of a ship to give the Executive Director notice in writing of this. The clause also allows a defence, and provides for certain other relevant matters.

*Clause 111* allows the payment of rewards, and provides for certain other related matters.

*Clause 112* enables certain arrangements to be made with the Commonwealth.

*Clause 113* provides for vesting of ownership of a historic shipwreck or historic shipwreck relic in the Crown, and certain other matters.

*Clause 114* contain provisions relating to actions undertaken to deal with the remains of a ship that constitutes an obstruction to the safe and convenient navigation of Victorian waters or that is situated on shore in any port in Victoria.

## **PART 6—PROTECTION OF ARCHAEOLOGICAL PLACES**

*Clauses 115 to 117* require the Executive Director to establish and maintain the Heritage Inventory, list what is to be included in the Heritage Inventory and enable the Executive Director to make a recommendation for the inclusion in the Heritage Register of a place or relic listed in the Heritage Inventory.

*Clause 118* enables certain notices to be erected near registered archaeological places, and make it an offence for a person to do certain things in relation to a notice.

*Clause 119* states that all archaeological relics within a registered archaeological place are the property of the Crown.

*Clause 120* provides for the Museum of Victoria to be the official place of lodgement of archaeological relics which are the property of the Crown.

*Clause 121* creates certain offences relating to unregistered archaeological relics and sites and provides that a person is not guilty of an offence if he or she picks up an archaeological relic exposed in or on the surface of land.

*Clause 122* provides for the safeguarding of archaeological relics, and provides for certain other relevant matters in relation to archaeological relics.

*Clause 123* enables the Executive Director to issue a consent to a person to do certain things in relation to an archaeological relic, and requires the person to comply with the terms and conditions of the consent.

*Clause 124* enables the Executive Director to direct the excavation of a registered archaeological place and to remove relics from it and makes it an offence to interfere with the excavation or examination directed by the Executive Director.

*Clause 125* requires a person undertaking an investigation of an archaeological site or object to notify the Executive Director of that intention and to provide site documentation.

*Clause 126* requires the discovery of archaeological relics to be reported and provides a defence to any proceedings under this clause if the defendant did not know or could not reasonably be expected to know that the relic was an archaeological relic.

*Clause 127* enables the Executive Director to take certain actions to protect archaeological relics and creates a related offence.

*Clause 128* creates an offence relating to the buying, selling or possessing of archaeological relics without the consent of the Executive Director except where the person had possession of the archaeological relic prior to the commencement of the **Archaeological and Aboriginal Relics Preservation Act 1972**.

## **PART 7—THE HERITAGE FUND**

*Clause 129* establishes the Heritage Fund and provides for certain other related matters.

*Clause 130* provides for payments into the Heritage Fund, the investment of money credited to the Fund and the crediting to the Fund of interest earned by such investments.



*Clause 131* provides for payments out of the Heritage Fund and allows the Executive Director to apply money for certain specified purposes.

*Clause 132* enables the Heritage Council in certain circumstances to borrow money.

*Clause 133* enables the Heritage Council in certain circumstances to accept gifts etc.

*Clause 134* allows the Executive Director, with the consent of the Heritage Council to make a grant or loan for specified purposes

*Clause 135* deals with the rate of interest on loans from the Heritage Fund.

*Clause 136* enables the Heritage Council with the consent of the Minister to acquire land for the purposes of the Act. The clause also contains provisions related to such acquisitions.

*Clause 137* enables the Heritage Council in certain circumstances to borrow money and, with the consent of the Minister, to sell, lease, exchange or otherwise deal with certain property.

*Clause 138* enables the Heritage Council, with the consent of the Minister, to provide special assistance to the owner or a registered place for the purpose of conserving that place. The clause also deals with certain related matters.

*Clause 139* contains provisions dealing with the circumstances in which any land tax or rate remitted under clause 138 or any corresponding previous provision, becomes payable. The clause also provides for certain other related matters.

*Clause 140* enables the Executive Director to appoint inspectors for the purposes of the Act.

*Clause 141* requires the Executive Director to issue an identity card to each inspector (unless that inspector is a member of the police force), and provides for certain related matters.

*Clause 142* requires an inspector to produce his or her identity card in certain circumstances.

*Clause 143* enables an inspector in certain circumstances to require a person to state his or her name and address and states certain obligations of inspectors exercising this power.

*Clause 144* states the powers of inspectors or authorised persons to enter land and premises and record information for certain purposes of the Act.

*Clause 145* states the powers of inspectors in relation to archaeological relics.

*Clause 146* enables an inspector in certain circumstances to impound and detain an archaeological relic and if a conviction for an offence against this Act occurs, allows a court to order that an archaeological relic be forfeited to the Crown.

*Clause 147* states the powers of inspectors in relation to the Part of this Act and the regulations dealing with historic shipwrecks, and provides for certain related matters.

*Clause 148* enables an inspector to arrest a person without warrant in certain circumstances relating to offences in respect of shipwrecks, and provides for certain related matters.

*Clause 149* allows in certain circumstance for an inspector to apply to a magistrate for a search warrant and for a warrant to be issued to do certain things. The clause lists certain kinds of information which must be stated in the search warrant and requires that the warrant be issued in accordance with the **Magistrates Court Act 1989**. This clause relates only to certain offences in respect of historic shipwrecks or shipwreck relics.

*Clause 150* enables an inspector in certain circumstances to seize or detain any ship, vehicle, equipment or article and provides for related matters including release or forfeiture of the ship.

*Clause 151* creates an offence in relation to hindering an inspector.

*Clause 152* creates an offence in relation to impersonating an inspector.

*Clause 153* requires police officers to assist inspectors if it is practicable to do so.

*Clause 154* creates an obligation on an owner of a registered place or object to not allow that place or object to fall into disrepair or fail to maintain the place or object to the extent that its conservation is threatened.

*Clause 155* enables the Executive Director, with the consent of the Heritage Council, in certain circumstances to serve written notice on the owner of a registered place or object requiring the owner to show cause why an order should not be made that specified works be carried out in relation to the place or object.

*Clause 156* enables the Executive Director, with the consent of the Heritage Council, in certain circumstances to order that specified works be carried out in relation to a registered place or object.

*Clause 157* enables the owner of the place or object to appeal to the Administrative Appeals Tribunal against an order made under clause 156. The clause also provides for matters related to the hearing of the appeal and the date of effect of the appeal decision.

*Clause 158* requires the owner on whom an order under clause 156 is served to comply with that order.

*Clauses 159 to 161* provide for orders of the Supreme Court to be made to remedy or restrain a contravention of this Act, including a contravention of the conditions of a permit etc. and including a threatened or apprehended contravention.

*Clause 162* enables an inspector to serve an infringement notice on any person that the inspector has reason to believe has committed a prescribed offence against this Act or the regulations. The clause also provides for the form of the notice.

*Clause 163* enables an inspector to serve an infringement notice on any person that the inspector has reason to believe has committed a prescribed offence against this Act or the regulations and to require additional steps to be taken to expiate the alleged offence. The clause also provides for the form of the notice.

*Clause 164* provides for the withdrawal of an infringement notice and related matters.

*Clause 165* contains provisions relating to the expiation of an offence, including where an infringement notice states that additional steps must be taken, and also deals with matters related to payment of the penalty.

*Clause 166* provides for proceedings where an infringement notice has been served and certain related matters.

*Clause 167* states how documents may be served under this Act or the regulations.

*Clause 168* deals with the period for which proceedings for an offence may be brought.

*Clause 169* lists the persons who may take proceedings for an offence under the Act.

*Clause 170* provides that in any proceedings for an offence against this Act, certain certificates are to be evidence of the matters stated in them.

*Clause 171* provides that in any proceedings for an offence against Part 5 of this Act or the shipwrecks regulations, a statement of an inspector as to certain matters is to be evidence of that fact.

*Clause 172* provides that evidence that a person had possession of a historic shipwreck or historic shipwreck relic in certain circumstances and without a permit under Part 5 is evidence, and in the absence of evidence to the contrary is proof, that the person took the shipwreck or relic in contravention of Part 5 or the shipwrecks regulations.

*Clause 173* contains provisions relating to offences by bodies corporate.

## **PART 9—GENERAL**

*Clause 174* states that it is the intention of this section to limit the jurisdiction of the Supreme Court to the extent necessary to prevent it entertaining actions of the kind described in section 104 (5) of this Act.

*Clauses 175 to 177* enable the Governor in Council to make regulations necessary for carrying this Act into effect including regulations relating to historic shipwrecks and historic shipwreck relics and provide certain additional regulation-making powers.

## **PART 10—GENERAL TRANSITIONAL PROVISIONS**

*Clause 178* contains general transitional provisions.

*Clauses 179 to 193* contain transitional provisions relating to the **Historic Buildings Act 1981**. In particular, clause 184 enables the Governor in Council, by order published in the Government Gazette, to declare that any building or land or object on the register of government buildings under the **Historic Buildings Act 1981** is included in the Heritage Register. Clause 184 ceases to have effect upon the commencement of clause 205.

*Clauses 194 to 201* contain transitional provisions relating to the **Historic Shipwrecks Act 1981**.

*Clauses 202 and 203* contain transitional provisions relating to the **Archaeological and Aboriginal Relics Preservation Act 1972**.

## **PART 11—REPEALS AND CONSEQUENTIAL AMENDMENTS TO OTHER ACTS**

*Clause 204* provides for certain provisions of the **Historic Buildings Act 1981** to continue to apply to designated buildings under that Act for two years from the date that section 204 comes into operation. This clause also provides for certain other relevant matters.

*Clause 205* repeals the **Historic Buildings Act 1981** and certain related Acts.

*Clause 206* repeals the **Historic Shipwrecks Act 1981** and a related Act.

*Clause 207* amends the **Archaeological and Aboriginal Relics Preservation Act 1972**.

*Clause 208* makes minor consequential amendments to other Acts as specified in Schedule 2.

*Schedule 1* deals with matters relating to the membership and procedures and minutes of meetings of the Heritage Council, including such matters as terms of appointment of members and fees and allowances payable to them, and with procedures and fees and allowance or remuneration of its committees and advisory committees.

*Schedule 2* lists the consequential amendments to be made to the **Building Act 1993**, the **Casino Control Act 1991**, the **Libraries Act 1988**, the **Magistrates' Court Act 1989**, the **Mineral Resources Development Act 1990**, the **Planning Appeals Act 1980**, the **Planning and Environment Act 1987** and the **Valuation of Land Act 1960**.