

Historic Buildings (Further Amendment) Act 1991

No. 45 of 1991

TABLE OF PROVISIONS

Section

1. Purpose
2. Commencement
3. Functions of Council
4. Committees
5. Delegation by Council
6. New section 11A inserted
 - 11A. Delegation by Minister
7. Registration
8. Certificates
9. Permit applications
10. Permits
11. Jurisdiction of Administrative Appeals Tribunal
12. Show cause notices
13. Appeals
14. Offences
15. Interim preservation orders
16. Historic Buildings Fund
17. New sections 45, 45A and 45B inserted
 45. Accounts and records
 - 45A. Annual report
 - 45B. Audit
18. Loans and grants
19. Power of entry
20. Repeal of section 62
21. Transitional



Victoria

No. 45 of 1991

Historic Buildings (Further Amendment) Act 1991

[Assented to 18 June 1991]

The Parliament of Victoria enacts as follows:

1. *Purpose*

The purpose of this Act is to amend the **Historic Buildings Act 1981** to improve the operation of the Historic Building Council.

2. *Commencement*

This Act comes into operation on a day to be proclaimed.

3. *Functions of Council*

After section 9 (4) of the **Historic Buildings Act 1981** insert—

Historic Buildings (Further Amendment) Act 1991
Act No. 45/1991

- “(5) In carrying out its functions under this Act the Council may prepare, or commission the preparation of, or adopt any guidelines, statements of policy, reports, studies and conservation plans it thinks fit.
- (6) In carrying out its functions under this Act, the Council or a committee may have regard to any document prepared or adopted under sub-section (5).”.

4. *Committees*

- (1) For section 10 (1) of the **Historic Buildings Act 1981** substitute—

“(1) For the purposes of this Act, the Council may appoint committees consisting of not less than 3 members of the Council.

- (1A) A committee appointed under sub-section (1) must consist of not less than 3 and not more than 5 members of the Council if it is appointed to—

- (a) conduct a hearing under section 18 (8); or
(b) consider and determine an application for a permit or declaration under section 26 or 27.”.

- (2) For section 10 (3) of the **Historic Buildings Act 1981** substitute—

“(3) Three members of the Council shall constitute a quorum of a committee.”.

5. *Delegation by Council*

In section 11 of the **Historic Buildings Act 1981**—

- (a) in sub-section (1) for “sub-committee” (wherever occurring) substitute “committee”; and
- (b) in sub-section (1) (b) for “sections 9 (1) (a), 18, 19, 35, 36 and 40” substitute “sections 9 (1) (a), 18 (6), 18 (8), 19, 35 and 36”; and
- (c) in sub-section (3) after “officer” (where twice occurring) insert “or committee”.

6. New section 11A inserted

After section 11 of the **Historic Buildings Act 1981**
insert—

“11A. Delegation by Minister

The Minister may by instrument delegate to the Director any powers or functions of the Minister under section 32D in relation to alterations to designated buildings.”

7. Registration

(1) After section 18 (1) of the **Historic Buildings Act 1981**
insert—

“(1AAA) An applicant under sub-section (1) may at any time before a hearing is held under sub-section (8) in relation to the application—

(a) amend the application; or

(b) provide additional information to the Council in respect of the application.

(1AAB) Nothing in sub-section (1AAA) prevents the Council from requesting the owner to provide further information in relation to an application.”

(2) After section 18 (2A) of the **Historic Buildings Act 1981**
insert—

“(2B) A notice under sub-section (2) must be given within 30 days after the Council resolves to make the examination.”

(3) For section 18 (7) of the **Historic Buildings Act 1981**
substitute—

“(7) In making an examination the Council must consider—

(a) the aesthetic, scientific, architectural, historic or social value of the building; and

(b) any relevant guidelines or statements of policy adopted by the Council.

Historic Buildings (Further Amendment) Act 1991
Act No. 45/1991

- (7A) The Council may refuse to make a recommendation under sub-section (6) in respect of a building if it considers that it is more appropriate for steps to be taken under the **Planning and Environment Act 1987** or by any other means to preserve the building.”.
- (4) In section 18 (8) of the **Historic Buildings Act 1981** after “recommendation” (where secondly occurring) insert “and a statement of significance in respect of the building.”.
- (5) After section 18 (9) of the **Historic Buildings Act 1981** insert—
- “(10) An application under sub-section (1) to add a building to the register, lapses at the end of 2 years after the date on which the Council received the application unless the Council has commenced an examination pursuant to sub-section (1) in relation to the application within that period.
- (11) The lapsing of an application in respect of a building under sub-section (10) does not prevent the Council from making an examination in relation to a building of its own motion or at the direction of the Minister or on any other application under sub-section (1).”.

8. *Certificates*

After section 22 (*d*) of the **Historic Buildings Act 1981** insert—

- “(e) whether any building on the land is the subject of an application or examination under section 18 (1);
- (f) whether a declaration is in force under section 26 (7) or 26 (8) in relation to the building specifying alterations or classes of alterations which may be carried out without a permit;
- (g) whether an order for the carrying out of repairs is in force under section 36 in respect of a building on the land;

- (h) whether an order of the Supreme Court is in force under section 54 to remedy or restrain a breach of this Act in respect of a building on the land;
- (i) whether a building on the land is the subject of a declaration under section 57, preventing the use or development of the building or the land or both.”.

9. Permit applications

- (1) At the end of section 26 (2) of the **Historic Buildings Act 1981** insert—

“Penalty: 1500 penalty units or 2 years imprisonment”.

- (2) In section 26 (3) of the **Historic Buildings Act 1981** after “land” insert “or the authorised agent of the owner”.

- (3) After section 26 (3) of the **Historic Buildings Act 1981** insert—

“(3A) An application by an agent of the owner under sub-section (3) must be accompanied by the owner’s written authority authorising the agent to so apply.

(3B) The Council may require the owner to provide it with more information before it deals with the application.

(3C) A request under sub-section (3B) must be made within 30 days of receipt of an application.

(3D) Only one request may be made under sub-section (3B) in respect of an application.

(3E) If a request is made under sub-section (3B) the application is to be taken to have been received under this Act on the day on which the further information is provided to the Council.”

- (4) In section 26 (4) of the **Historic Buildings Act 1981**—

(a) in paragraph (b) for “unless in the case of a proposed alteration it considers the alteration will not” substitute “if the Council considers the proposed alteration may”; and

(b) in paragraph (c) for “28 days” substitute “14 days”.

- (5) After section 26 (4) of the **Historic Buildings Act 1981** insert—

Historic Buildings (Further Amendment) Act 1991
Act No. 45/1991

“(4A) The owner must pay the cost of any notice given under sub-section (4) (b).”.

(6) In section 26 (6) of the **Historic Buildings Act 1981** for “28 days” substitute “14 days”.

(7) After section 26 (6) of the **Historic Buildings Act 1981** insert—

“(6A) An applicant may at any time—

(a) withdraw an application made under this section; and

(b) with the written approval of the Director, make minor amendments to an application.”.

10. Permits

(1) After section 27 (3) of the **Historic Buildings Act 1981** insert—

“(3A) The Council must notify the applicant of any extension granted under sub-section (3) within 14 days after it is granted.”

(2) After section 27 (4) of the **Historic Buildings Act 1981** insert—

“(4A) Any person who fails to comply with a permit or a condition of a permit is guilty of an offence and liable to a penalty of up to 1500 penalty units or 2 years imprisonment.”

11. Jurisdiction of Administrative Appeals Tribunal

In section 31A of the **Historic Buildings Act 1981** for “30 or 31” substitute “30, 31 or 37”.

12. Show cause notices

After section 35 (3) of the **Historic Buildings Act 1981** insert—

“(4) An owner cannot challenge the validity of a notice referred to in sub-section (1) on a ground based on the Council’s opinion of a purpose stated in the notice.

- (5) Sub-section (4) does not affect—
- (a) the ability of the owner to show cause why an order should not be made under section 36; or
 - (b) the ability of the Administrative Appeals Tribunal to rehear the matter under section 37.”.

13. Appeals

- (1) In section 37 of the **Historic Buildings Act 1981**—
- (a) in sub-section (1)—
 - (i) for “the County Court” (where first occurring) **substitute** “the Administrative Appeals Tribunal”; and
 - (ii) for “the County Court” (where secondly occurring) **substitute** “the Tribunal”; and
 - (iii) for “the Court” (where twice occurring) **substitute** “the Tribunal”; and
 - (b) in sub-section (2) for “the Court” **substitute** “the Tribunal”.
- (2) In section 38 of the **Historic Buildings Act 1981**—
- (a) for “a judge” **substitute** “the Administrative Appeals Tribunal”; and
 - (b) at the end of that section **insert** “and be liable to a penalty of up to 1500 penalty units or 2 years imprisonment.”.

14. Offences

Section 39 (1) of the **Historic Buildings Act 1981** is repealed.

15. Interim preservation orders

- (1) In section 40 (2) of the **Historic Buildings Act 1981**—
- (a) after “effect” **insert** “or a reproduction of that order”; and
 - (b) after “owner” **insert** “,occupier or person apparently in charge”; and

Historic Buildings (Further Amendment) Act 1991
Act No. 45/1991

- (c) after “investigated by the Council” insert “(whether under section 18 or otherwise)”.
- (2) In section 40 (3) of the **Historic Buildings Act 1981**—
- (a) for “the owner” substitute “a person”;
- (b) after paragraph (c) insert—
- “(d) by forwarding it electronically to the person at the usual or last known place of abode or business of the person; or
- (e) by displaying it on the building.”
- (3) For section 40 (4) of the **Historic Buildings Act 1981** substitute—
- “(4) If an interim preservation order is served on any person other than the owner or is served on the owner by displaying it on the building the Council must as soon as possible after the service of the order—
- (a) cause a copy of the order to be served on the owner of the building pursuant to sub-section (3) (a)(b) (c) or (d); 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.”.
- (4) In section 40 (5) of the **Historic Buildings Act 1981** for “an owner pursuant to sub-section (3) or on an occupier pursuant to sub-section (4), the owner or occupier (as the case may be)” substitute “any person pursuant to sub-section (3), that person”.
- (5) In section 40 (6) of the **Historic Buildings Act 1981** for “An owner or occupier” substitute “A person”.
- (6) At the end of section 40 (7) of the **Historic Buildings Act 1981** insert “and liable to a penalty of up to 1500 penalty units or 2 years imprisonment”.
- (7) For section 40 (9) (a) of the **Historic Buildings Act 1981** substitute—
- “(a) shall take effect from the day it is served on the owner, occupier or person apparently in charge of the building pursuant to sub-section (3);”

- (8) After section 40 (9) of the **Historic Buildings Act 1981** insert—

“(10) The Council must notify the owner of the decision within 14 days after an extension of time is granted under sub-section (9).”.

16. Historic Buildings Fund

After section 43 (3) (a) of the **Historic Buildings Act 1981** insert—

“and

(aa) all fees paid under this Act; and”

17. New sections 45, 45A and 45B inserted

For section 45 of the **Historic Buildings Act 1981** substitute—

“45. Accounts and records

- (1) The Council must ensure that there are kept proper accounts and records of the transactions and affairs of the Council and such other records as sufficiently explain the financial operations and financial position of the Council.
- (2) The Council must do all things necessary to do each of the following:
 - (a) ensure that all money payable to the Council is properly collected;
 - (b) ensure that all money expended by the Council is properly expended and properly authorised;
 - (c) ensure that adequate control is maintained over assets owned by, or in the custody of, the Council;
 - (d) ensure that all liabilities incurred by the Council are properly authorised;

Historic Buildings (Further Amendment) Act 1991
Act No. 45/1991

- (e) ensure efficiency and economy of operations and avoidance of waste and extravagance;
- (f) develop and maintain an adequate budgeting and accounting system;
- (g) develop and maintain an adequate internal audit system.

45A. Annual report

- (1) The Council must, in respect of each financial year, prepare an annual report containing—
 - (a) a report of its operations during the financial year; and
 - (b) financial statements for the financial year—

and submit the report to the Minister not later than 31 October next following the financial year.

- (2) The report of operations referred to in subsection (1) (a)—
 - (a) must be prepared in a form and contain information determined by the Council to be appropriate; and
 - (b) must contain—
 - (i) a summary of all recommendations made by the Council to the Minister during that year; and
 - (ii) particulars of all additions to, deletions from and other amendments of, the register and the register of government buildings during that year; and
 - (iii) particulars of any financial assistance provided under Part IV during that year; and
 - (iv) any further information required by the Minister.

- (3) The financial statements referred to in subsection (1) (b)—
- (a) must contain information determined by the Treasurer to be appropriate; and
 - (b) must be prepared in a manner and form approved by the Treasurer; and
 - (c) must present fairly the results of the financial transactions of the Council during the financial year to which they relate and the financial position as at the end of that year; and
 - (d) must be signed by the principal accounting officer (by whatever name called) of the Council and by the Chairman and another member of the Council who shall—
 - (i) state whether, in their opinion, the financial statements present fairly the results of the financial transactions of the Council during the financial year to which they relate and whether they sufficiently explain the financial position of the Council as at the end of the financial year; and
 - (ii) state whether, at the date of signing the financial statements, they were aware of any circumstances that render any particulars included in the statements misleading or inaccurate and, if so, particulars of the circumstances; and
 - (e) be audited as required by section 45B (1).
- (4) The Minister must cause each annual report submitted to the Minister under this section to be laid before the Legislative Council and the Legislative Assembly before the expiration of the seventh sitting day of the Legislative Council or the Legislative Assembly, as the case may be, after the annual report has been received by the Minister.

Historic Buildings (Further Amendment) Act 1991
Act No. 45/1991

- (5) If the Council fails to submit an annual report to the Minister—
- (a) if an extension has not been granted under sub-section (7), by 30 September in any year; or
 - (b) if such an extension has been granted by the date to which the extension was granted—

the Minister must report or cause to be reported that failure and the reasons for the failure to each House of the Parliament.

- (6) The Council may apply in writing to the Minister for an extension of the date by which an annual report is to be submitted to the Minister.
- (7) The Minister may in writing grant to the Council an extension to such date as the Minister determines.
- (8) The Minister must advise or cause to be advised each House of the Parliament of each extension granted under this section and the reasons for the extension.
- (9) This section does not apply to the Council if, as a result of an Order made under the **Annual Reporting Act 1983**, the Council is required to submit an annual report under that Act.

45B Audit

- (1) The financial statements referred to in section 45A must be audited by the Auditor-General.
- (2) The Auditor-General has, in respect of the audit of the financial statements, all the powers conferred on the Auditor-General by any law relating to the audit of the public accounts.
- (3) Without limiting the generality of sub-section (2), the Auditor-General and each officer of the Auditor-General—

- (a) has right of access at all times to the books of the Council; and
 - (b) may require from an officer or employee of the Council any information, assistance and explanations necessary for the performance of the duties of the Auditor-General in relation to the audit.
- (4) The Council must pay to the Consolidated Fund an amount to be determined by the Auditor-General to defray the costs and expenses of any audit by the Auditor-General.”.

18. Loans and grants

In section 47 (1) of the **Historic Buildings Act 1981** for “, other than a government building” substitute “or a designated building”.

19. Power of entry

After section 61 (1) of the **Historic Buildings Act 1981** insert—

- “(1A) Any member of the Council or any person who is authorised by the Council to enter into and upon any building or land may in the course of that entry—
- (a) take photographs; and
 - (b) make measurements or sketches; and
- (c) use any other means of recording information necessary for the purposes of this Act.”.

20. Repeal of section 62

Section 62 of the **Historic Buildings Act 1981** is repealed.

21. Transitional

- (1) Despite anything to the contrary in this Act, the **Historic Buildings Act 1981** continues to apply (as if this Act had not been enacted) to and in relation to—

Historic Buildings (Further Amendment) Act 1991
Act No. 45/1991

- (a) any application made under section 18; and
- (b) any examination begun under section 18; and
- (c) any application made under section 22; and
- (d) any application made under section 26; and
- (e) any examination begun under section 27; and
- (f) any notice served under section 35; and
- (g) any order served under section 36; and
- (h) any interim preservation order served under section 40—

of the **Historic Buildings Act 1981** before the commencement of this Act.

- (2) Despite anything to the contrary in this Act, the **Historic Buildings Act 1981** continues to apply (as if this Act had not been enacted) to and in relation to any appeal made under section 37 of the **Historic Buildings Act 1981** before or after the commencement of this Act against an order made under section 36 (1) of the **Historic Buildings Act 1981** before that commencement.
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NOTES

1. *Minister's second reading speech—*
Legislative Assembly: 8 May 1991
Legislative Council: 30 May 1991
2. The long title for the Bill for this Act was "A Bill to further amend the **Historic Buildings Act 1981** and for other purposes."
3. Section headings appear in bold italics and are not part of the Act. (See **Interpretation of Legislation Act 1984**).