

Regulatory Impact Statement

Heritage Regulations 2017
Heritage (Underwater Cultural Heritage) Regulations 2017

June 2017

Notice

The Department of Environment, Land, Water and Planning (the department) acknowledges its responsibility for this Regulatory Impact Statement (RIS) that sets out the impacts of the proposed Heritage Regulations 2017 and Heritage (Underwater Cultural Heritage) Regulations 2017.

This RIS has been prepared for the express purpose of supporting the proposed regulations and other potential uses of the information contained in the RIS has not been a consideration in its development. No reliance should be placed on this document for any other purpose.

The information, statements, statistics and commentary contained in this RIS have been substantially prepared by Regulatory Impact Solutions from material provided by or through the department.

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EXECUTIVE SUMMARY

Background

The *Heritage Act 2017* (the Act) provides a modern framework for the protection and conservation of places and objects of cultural heritage significance. Under the Act a place can include an archaeological site, a building, a garden, a landscape, a precinct, or a shipwreck. The Act will commence operation on 1 November 2017, replacing the *Heritage Act 1995*.

The purpose of the Act is to provide for the protection and conservation of the Victoria's cultural heritage. It does this by establishing the Heritage Council, the Heritage Fund, a register of places and objects of state significance, and an inventory of archaeological sites.

The Act establishes, among other things:

- the Heritage Council and the role of the Executive Director (who is supported by Heritage Victoria a business unit within the Department of Environment, Land, Water and Planning – 'the department'), and sets out the functions of each in relation to decision making under the Act
- the process by which places and objects can be nominated for inclusion in the Victorian Heritage Register, and how decisions on registration are made and reviewed
- obligations on owners and managers of registered places and objects to maintain the registered places and objects
- the process for approval of works or activities in relation to registered places or objects
- notification and protection of historic and registered shipwrecks, and historic and registered shipwreck artefacts
- the management of archaeological sites
- enforcement and compliance provisions, including penalties for unauthorised works to registered places and objects.

This Regulatory Impact Statement (RIS) relates to the following regulations proposed to be made under the Act:

- Heritage Regulations 2017; and
- Heritage (Underwater Cultural Heritage) Regulations 2017.

RISs are prepared to explain the rationale and impacts of proposed statutory rules. While the impact of each set of regulations pertaining to the Act is not expected to be significant, the primary purpose of this RIS is to inform public consultation on the proposed regulations.

What is being proposed, and why?

The proposed regulations set fees for certain activities, set penalties and infringement offences, and prescribe certain documents and forms. The outcomes sought to be achieved by the proposed regulations are to:

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- recover an appropriate amount of government costs associated with performing functions under the Act. An appropriate amount balances cost recovery objectives and other heritage policy objectives
- ensure that relevant information is efficiently provided to the Executive Director and the Heritage Council to meet their statutory duties
- provide for the integrity of the protection of registered and historic shipwrecks and historic and registered artefacts, and protected zones.

Allowing people to undertake works or activities on heritage places or objects, archaeological sites or artefacts, registered or historic shipwrecks, and registered or historic shipwreck artefacts, can pose a risk to cultural heritage. To manage this risk, permits or consents are required under the Act. Managing these processes results in costs to government. A principle of cost recovery is that those who give rise to the risk should contribute to the costs of the processes needed to manage that risk.

Currently, fees collected under the existing regulations recover in the order of \$0.5 million per year, which is paid into the Heritage Fund. The Heritage Fund is used to provide assistance for the conservation and management of cultural heritage places and objects, the making of loans and grants, and to cover various Heritage Council expenses relating to administration of the Act.

The fees in the Heritage (General) Regulations 2015, and the Heritage (Historic Shipwreck) Regulations 2007 have not been comprehensively reviewed in over 10 years. These fees no longer reflect the cost to government of undertaking these activities and do not comply with the government policy objective of setting fees to recover an appropriate share of the cost of the associated activities.

The cost to the department and the Heritage Council of undertaking their various regulatory functions under the Act is anticipated to be in the order of \$2.5 million per year. Not all of this is expected to be recovered through fees—for example the Act does not allow the setting of a fee for making a nomination of a place or object to the Victorian Heritage Register as it is a policy position that nominating places is for the wider public benefit. The department estimates that the actual cost of providing the services that could be charged a fee under the Act will be around \$1.8 million per year. Even allowing for the continuation of fee waivers and concessions in some situations, this still suggests a need to increase fees, although not all fees will be set to recover the full cost. It is expected that the proposed fees, under both sets of regulations, will collect around \$1.7 million per year in total.

The following table provides a summary of the proposed new fees, and changes from the current fees. The full list of proposed fees can be found at Appendix A on page 45.

Table 1: Fees included in the proposed regulations (summary)

Fee	Current fee (from 1 July 2017)		Proposed fee (from 1 November 2017)		% change
	Fee units	Fee amount	Fee units	Fee amount	
Review of ED refusal					

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Request for review of the Executive Director's refusal of nomination	new fee		250	\$3,555.00	NA
Heritage Certificates					
Applying for a certificate stating relevant heritage information about a place or object	4	\$56.88	6	\$85.32	50%
Underwater cultural heritage permits					
Permits to enter protected zones for various purposes; interference or use of shipwrecks or shipwreck artefacts (Fee class depends on the specific purpose or activity)	NA*	\$20 to \$1,300	1 to 1500	\$14.22 to \$21,330.00	Up to 3455%
Permits for works or activities at registered places					
Subdivision, consolidation or realignment of a boundary of a registered place or the subdivision of a building; undertake works or activities to a registered place or registered object (different fee classes based on value of works); demolish 50 per cent or more of a registered place or object	9 to 551	\$127.98 to \$7,835.22	20 to 1500	\$284.40 to \$21,330.00	118% to 2208%
Amend an unadvertised permit application to undertake works or activities to a registered place or object	new fee		45% of corresponding permit fee		NA
Amend an advertised permit application to undertake works or activities to a registered place or object	new fee		75% of corresponding permit fee		NA
Amend an unadvertised permit application to demolish or partially demolish a registered place or object	new fee		20% of corresponding permit fee		NA
Amend an advertised permit application to demolish or partially demolish a registered place or object	new fee		30% of corresponding permit fee		NA
Amend a permit to undertake works or activities to a registered place or object	new fee		75% of corresponding permit fee		NA
Amend a permit application to demolish or partially demolish a registered place or object	new fee		30% of corresponding permit fee		NA
Review of Executive Director's determination relating to permit to undertake works or activities in relation to a registered place or object	new fee		200% of corresponding permit fee		NA
Review of Executive Director's determination to demolish or partially demolish a registered place/object	new fee		40% of corresponding permit fee		NA
Archaeological consents					
Consent to uncover and expose an archaeological site or part of an archaeological site; excavate an archaeological site or part of an archaeological site; damage and disturb an archaeological site or part of an archaeological site	15 to 48	\$213.30 to \$682.56	20 to 400	\$284.40 to \$5,688.00	33% to 733%
Possess or dispose of archaeological artefacts, to undertake geotechnical or soil testing, trenching or boring in order to install, maintain or upgrade service utilities to an archaeological site, or a site recorded in the Heritage Inventory, or a test archaeological excavation as part of a Cultural Heritage Management Plan under the <i>Aboriginal Heritage Act</i> , or for all other purposes for which a consent is required in relation to an archaeological artefact, archaeological site, or a site recorded in the Heritage Inventory	new fee		75	\$1,066.50	NA
Review of Executive Director's determination in relation to a consent	new fee		45% of corresponding consent fee		NA

* Fees for shipwrecks permits are presently expressed in dollar terms, rather than in monetary units. Under the proposed regulations, all fees will be expressed in terms of fee units.

The fee classes within the works permits, archaeological consents and underwater cultural heritage permits are also proposed to change from the current classes. This is to align with changes in the Act and to better differentiate fees based on different activities. See the discussion in section 4.1 (page 25) for further information on these changes.

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It is proposed that in some cases, fees will be set below the full cost, while others will be set to recover more than the actual cost. This reflects the department's consideration of a fair balance of costs between those that give rise to the need to manage the permit and consent frameworks, while recognising that some of the allowed activities may have some benefit for the wider community. Fees have also been set with the objective of avoiding non-compliance. As a result, it is proposed that there will be some minor cross-subsidisation between different fee groups.

The department proposes that some fees (mostly for permits for smaller value works or consents related to single dwellings) be set below full cost recovery. To offset the forgone revenue of these fees set below their full cost, it is proposed to increase the fee for heritage certificates to slightly more than full cost recovery. This reflects the fact that the social, economic and environmental benefits delivered by well-maintained heritage assets are as a result of the efforts of a minority, but enjoyed by the majority. This increased fee for heritage certificates—which are applied for far more frequently than any other fee-attracting activity—allows the costs of administrative activities under the Act to be spread over a much wider group and be shared more evenly.

A small number of other fees are set above their full cost. These relate to activities that would involve or may risk substantial damage or the complete destruction of the heritage value of a place or object. The risk these applications pose to heritage value is extremely high and there is a sound justification for these applicants bearing a higher share of the costs associated with maintaining a well-regulated heritage system overall. The fee therefore seeks to capture this negative outcome and thereby act as a better value indicator to those wishing to undertake such activities.

The department considered two alternative options to set fees at full cost recovery. These models were:

- full cost recovery – this was also based on the proposed fee structure, with fees set to recover costs for each fee class
- a streamlined full cost recovery – this was also based on the proposed fee structure, but with the different classes within each fee type removed (i.e. “flat fees”).

These approaches were found to be inferior. Although the full cost recovery model provides an efficient outcome, the department anticipates that it would have undesired effects in terms of compliance. For example, large fees for small value works could result in people not seeking a permit, resulting in damage to cultural heritage places or objects. The flat fee model also had a number of disadvantages, such as resulting in permits for minor works subsidising those for larger works as categories were collapsed.

Under the current regulations, fees may be waived in certain circumstances and certain groups or activities may be exempt from paying some fees. In the past waivers or exemptions have been requested rarely relative to the number of transactions. The proposed regulations will continue to provide the ability to waive

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fees under a range of circumstances, although these will now be determined by the Heritage Council. The waivers proposed in the regulations have been expanded to cover a greater range of activities and users than provided for under the current regulations, such as a waiver for consent applications for archaeological sites that have low archaeological value. The waiver provisions have also been made consistent across fee types. As a result of these changes, it is not known whether the frequency of waivers or exemptions will increase or decrease under the proposed regulations, although they are still expected to be a very small proportion overall.

There will continue to be no fee for nominating a place or object to the Victorian Heritage Register. This reflects the policy position that including places and objects in the Register is for the wider public benefit and nominations for places and objects with a prima facie case for state-level cultural heritage significance should be encouraged.

The proposed regulations also prescribe a number of forms necessary to efficiently perform functions under the Act. These are:

- nomination of a place or object for inclusion in the Victorian Heritage Register
- submission to the Heritage Council on a recommendation to include or not include a place or object in the Register
- application to obtain a heritage certificate
- notification of intention to sell
- application for a permit to explore or recover shipwrecks and artefacts
- application for a permit for the use of registered shipwrecks or registered artefacts
- notification of discovery of shipwrecks or shipwreck artefacts
- notice of alteration for religious service purposes
- application for a permit to carry out works or activities to a heritage place or object
- request for amendment of a permit or permit application
- application for consent
- issue of an interim protection order
- notice of existence of an interim protection order
- identity card for inspectors.

As most of these forms would be used by the department even if not prescribed in the regulations, there is no material additional burden associated with including them in the proposed regulations.

The proposed regulations also:

- require copies of all historical archaeological surveys be provided to the Executive Director
- prohibit certain activities in protected zones. This is necessary to establish the circumstances in which a person must seek a permit. The impact of these prohibitions is the need to complete a permit application and pay the associated fee

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- set penalties for certain infringement offences in line with penalties in the Act.

Who has been consulted?

In the development of the proposed regulations, the department held a number of meetings with a stakeholder reference group. This group comprised representatives from the Heritage Council, the Property Council of Australia (Victorian Division), the Municipal Association of Victoria, the National Trust of Australia (Victoria), the Australian Association of Consulting Archaeologists (Victorian State Chapter), the Australian Institute for Maritime Archaeology, and Australia ICOMOS (International Council on Monuments and Sites).

The stakeholder reference group provided views on the operation of the current regulations, design of fee categories and potential fee structures, and usefulness of the prescribed forms. Their views on particular items are noted in this RIS.

The Department of Justice and Regulation was consulted on the proposed infringements and penalties. It has advised the proposed penalties are consistent with the Attorney-General's Guidelines on infringements under the *Sentencing Act 1991*.

Questions for stakeholders

The release of the proposed regulations now provides an opportunity for wider feedback from any interested party. Written submissions may be made by 27 July 2017 either using the online form at www.heritage.vic.gov.au, via email Heritage.ActReview@delwp.vic.gov.au or to via post to Heritage Victoria, PO Box 500, MELBOURNE VIC 8002. Submissions may be published or provided to other parties unless requested to be a confidential submission.

All submissions received in the consultation period will be considered before the Minister for Planning makes a final decision on whether to proceed with the regulations as proposed.

Stakeholders may wish to comment on the following:

- **Are the proposed fees fair and balanced? In particular, is it reasonable that some fees are set below the full cost while others are set above?**
- **Are the proposed fee exemptions and waivers appropriate?**
- **Are the regulatory activities undertaken by the department efficiently?**
- **Are the prescribed forms simple to understand and use? Could they be made simpler?**
- **Are the proposed infringements suitable as infringeable offences?**

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The remainder of this report is structured as follows:

Chapter 1 – Background

Chapter 2 – The problem sought to be addressed

Chapter 3 – Objectives of the regulations

Chapter 4 – Options to achieve objectives

Chapter 5 – Determining the preferred option

Chapter 6 – Summary of the preferred option

Chapter 7 – Implementation

Chapter 8 – Evaluation strategy

Appendix A – The proposed fees

Appendix B – Estimating the costs of activities

Appendix C – Costs and savings of using prescribed forms

Appendix D – Heritage fees in other Australian jurisdictions

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1. BACKGROUND

1.1 The *Heritage Act 2017*

Victoria has a proud practice of heritage protection. It was the first Australian state or territory to enact heritage legislation in 1974 and has remained a national leader in the identification, conservation and management of heritage.

As part of the government's election commitments, the *Heritage Act 1995* was comprehensively reviewed in 2015 with a view of strengthening protections for historic heritage places and objects of cultural heritage significance to Victoria. Following the release of a discussion paper, public consultation was undertaken between June and August 2015. The department received more than 125 submissions. All submissions received were reviewed and guided the development of the *Heritage Act 2017*.

The *Heritage Act 2017* ('the Act') received Royal Assent on 15 March 2017. This Act replaces the *Heritage Act 1995*, by modernising and improving the processes and protections currently provided. It will come into operation on 1 November 2017.

The Act is Victoria's principal legislation for the identification and management of cultural heritage places and objects of state significance, historic archaeological sites and maritime heritage. This includes historic buildings, structures and precincts; gardens, trees and cemeteries; historic archaeological sites; cultural landscapes; shipwrecks and associated artefacts; and heritage objects. The Act does not manage places of local significance which are protected by heritage overlays in local planning schemes. The Act does not address places or objects that are of cultural heritage significance only on the ground of their association with Aboriginal tradition as these are covered by the *Aboriginal Heritage Act 2006*.

The Act creates the Victorian Heritage Register ('the Register') which lists and protects heritage places and objects that are significant to the history and development of Victoria. There are currently 2,400 places and objects and 620 shipwrecks included in the Register. Approximately 51 per cent of places included in the Register are in public ownership and 49 per cent are in private ownership. Works or activities that may impact a registered place or object require a permit or permit exemption. It is recognised that if significant places are to have a future, they need to be used and cared for. Alterations are often needed to keep pace with modern requirements, but they must respect the importance of the place.

The Act also provides for the creation of the Heritage Inventory ('the Inventory') which is a listing of all known historic archaeological sites and artefacts in Victoria that are 75 years or more or have been declared as a site of archaeological value. Consents are required to disturb all archaeological sites that are 75 years or older whether or not have they been listed in the Heritage Inventory, unless they have been determined to have low archaeological value and removed from the Heritage Inventory.

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Shipwrecks and their artefacts are an extremely important component of Victoria's cultural heritage. There are approximately 620 shipwrecks scattered around Victoria's coastline and within its bays and estuaries. Of these 200 are currently protected by the Act. Approximately 330 shipwrecks are covered by the Commonwealth *Historic Shipwrecks Act 1976*, with the balance falling outside both statues as they are younger than 75 years old.

Shipwrecks can provide recreation, tourism, education, and research opportunities. In some circumstances, however, public safety issues may necessitate a restriction of access a historic shipwreck site. Protected zones are declared for fragile and highly significant registered shipwrecks. There are currently nine protected zones in Victoria, six of which are in Port Phillip Bay. Protected zones vary in size and are marked on navigational charts. It is the responsibility of the boat operator to know where these zones are located.

The Act provides a number of measures to protect historic and registered shipwrecks, and historic and registered shipwreck artefacts. Under the Act, a historic shipwreck or historic shipwreck artefact is one that has been situated in Victorian waters for 75 years or more. A registered shipwreck or registered shipwreck artefact is one that has been included in the Victorian Heritage Register. Measures to protect these include:

- an offence to remove a registered or historic shipwreck, or registered or historic shipwreck artefact from Victoria
- a prohibition on disposing, possessing, taking, destroying, damaging, removing, disturbing or otherwise interfering with any historic shipwreck or artefact
- an offence to possess on or near a registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact, any salvage or recovery equipment or any equipment that could be readily adapted or used for the salvage or recovery of the item or any explosives, instruments or other equipment that could be used to damage it.

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Upon the commencement of the Act, all regulations made under the *Heritage Act 1995* will cease to have effect,¹ and new regulations will be required to be made. It is proposed to consolidate the current three sets of regulations (General, Infringement Notice, and Historic Shipwrecks) into two sets (Heritage Regulations, and Heritage (Underwater Cultural Heritage) Regulations).

Under the Act, the Executive Director and the Heritage Council are responsible for performing a range of functions, which incur a cost. The overarching purpose of the Act is to conserve cultural heritage places and objects for the whole community, however a number of functions performed under the Act derive a benefit for individuals. For example, a decision to accept a nomination to include a place in the

¹ The Act provides transition arrangements for processed that are commenced but not finalised before the Act commences.

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Register benefits the whole community, whereas allowing works to be carried out on a registered place is most likely to primarily benefit the owner or occupier of that place.

1.2 Executive Director (Heritage Victoria)

Heritage Victoria, a business unit of the Department of Environment, Land, Water and Planning ('the department'), is the key agency for the protection of heritage places and objects Victoria. The role of the Executive Director is established by the Act, and is held by the Director, Heritage Victoria. The Executive Director, through Heritage Victoria, is responsible for:

- establishing and maintaining the Register and Inventory
- recommending to the Heritage Council places and objects for inclusion or removal from the Register
- determining permits to alter or make changes to registered places and objects
- to manage enforcement activities.

1.3 The Heritage Council

The Heritage Council is an independent statutory body which identifies and protects places and objects of cultural heritage significance to the State of Victoria. It is a ten-member independent statutory authority decision-making body, supported by a secretariat based in the department. Council members are drawn from a wide range of professional disciplines and organisations and the categories of membership are set out in the Act.

The Heritage Council receives professional advice and administrative support from the Executive Director. It has developed protocols to ensure it maintains independence from the department for its roles in registrations, and permit reviews. The Heritage Council is responsible for:

- advising the Minister for Planning on the protection and conservation of Victoria's cultural heritage
- deciding which places and objects are included in the Register
- hearing reviews on permit applications
- promoting public understanding of Victoria's cultural heritage and conducting community education and information programs
- undertaking research related to identification, conservation and interpretation of cultural heritage
- advising and liaising with state government departments and agencies and municipal councils on the protection and conservation of places and objects of cultural significance.

1.4 Benefits and value of heritage

Heritage is 'what we inherit', and the heritage value of a heritage asset is its aesthetic, historic, scientific, social or spiritual value for past, present or future generations.

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Victoria's heritage is rich and diverse, and includes buildings, monuments, gardens, cemeteries, landscapes, shipwrecks archaeological sites and objects. The heritage places and objects included in the Register, contribute to the attractiveness and liveability of Victoria and provide a broad range of economic, social and environmental benefits. Heritage listing and heritage protection is ultimately a 'public good' driven by the broader community.

Economic benefits

Heritage is one of the most rapidly expanding tourism segments in terms of visitor numbers globally, and is a major attraction for both Melbourne and regional Victoria. Studies have shown that 'cultural tourists',² which include those visiting historic and heritage places, tend to stay for longer and spend more than 'non-cultural tourists'.³ Research undertaken in the United Kingdom also found that investment in historic visitor attractions provided a range of benefits to the local community by attracting visitors to an area and spending money in local hotels, pubs, shops and restaurants.⁴

Tourism data (2007-08) indicated Victoria's heritage buildings, sites and monuments were visited by over 1.9 million people, comprising 826,000 international visitors (56 per cent of total international visitors), 592,000 domestic overnight visitors and 529,000 domestic day visitors. Tourists visiting these heritage places spent approximately \$2.4 billion (15 per cent of total tourist expenditure in Victoria) and supported 184,800 jobs.⁵

In the year ending June 2016, a significant increase in tourism occurred with a total of 3.5 million travellers to and within Victoria having visited a historic site or monument on their trip. This equates to 4.9 per cent of the 71.4 million trips to and within Victoria. Travellers engaging in this type of experience have grown by 34.5 per cent over the last year and 12.8 per cent per annum over the last five years⁶.

Social benefits

Research by the Allen Consulting Group indicated that 80 per cent of Victorians consider that the historic houses in their area are an important part of the area's character and identity.⁷ Similarly, the vast majority of Victorians considered heritage to be an important part of Australia's identity and culture.⁸

² Tourism Research Australia *Through the Looking Glass: The future of domestic tourism in Australia*. A consultancy report for the Department of Resources, Energy and Tourism, Australian Government (2008)

³ Tourism Research Australia *Through the Looking Glass: The future of domestic tourism in Australia*. A consultancy report for the Department of Resources, Energy and Tourism, Australian Government (2008).

⁴ English Heritage *Heritage Counts 2010 England* (2010).

⁵ Based on data from Tourism Research Australia and Tourism Victoria; see also Tourism Research Australia *Snapshots 2009 Cultural and Heritage Tourism in Australia* (2009).

⁶ International and National Visitor Surveys, June 2016, Tourism Research Australia, unpublished data.

⁷ Allen Consulting Group, *Valuing the Priceless: The Value of Historic Heritage in Australia*, Research Report 2 (November 2005), p. 83.

⁸ *Ibid.* pp. 84-5.

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Socially, heritage assets have the ability to make contributions to an area's liveability and identity. In many cases, they are places that are a focus for community activities, such as public halls, schools, mechanics institutes, places of religious worship and parks. Heritage assets also often include local landmarks that people identify with a town or area, such as significant buildings, monuments and bridges.

Heritage conservation projects often also provide social benefits through community involvement and raising the community's awareness of its heritage. Once completed, heritage conservation projects are often accompanied by community events, further enhancing the community's sense of identity.

Environmental benefits

Conserving buildings rather than demolishing them can also provide a significant reduction in the amount of landfill. Studies in Perth have indicated that waste from building demolition makes up nearly 30 per cent of landfill.⁹

Environmentally, finding new ways to re-use heritage buildings – rather than erecting new buildings – can have significant savings for the environment. Research undertaken by RMIT University for the department indicated that heritage buildings have significant amounts of embodied energy. For example:

- a typical heritage-listed state school – 10,700 GJ, equivalent to 4,000 tonnes of CO₂; and
- a small nineteenth century masonry court house – 1,700 GJ, equivalent to 650 tonnes of CO₂.

Typically, the amount of embodied energy in a house is equivalent in amount to its energy consumption over 10 years, and the amount of embodied energy in an office building equivalent to its energy consumption over 30 years¹⁰.

Heritage buildings also tend to be more energy efficient than new buildings. A 2011 study¹¹ showed that if a house can be retained and improved, the primary energy associated with the construction and materials of a new, replacement house can be avoided. For example, if a Victorian era house (1875-1901), which is representative of many heritage dwellings (e.g. has solid brick walls, a galvanized metal roof and a floor area of 125m²) is retained, the primary energy associated with the construction and materials of a new, replacement house can be avoided (a contemporary 5 star house analysed in the study required 4 GJ per square metre of primary energy for

⁹ Ibid.

¹⁰ Heritage Council of Western Australia, *Heritage Matters*, Issue 24 (August 2007), p. 3.

¹¹ The National Sustainability and Heritage Residential Buildings Project was undertaken in 2011 by RMIT University for the Victorian Heritage Council and a number of other Victorian Government stakeholders. The study calculated and compared the life cycle environmental impacts of a sample of contemporary and heritage buildings, both in their existing state and following a series of interventions to reduce energy used for heating and cooling. A life cycle approach was used to calculate the impacts of the buildings in order to ensure that a fair and complete comparison was drawn. Only those elements of the building life cycle that directly related to the provision of climate controlled space were considered, such as the physical building itself and the operational elements needed to heat and cool it over its life.

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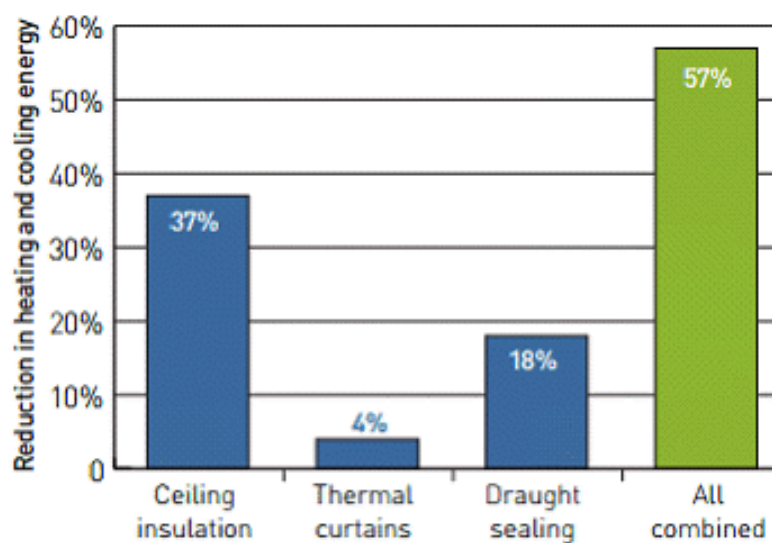
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construction and materials manufacture). To help place these figures into context, 100kg of brown coal contains approximately 1 GJ of primary energy.

Building fabric-related interventions to reduce heating and cooling energy use will also increase the energy star rating of heritage buildings. The modelled reduction in heating and cooling requirements for each intervention, versus the same house with no insulation, are shown in Figure 1.

Figure 1: Energy savings



Source: RMIT, 2011.

Comparing a representative Victorian house with a representative contemporary house (e.g. has brick veneer walls, concrete tiled roof and a floor area of 218m² with ground floor living areas and first floor bedrooms), implementation of the interventions in Figure 1 would lift the Victorian house to a 2.7 potential energy star rating compared with 2.1 for a contemporary house.

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2. THE PROBLEM SOUGHT TO BE ADDRESSED

2.1 Context

The Act seeks to protect and conserve places and objects of cultural heritage significance. Allowing people to undertake works or activities to heritage places – as well as archaeological sites and artefacts, registered and historic shipwrecks, registered and historic shipwrecks artefacts, and objects – poses a risk to the state’s cultural heritage as the heritage value could be damaged or destroyed if not adequately managed.

To manage this risk to cultural heritage, permits and consents are required under the Act. Assessing and managing these permits and consents results in necessary costs to government. An established principle of cost recovery is that those people who give rise to the risk should contribute to the costs of the processes needed to manage that risk. This is achieved by charging fees for activities that create the risk to cultural heritage.

Where fees fully recover the costs to government, taxpayers in general are not additionally subsidising those who are responsible for the activities that give rise to the costs. As such full cost recovery promotes the efficient allocation of resources by sending the appropriate price signals about the value of all the resources being used in the regulatory activities.

Currently fees are charged for various activities including those in relation to:

- requests for a heritage certificate
- requests to undertake works or activities in relation to a registered place or object
- requests to undertake archaeological activities in relations to sites on the Heritage Inventory or an archaeological site not on the Heritage Inventory, or to use archaeological artefacts
- requests to access protected zones or shipwreck artefacts.

For the last three activities, there is an identifiable party that is proposing an activity that poses a risk to the state’s cultural heritage. The costs of assessing and managing permits and consents is a direct result of the government having to manage these risks. For heritage certificates, this is no risk to cultural heritage, however there is a cost to government associated with providing this information to a person seeking a certificate, for which that person should meet the costs.

In the absence of any regulations under the Act, these activities would still need to be undertaken as they are statutory processes. However, as no fees could be charged, the full cost of managing Victoria’s historic cultural heritage would fall to the taxpayer (either through increased taxes, or reducing government spending in another area). This is inconsistent with the government’s policy on cost recovery.

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2.2 Cost of government activities

The cost to the department and the Heritage Council of undertaking their various regulatory functions under the Act is anticipated to be in the order of \$2.5 million per year. Not all of these costs will be recovered through fees—for example the Act does not allow for the setting of a fee for making a nomination a place or object to the Victorian Heritage Register as it is a policy position that nominating places with a prima facie case for state-level heritage significance is for the wider public benefit.

Table 2 provides an outline of the cost to the department and the Heritage Council associated with particular functions under the Act for which a fee can be charged, and the nature of the party giving rise to the need for the regulatory activity.

Table 2: Cost of activities undertaken by the department

Activity	Reason for regulatory action	Cost to government
Requests for review of the Executive Director's refusal of nomination (s. 30)	The Act seeks to create a sound and robust system for including new places and objects in the Register. Changes to the Act will allow the Executive Director to refuse a nomination if it is clear there is no reasonable prospect of inclusion in the Register. People who seek to challenge this decision give rise to a costly review process.	Heritage Council must review the decision in line with the requirements of the Act.
Applying for a certificate stating relevant heritage information about a place or object (s. 58)	Certificates are usually requested when a property is being bought or sold. They provide information on the heritage status of a place or object and are used by owners, buyers and sellers.	The Executive Director must locate and collating the relevant information and issue the certificate
Applying for permits for exploration or recovery of registered shipwrecks, historic shipwrecks, registered shipwreck artefacts or historic shipwreck artefacts and in relation to protected zones, or use of registered shipwrecks or registered shipwreck artefacts (ss. 77, 78)	The person wishing to undertake the otherwise prohibited activities creates a risk to the protection of the shipwrecks and artefacts, which needs to be assessed through the permit process.	The Executive Director must consider the application and make a decision. There are also compliance activities that result from the permit arrangements. For some shipwrecks, equipment is provided to allow access while avoiding damaging the shipwreck itself.
Applying for a permit to carry out works or activities in relation to a registered place or object (s. 93)	The person wishing to undertake the works creates a risk to the heritage value of registered places and objects, which needs to be assessed through the permit process.	The Executive Director must consider the application in accordance with the Act, and make a decision. There are also activities related to permits once issued including compliance.
Applying to amend a permit application (s. 96)	The person wishing to undertake the works creates a risk to the heritage value of registered places and objects, which needs to be assessed.	Depending on the nature and timing of the amendment, the Executive Director may need to reconsider the application, including re-advertising.
Applying to amend a permit to carry out works or activities (s. 105)	The person wishing to undertake the works creates a risk to the heritage value of registered places and objects, which needs to be assessed.	The Executive Director must consider the amendment and make a decision.

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Activity	Reason for regulatory action	Cost to government
Seeking a review of a permit decision (s. 106)	The person wishing to undertake the works creates a risk to the heritage value of registered places and objects, which needs to be assessed through the permit process.	Costs incurred by both the Executive Director and the Heritage Council in preparing for and hearing a review and determining an outcome
Applying for consent to excavate or uncover a site recorded in the Heritage Inventory or an archaeological site which is not recorded in the Heritage Inventory, damage or disturb a site recorded in the Heritage Inventory or an archaeological site which is not recorded in the Heritage Inventory, damage or disturb an archaeological artefact, including for the purposes of study, conservation or exhibition, or possess an archaeological artefact (s. 124).	The person wishing to undertake the activities at archaeological sites creates a risk to the conservation of the cultural heritage value of artefacts at the site, which needs to be assessed and managed through the consent process to manage the risk and ensure significant artefacts are preserved.	The Executive Director must consider the consent and make a decision. There are usually a number of follow-up activities, including checking of compliance with consent conditions.
Request a review regarding consent (s. 126)	The person wishing to undertake the activities at archaeological sites creates a risk to the conservation of the cultural heritage value of artefacts at the site, which needs to be assessed and managed through the consent process to manage the risk and ensure significant artefacts are preserved.	Heritage Council incurs costs in considering the submissions and determining an outcome.

The total fee revenue collected in 2015-16 was around \$0.5 million per annum. The department estimates that the actual cost of providing the services for which a fee could be charged under the Act will be around \$1.8 million per year.

While parties making applications create the need for the regulatory costs to be incurred, there may be some wider public benefit associate with allowing some activities. For example, all forms of archaeology provide a benefit through increased knowledge and understanding. These activities may also give rise to social, economic and environmental benefits for the wider community.

The current fee structure provides for waivers and exemptions in some circumstances. Waivers apply in circumstances where the dominant purpose of the activity is for the public good or interest. These include activities include conservation a registered place or object, ensuring public safety, assisting historical research or to educate the public. These are not a departure from full cost recovery, but rather a recognition that the benefits from these activities benefit society as a whole, the risk is low and can be adequately managed, and would therefore be too difficult to recover. As such it is more appropriate that government cover the cost from general revenue rather than from the individual undertaking the activity. A waiver is also proposed for consent applications for archaeological sites that are determined by the Executive Director to have low archaeological value.

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Exemptions are provided to ensure vulnerable groups on fixed incomes are not prevented from undertaking works or activities to a heritage place they own and reside in by the cost of obtaining a permit. It is in society's interest that these heritage places are conserved and maintained.

Although waiver and exemption provisions have existed for some time, there has not been a significant number of requests for either. It has been estimated that in the 2016-17 financial year there were about 60 requests for a waiver or exemption across all fee categories. This was significantly higher than normal as the 150th anniversary of the sinking of the *City of Launceston* occurred in this period. Entry to this protected zone is usually not permitted, however to mark this anniversary the restriction was lifted for a period of seven days. During this time approximately 30 permits were issued to around 160 divers, all of which were waived as part of the anniversary celebrations. The majority of the remaining waivers related to entering other protected zones. The next largest category of waivers related to undertaking works or activities to a registered place or object, with the remainder being in relation to archaeological consents. Generally waivers only apply to low risk activities, such as conservation or education, which are not likely to significantly damage a registered place or object. The actual revenue forgone associated with waivers is still anticipated to be marginal.

It is noted that the current fees have not been comprehensively reviewed in over 10 years. The General Regulations were amended in 2014 to express fees in terms of fee units, and only the fee for heritage certificates was changed in the 2015 Heritage (General) Regulations. The shipwreck permit fees were set in fixed dollar amounts in 2007 and have not been indexed or reviewed since that time.

Taking into account average frequency of fees over the past five years and the value of fee units from 1 July 2017, Table 3 shows the indicative differences between expected fee revenue in 2017-18 if current fees remain unchanged and the actual cost of performing those same functions (i.e., the costs of only those activities that already attract a fee).

Table 3: Expected fee revenue and cost of activities, 2017-18

Fee type	Expected fee revenue collected 2017-18	Full cost of matched activities
Heritage certificates	\$398,160.00	\$373,311.50
Permits related to shipwrecks and protected zones	***	***
Permits for works on registered places	\$121,114.58	\$1,125,828.67
Consents for activities on archaeological sites or artefacts	\$21,330.00	\$192,909.54
TOTAL	\$540,604.58	\$1,692,049.71

*** fees are charged for permits related to shipwrecks and protected zones in only a very small number of cases each year and it is not practical to anticipate any particular number of permits for each fee class.

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In addition, the Act now provides new processes that need to be included in the setting of fees.¹²

2.3 Prescribed forms

Under the Act, the Executive Director is responsible for considering applications and making recommendations and determinations in relation to a number of matters. These include recommending a nominated place or object for inclusion in the Register, and determining permit applications for works or activities to a registered place or object. In considering these applications, the Executive Director must have regard to a number of factors set out in the Act. Collecting the information necessary to assess a nomination to the Register, an application for a permit or a consent, can be time consuming and inefficient where the person making the application does not provide all relevant information in their application. The need to request further information imposes costs on both people making nominations/applications and the department. This is a result of there being no formal requirements in relation to the information that must be provided at the time of application.

There are around 70 nominations for registration per annum. The Executive Director estimates that around 21 per cent of nominators are asked for more information before a nomination is accepted. This additional time to request and provide additional information is estimated to incur a cost of around \$5,600 per annum.¹³

There are over 200 permit applications per annum. On average, around 55 per cent of permit applications are subject to clock stoppages due to insufficient information being provided by the applicant; around 40 per cent of permits are subject to stoppages more than once during the process due to ongoing requests for further information. This additional time to request and provide additional information is estimated to incur a cost of around \$98,000 per annum.

In the development of this RIS, the stakeholder reference group was asked for feedback on the forms prescribed under the current regulations. While a number of minor improvements were suggested (discussed later in this RIS, see page 43), the stakeholder reference group considered the use of the current prescribed forms was beneficial in terms of clearer statement of what information needed to be provided.

Under the Act, there are obligations placed on people to notify the Executive Director or the Heritage Council of particular events. These include an intention to sell a registered place or object (i.e. enter a contract of sale), discovery of shipwrecks or artefacts, and alteration of places or objects for religious purposes. There are already forms prescribed under the 2015 regulations for these activities. Table 4 below shows the frequency of use of these prescribed forms in 2014-15.

¹² The primary change is the ability for the Executive Director to reject a nomination for registration, creating a new activity under the Act for a person wishing to have that decision reviewed.

¹³ See Appendix B for estimation of costs.

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Table 4: Number of prescribed forms used

Form	Number in 2014-15
Notification of intention to sell	15
Alterations for religious service purposes	nil*
Notification of discovery of shipwrecks or artefacts	1*

* these are used infrequently, each averaging around once every 3-5 years.

The reason why the Act includes these notifications is so that the Executive Director can properly administer the Act. However, the Act does not specify what information is required to be provided in such notifications. There is a risk that, without specifying the information required, applications will be inadequate. Forms have been prescribed for these purposes for at least twenty years, so it is difficult to determine the extent of the problem were no standard forms are prescribed.

The current regulations also prescribe a form for the notification of a change of ownership, however under the Act, section 60 lists the information needed to be provided upon change in ownership, meaning a separate form will no longer be needed to be prescribed.

The proposed regulations also include a number of prescribed forms that are only relevant for government: form of an Interim Protection Order (IPO) and form of identity card for inspectors. These are to ensure consistency in formal documents issued by both the Executive Director and Heritage Council and do not impose any incremental costs.

The Executive Director and the Heritage Council can issue IPOs to provide protection for places and objects not included in the Register where it is considered that the place or object has a *prima facie* case for inclusion in the Register and there is an imminent risk of damage or harm to a place or object. A place or object that is subject to an IPO is deemed for the period of that order to be included in the Register in the category or categories specified in the order. The Act requires a person who has been served with an IPO to cause a notice of the existence of that order to be continuously displayed in a conspicuous position on the place or near the object. The Act does not specify what information should be included in such a notice. A notice that merely refers to the existence of an order would have limited effect as most people would not necessarily understand what an IPO is or its consequences. Hence, without including specific information about the IPO, the requirement to provide notice of its existence would be of little value. This may undermine the benefit sought to be achieved by the IPO if its issuing does not effectively stop parties adversely affecting the place or object in question. There are approximately three IPOs issued each year. The Act separately requires notice of IPO to the owner, occupier or person apparently in charge of the place or object.

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2.4 Underwater Cultural Heritage

The Act provides for the creation of protected zones, however there is nothing in the Act itself that affords extra protection to such zones. Instead, the Act intends that regulations may make any restrictions in relation to protected zones, for the purpose of conservation and good management of the shipwreck. This is done on the basis that a person may still do any activity prohibited by regulations if they obtain a permit under the process set out in the Act.

The proposed regulations provide that a person must not, except in accordance with a permit granted under the Act:

- enter a protected zone; or
- moor, park or use a ship or other vehicle within a protected zone; or
- trawl, fish or dive or undertake any other underwater activity within a protected zone; or
- bring into or use within any protected zone equipment constructed or adapted for the purpose of diving, salvage or recovery operations, whether on land or on or under water; or
- bring into or use within any protected zone any explosives, or any equipment, instruments or tools constructed or adapted for the purposes of cultivating, mining, quarrying, dredging or excavating land including land covered by water; or
- cause a ship or other vehicle carrying any equipment, explosives, instruments or tools specified the previous paragraphs to enter or remain within any protected zone; or
- cultivate, mine, quarry, dredge or excavate or carry out other activity on or below land within a protected zone; or
- carry out any other activity 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.

As noted above, a permit may be granted for these activities. The reasonableness of the prohibition is therefore considered in terms of the cost of obtaining that permission relative to the risks being addressed, and the size of the penalty for breaching the prohibition. During the past five years, there have been a total of 31 offences for entering a protected zone without a permit.

The proposed regulations set a penalty amount of 50 penalty units (\$7928.50 in 2017-18) for offending these prohibitions, although some offences are proposed to be regarded as infringement offences and would attract a lower fine (see below).

The proposed regulations also provide that a person must not, without lawful authority, knowingly move, remove, damage, alter or otherwise interfere with any plinth, mooring, buoy, pile or other marker or any notice or sign, or any equipment or material lawfully placed or situated in or within 100 metres of any registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck

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artefact or in any protected zone. This is to ensure that actions taken to protect underwater cultural heritage are effective. A penalty amount of 50 penalty units (\$7928.50 in 2017-18) is proposed, increased from the current penalty of 20 penalty units.

2.5 Historical archaeological surveys

Section 127 of the Act applies to the 'discovery' of archaeological sites.

Archaeological sites can be discovered in any of the following ways:

- through construction activities
- following a historical archaeological survey
- a site identified by a land owner which contains an artefact, deposit or feature more than 75 years old that has not yet been included in the Heritage Inventory.

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. There is no requirement for a site card or historical archaeological survey of such sites.

Sites 'discovered' following a historical archaeological survey will trigger the requirement for a site card. The site card provided to the Executive Director must include a site description, and details about its location, extent and history. A site card is also provided to the Executive Director for sites identified by a land owner but not included in the Heritage Inventory. In this situation, a historical archaeological survey is not required, and an archaeologist may only be engaged to prepare a site card.

There are around 50 historical archaeological surveys completed in Victoria each year. In the event the survey does not find any archaeological sites, these reports are usually about one to two pages stating there were no significant findings (about 20 percent of surveys). These surveys may relate to known archaeological sites (re-surveys) or unknown archaeological sites (if a site is discovered a site card would be triggered).

There is no requirement in the Act that the report prepared following a historical archaeological survey be provided to the Executive Director. Currently the department maintains a database of all archaeological surveys, which is a public resource that contains detailed information about surveyed areas with both archaeological sites and surveyed areas with no archaeological sites. This information is also made available to key stakeholders, including archaeological consultants, developers, local government, other state agencies and the broader community. This record of all completed surveys is also useful for avoiding duplication of project works. The collection of survey reports is often used by consultants to learn where surveys have previously been conducted, and where they may not need to be repeated.

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Most information about the location, extent, condition and significance of the state's historical archaeological sites results from survey work undertaken by consultant archaeologists. This information is used to manage the state's archaeological resource. Accurate information about the location of sites, facilitates compliance with the requirements of the Act and ensures that sites are not inadvertently disturbed.

Historical archaeological survey reports are produced outside of any requirements in the Act or the regulations. The lodgement of these reports with the Executive Director ensures this database is up to date and therefore it remains a useful resource to academics, archaeological consultants, developers and the community. As such the regulations propose a requirement that copies of these survey reports be provided for all historical archaeological surveys undertaken in Victoria. The department does not consider this will impose any material additional burden, as these reports are already being produced. The requirement in the regulation is only that a copy be lodged with the Executive Director – it does not seek to prescribe the form or content of the report. To encourage compliance there is a penalty proposed of 20 penalty units (\$3,171.40 in 2017-18), and an infringement offence of 3 penalty units. Given the cost of compliance (and avoiding the penalty) is very small, this requirement is not examined further in this RIS.

2.6 Infringement offences

The Act provides that some offences may be designated as infringement offences within the meaning of the *Infringements Act 2006*. This allows inspectors to issue infringement notices and allow the offender to pay a fine for minor breaches in lieu of pursuing the alleged offence in court.¹⁴ The infringement amounts are therefore less than the full penalty amount that would usually apply. Infringement offences make it easier to enforce the Act; without infringement offences, all breaches of the Act would need to be pursued through court which would divert government resources.

Table 5 outlines the infringement offences are proposed in the regulations. Note: the value of a penalty unit for 2017-18 is \$158.57.

These penalties have been determined in accordance with the Attorney-General's Guidelines on infringements under the *Sentencing Act 1991*, and have been developed with the Department of Justice and Regulation.

¹⁴ Note that payment of a fine does not avoid the issuing of a rectification order under section 160 of the Act should works be carried out on a registered place without a permit.

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Table 5: Proposed infringement offences

Proposed offence	Penalty under Act		Proposed Infringement	
	Individual	Body corporate	Individual	Body corporate
An offence against section 89(1) of the Act, constituted by: (i) use of materials or methods other than in accordance with section 89(4); or (ii) application of a colour scheme other than in accordance with section 89(4); or (iii) planting of trees or plants other than in accordance with section 89(4); or (iv) removal, lopping or destruction of trees other than in accordance with section 89(4); or (v) pruning trees other than in accordance with section 89(4); or (vi) partial demolition of an existing brick or stone retaining wall or fence other than in accordance with section 89(4); or (vii) installation of a new fence or gate other than in accordance with section 89(4); or (viii) installation of water or septic tanks other than in accordance with section 89(4); (ix) installation of services (including air conditioners, solar panels, satellite dishes, hot water service units, heating units, fire hose reels, fire hydrants, fire sprinkler or suppression systems, safety ladders, walkways and fall barriers) other than in accordance with section 89(4); or (x) installation of security lights or systems other than in accordance with section 89(4); or (xi) installation of pools, spas or decks other than in accordance with section 89(4); or (xii) installation of signage other than in accordance with section 89(4); or (xiii) removal, insertion or resizing of doorways or windows other than in accordance with section 89(4).	48	240	10	20
An offence against section 89(3) of the Act, constituted by disturbing the position of a fixed registered object.	48	240	10	20
An offence against section 104 of the Act, constituted by a: (i) commencement of works without providing a financial security (bank guarantee), 5 days' notice, or the documentation specified in the permit; or (ii) use of materials or methods other than in accordance with section 89(4); or (iii) application of a colour scheme other than in accordance with section 89(4); or (iv) planting of trees or plants other than in accordance with section 89(4).	120	600	10	20
An offence against regulation 32 of the Heritage Regulations, constituted by failure to provide copies of the survey report within 12 months of undertaking the survey.	20	20	3	3
An offence against regulation 9 of the Underwater Cultural Heritage Regulations, constituted by: (a) entering a protected zone; or (b) mooring in a protected zone; or (c) parking in a protected zone	50	50	3	3
An offence against regulation 9 of the Underwater Cultural Heritage Regulations constituted by undertaking the following activities in a protected zone: (a) diving; or (b) fishing.	50	50	6	6
An offence against regulation 9 of the Underwater Cultural Heritage Regulations constituted by possessing in a protected zone equipment constructed for: (a) diving; or (b) salvage or recovery; or (c) cultivation; or (d) mining or quarrying; or (e) dredging.	50	50	10	10

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3. OBJECTIVES OF THE REGULATIONS

3.1 Objectives of the *Heritage Act 2017*

The purposes of the Act are:

- to provide for the protection and conservation of places and objects of cultural heritage significance
- to establish the Register for the registration of places and objects
- to establish the Inventory for the recording of archaeological sites and approved sites of archaeological value
- to establish the Heritage Council to perform functions in relation to cultural heritage
- to establish the Heritage Fund to provide for the conservation and management of cultural heritage
- to provide for the management of places included in the World Heritage List
- to create offences and other enforcement measures to protect and conserve cultural heritage.

3.2 Objectives of the proposed regulations

Regulations are aimed at supporting and promoting the objectives of the principal legislation.

The specific outcomes sought to be achieved by making the proposed regulations are to:

- recover an appropriate amount of government costs associated with performing functions under the Act. In this context, an appropriate amount is a fee that balances cost recovery objectives and other policy objectives. In particular, the fees should support the achievement of the objectives of the Act including incentives for non-compliance
- ensure that relevant information is efficiently provided to the Executive Director and the Heritage Council to meet their statutory duties
- provide for the integrity of the protection of registered and historic shipwrecks and protected zones.

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4. OPTIONS TO ACHIEVE OBJECTIVES

4.1 Setting fees

It is government policy that fees and user charges should be set on a full cost recovery basis to ensure that both efficiency and equity objectives are met, unless there is a clear policy reason for not doing so. Full cost represents the value of all the resources used or consumed in the provision of an output or activity.

Full cost recovery promotes the efficient allocation of resources by sending the appropriate price signals about the value of all the resources being used in the provision of government goods, services and/or regulatory activity. In other words, those that give rise to the need for regulation face the true cost of that regulatory activity.

The base case

The 'base case' (the situation in the future if no regulations are made) is that fees could not be charged for any of the relevant activities described in Table 2 above (see page 15). Under the base case, the activities would still need to be undertaken, as they are statutory processes, however funds to manage and conserve heritage places and objects would need to be met from general government revenue. In practice, this means spending would need to be diverted from other areas of government or taxes would need to be higher than otherwise needed.

Option 1: Full cost recovery

Under this option, fees would be set at the estimated full cost of providing each service. The full costs were estimated by:

- identifying the necessary steps needed to be undertaken by the department or the Heritage Council for each activity
- interviewing staff involved in these processes to estimate the time that would be taken for a 'typical' activity in each category
- calculating the total costs based on staff salary rates, related on-costs and overheads, and other non-staff costs
- benchmarking the costs by comparison to similar fees charged in other states.

The results of this costing activity are shown in Table 9 (see page 31). Stakeholders interested in the underlying data of these costs and further detail on the methodology are referred to Appendix B.

This option retains the current fee categories, although some of the fee categories changed slightly to either reflect changes in the Act, or feedback from the stakeholder reference group about providing clearer definitions of classes for some fee types.

The changes to some of the fee classes are outlined below (Tables 6 to 8).

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The department believes that the use of different works values to set different fees remains appropriate. The cost of assessing differing works value permit applications is proportional to the risk posed by proposed works or activities and the potential to harm the cultural heritage value of the place or object. For example, the risks tend to increase with an increase in the scale and cost of proposed works or activities as does the complexity in assessing high value, high risk permit applications. This is not always a perfect relationship, and there may be other factors that make individual permit applications more complex than others, however works values is considered the most reliable indicator of the amount of effort required to assess the permit application.

Thresholds for permits for works or activities to a registered place or object have been adjusted following feedback from the stakeholder reference group on a more appropriate distribution. The department agreed that the thresholds should provide for a more evenly graduated scale, and that works up to \$20,000 now represents all minor works to a place. The threshold for a permit to demolish a registered place or object has been changed to 50 per cent or more. This addresses situations where there is partial demolition of a place or object.

Table 6: Changes to thresholds for permits for works or activities to a registered place or registered object

Current fee classes	New fee classes
<i>Works or activities is less than \$5 000</i>	<i>Works or activities is less than \$10 000</i>
<i>Works or activities is at least \$5,000 but less than \$100 000</i>	<i>Works or activities is at least \$10 000 but less than \$20 000</i>
	<i>Works or activities is at least \$20 000 but less than \$100 000</i>
<i>Works or activities is at least \$100 000 but less than \$250 000</i>	<i>Works or activities is at least \$100 000 but less than \$250 000</i>
<i>Works or activities is at least \$250 000 but less than \$500 000</i>	<i>Works or activities is at least \$250 000 but less than \$500 000</i>
<i>Works or activities is at least \$500 000 but less than \$1 000 000</i>	<i>Works or activities is at least \$500 000 but less than \$1 000 000</i>
<i>Works or activities is at least \$1 000 000 but less than \$10 000 000</i>	<i>Works or activities is at least \$1 000 000 but less than \$5 000 000</i>
	<i>Works or activities is at least \$5 000 000 but less than \$10 000 000</i>
<i>Works or activities is at least \$10 000 000 but less than \$30 000 000</i>	<i>Works or activities is at least \$10 000 000 but less than \$30 000 000</i>
<i>Works or activities is \$30 000 000 or more</i>	<i>Works or activities is \$30 000 000 or more</i>
<i>Demolish the whole of a registered place or object</i>	<i>Demolish 50 per cent or more of a registered place or object</i>

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The fee classes for underwater cultural heritage permits have also been amended. This reflects in part changes to how the permits sit under the Act, and also the department's view on the types of activities that may occur and the relative risks of each activity to the heritage value of the shipwreck or shipwreck artefact.

Table 7: Revised fee classes for underwater cultural heritage permits

Current fee classes	New fee classes
Enter protected zone for recreational, scientific or educational purpose	Enter a protected zone to conduct any form of recreational diving or snorkelling
<i>Enter protected zone for recreational, scientific or educational purpose and requires the use of moorings</i>	<i>Enter a protected zone to conduct any form of recreational diving or snorkelling that requires the use of moorings within that protected zone</i>
	<i>Commercial operators to convey divers and snorkelers to dive sites for a fee, to enter a protected zone - 1 time, for recreational diving during a specified period, with maximum of 10 divers</i>
	<i>Commercial operators to convey divers and snorkelers to dive sites for a fee, to enter a protected zone - 5 times for a period not exceeding 12 months, for recreational diving, max 12 divers</i>
Enter protected zone for commercial purpose	Enter protected zone for any other purpose
Enter protected zone for commercial purpose and require use of moorings	Enter protected zone for any other purpose and requires the use of moorings
Enter protected zone for commercial purpose and may cause disturbance or interference with shipwreck	Take, destroy, damage, remove, disturb or otherwise interfere with less than 50 per cent of any registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact
Take, disturb or remove shipwreck or relics	Take, destroy, damage, remove, disturb or otherwise interfere with 50 per cent or more of any registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact
<i>Possess, dispose or trade relics</i>	<i>Possess, dispose of, or remove from Victoria any registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact</i>
<i>Remove relics from Victoria</i>	
Use of relic in custody of ED for study, conservation or exhibition	Use of registered shipwrecks, historic shipwrecks, registered shipwreck artefacts or historic shipwreck artefacts
Possess prohibited equipment near a shipwreck	Possess or use equipment, instruments or explosives of a kind referred to in section 76 of the Act in a protected zone
	<i>Any other activity on or below land within a protected zone or any other underwater activity in a protected zone</i>

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The fee classes for archaeological consents has been adjusted to better reflect the different stages of developing a site. In consultation with the stakeholder reference group, the fee classes now also provide for separate categories related to archaeological activities on single dwelling residential properties.

Table 8: Revised fee classes for archaeological consents

Current fee classes	New fee classes
Uncover or expose an archaeological relic or excavate any land for the purpose of discovering, uncovering or moving an archaeological relic	Consent to uncover and expose an archaeological site or part of an archaeological site in order to assess the condition and potential of the archaeology, for the purposes of constructing one domestic residential dwelling on a lot or allotment, or for an extension to one domestic residential dwelling on a lot or allotment
	Uncover and expose an archaeological site or part of an archaeological site in order to assess the condition and potential of the archaeology, for all other purposes
	Excavate an archaeological site or part of an archaeological site for the purposes of constructing of one domestic residential dwelling on a lot or allotment, or for an extension to one domestic residential dwelling on a lot or allotment
	Excavate an archaeological site or part of an archaeological site for all other purposes
Deface, damage or otherwise interfere with an archaeological relic, or carry out an act likely to endanger an archaeological relic, where the damage will affect less than 50% of the relic	Damage and disturb an archaeological site or part of an archaeological site for the construction of one domestic residential dwelling on a lot or allotment, or for an extension to one domestic residential dwelling on a lot or allotment
Deface, damage or otherwise interfere with an archaeological relic, or carry out an act likely to endanger an archaeological relic, where the damage will affect 50% or more of the relic	Damage and disturb an archaeological site for all other purposes, where damage is less than 50 per cent
	Damage and disturb an archaeological site for all other purposes, where damage is 50 per cent or more
	Possess or dispose of archaeological artefacts, to undertake geotechnical or soil testing, trenching or boring in order to install, maintain or upgrade service utilities to an archaeological site, or a site recorded in the Heritage Inventory, or a test archaeological excavation as part of a Cultural Heritage Management Plan under the <i>Aboriginal Heritage Act</i> , or for all other purposes for which a consent is required in relation to an archaeological artefact, archaeological site, or a site recorded in the Heritage Inventory

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Under all options, there will continue to be no fee charged for nominating a place or object for inclusion in the Register. The Act does not allow a fee to be charged for a nomination. This is despite evidence that heritage listing provides some benefits to an owner¹⁵ of a place or object.¹⁶ However, the primary beneficiary of conserving the heritage value of places and objects is the whole community, through defining cultural identity, education benefits, or tourism.

This full cost recovery option would collect around \$1.7 million per year, noting that there will continue to be a small number of fee exemptions and waivers granted. The fee exemptions and waivers will be forgone revenue (i.e., it is not proposed to make-up the lost revenue from fee waivers by increasing the fees paid by others).

Given that fee waivers are used in some cases, a potential variation would involve exempting these applications from the permit process altogether. This could provide a regulatory saving by avoiding the need to apply for permits at all. However, exemptions from permits related to underwater cultural heritage and archaeological consents are not permitted by the Act and legislative change would be needed. The Act does provide the ability for the Heritage Council to determine additional classes of exemption from permits for works and activities at heritage places, however the department considers that there is still a need to assess the risks to a place's heritage value even where the proposed works are for a public benefit, and therefore an exemption from a permit may not be appropriate. To date, fee waivers for such works are very rare, however the department proposes to monitor the use of waivers under the new regulations.

Option 2: Simplified cost recovery

Under this option, the different fee classes for works permits, underwater cultural heritage permits and archaeological consents (i.e., those listed in Tables 6 to 8 above) would be removed and a single fee amount would apply to each fee type (i.e. is a 'flat fee' for each fee type). The flat fee would be calculated to generate the same amount of revenue from each fee type as Option 1.

This option would also raise around \$1.7 million per year, however the use of flat fees within fee types means there is a high degree of cross-subsidisation within a fee type. For example, a permit for a small amount of work on a heritage site would attract the same fee, and therefore likely subsidise, a permit for larger scale works on another site.

¹⁵ It is noted that nominations need not be made by the owner, and the owner's consent is not required for registration, although the owner has an opportunity to make a submission on the recommendation of the Executive Director to include or not include a place or object in the Register.

¹⁶ See for example Productivity Commission (2005), *Conservation of Australia's Historic Heritage Places*, which identifies benefits to the owner including aesthetic value and financial benefits (e.g. charging access fees). Other studies have also noted minimal, or slightly positive, impacts on property values. Nominating a place or object may have a private beneficiary, as the nominator may incur private benefits from the registration, e.g. registration may result in the retention of a place that was otherwise earmarked for demolition. This may protect the amenity, enjoyment and potentially value of the nominator's property if, for example, it was adjacent to the nominated property. However, the basis for accepting a nomination is the wider community benefit, not the private benefit.

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Option 3: Modified cost recovery

This option proposes to set fees at less than full cost for a number of fees. The under-recovery is partially offset by setting fees slightly above full cost for some activities. This option was developed in consultation with the stakeholder reference group, and contains:

- for smaller scale activities, there is likely to be less commercial gain for the applicant, and therefore a reduced ability to pay compared to other fee categories
- for smaller scale activities, setting fees at the full cost may create an undesired incentive for non-compliance (i.e. undertaking small works without a permit), which poses a risk to heritage assets
- slightly higher fees for heritage certificates. This reflects the fact that the social, economic and environmental benefits delivered by well-maintained heritage assets are as a result of the efforts of a minority, but enjoyed by the majority. This increased fee for heritage certificates – which are applied for far more frequently than any other fee-attracting activities – allows the costs of administering activities under the Act to be spread over a much wider group (there are around 7000 certificates issued annually) while still having a relevant connection to the objectives of the Act. Certificates are generally provided to property owners or purchasers (with a capacity to pay) and where there is a connection to or an interest in the property's heritage status. The additional revenue from this fee for certificates will ensure that in total the fees charged under the Act matches the full cost of the regulatory functions, with the total revenue paid into the Heritage Fund. The fee for certificates would still be less than comparable property certificates, for example those issued by the National Trust of Australia (Victoria)
- a small number of other fees are set above their full cost. These relate to activities that would involve or may risk substantial damage or the complete destruction of the heritage value of a place or object. The fee therefore seeks to capture this negative outcome and thereby act as a better value indicator to those wishing to undertake such activities
- alignment of the fee for permits for subdivision with the fee payable under the Planning and Environment Regulations 2016, as the Act will allow a 'one stop shop' process between the heritage and planning legislation
- changing the fee basis for permits for entering protected zones for recreational purposes (now defined in terms of recreational diving and snorkelling) from a fee per permit to a fee based on the number of divers allowed under the permit. This is to ensure the fee is proportional to the risk involved in allowing divers to access the zone.

This option would also raise around \$1.7 million per year.

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4.2 Comparison of fees under each of the options

Table 9 details the fee amounts under each option. The amounts relate to the amounts that would be payable in 2017-18. For later years, the fee amount would increase in line with changes in the value of a fee unit, determined annually by the Treasurer under the *Monetary Units Act 2004*.

Table 9: Fee options

Fee	Full cost recovery (Option 1)	Flat fees (Option 2)	Modified (Option 3)
Review of ED refusal			
Request for review of the Executive Director's refusal of nomination	\$3,780.25	\$3,780.25	\$3,555.00
Heritage Certificates			
Applying for a certificate stating relevant heritage information about a place or object	\$53.33	\$53.33	\$85.32
Underwater cultural heritage permits			
Enter a protected zone to conduct any form of recreational diving or snorkelling	\$218.62 per permit	\$651.70 per permit	\$14.22 per diver
Enter a protected zone to conduct any form of recreational diving or snorkelling that requires the use of moorings within that protected zone	\$318.62 per permit		\$28.44 per diver
Commercial operators to convey divers and snorkelers to dive sites for a fee, to enter a protected zone - 1 time, for recreational diving during a specified period, with maximum of 10 divers	\$218.62		\$113.76
Commercial operators to convey divers and snorkelers to dive sites for a fee, to enter a protected zone - 5 times for a period not exceeding 12 months, for recreational diving, max 12 divers	\$940.43		\$568.80
Enter a protected zone for any other purpose	\$940.43		\$1,279.80
Take, destroy, damage, remove, disturb or otherwise interfere with less than 50 per cent of any registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact	\$940.43		\$10,665.00
Take, destroy, damage, remove, disturb or otherwise interfere with 50 per cent or more of any registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact	\$940.43		\$21,330.00
Possess, dispose of, or remove from Victoria any registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact	\$218.62		\$213.30
Use of registered shipwrecks, historic shipwrecks, registered shipwreck artefacts or historic shipwreck artefacts	\$218.62		\$113.76
Possess or use equipment, instruments or explosives of a kind referred to in section 76 of the Act in a protected zone	\$940.43		\$21,330.00
Any other activity on or below land within a protected zone or any other underwater activity in a protected zone	\$1,440.43	\$1,422.00	

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Table 9: Fee options (continued)

Fee	Full cost recovery (Option 1)	Flat fees (Option 2)	Modified (Option 3)
Permits for works or activities at registered places			
Subdivision, consolidation or realignment of a boundary of a registered place or the subdivision of a building	\$4,157.66	\$5,821.24	\$1,422.00
Undertake works or activities to a registered place or registered object, if the estimated cost of the works or activities is less than \$10 000	\$4,157.66		\$284.40
Undertake works or activities to a registered place or registered object, if the estimated cost of the works or activities is at least \$10 000 and less than \$20 000	\$4,157.66		\$1,066.50
Undertake works or activities to a registered place or registered object, if the estimated cost of the works or activities is at least \$20 000 but less than \$100 000	\$4,157.66		\$2,844.00
Undertake works or activities to a registered place or registered object, if the estimated cost of the works or activities is at least \$100 000 but less than \$250 000	\$4,691.12		\$4,266.00
Undertake works or activities to a registered place or registered object, if the estimated cost of the works or activities is at least \$250 000 but less than \$500 000	\$5,224.58		\$5,688.00
Undertake works or activities to a registered place or registered object, if the estimated cost of the works or activities is at least \$500 000 but less than \$1 000 000	\$6,291.50		\$7,110.00
Undertake works or activities to a registered place or registered object, if the estimated cost of the works or activities is at least \$1 000 000 but less than \$5 000 000	\$10,812.00		\$11,376.00
Undertake works or activities to a registered place or registered object, if the estimated cost of the works or activities is at least \$5 000 000 but less than \$10 000 000	\$12,597.00		\$12,798.00
Undertake works or activities to a registered place or registered object, if the estimated cost of the works or activities is at least \$10 000 000 but less than \$30 000 000	\$14,462.28		\$14,931.00
Undertake works or activities to a registered place or registered object, if the estimated cost of the works or activities is \$30 000 000 or more	\$16,341.56		\$17,064.00
Demolish 50 per cent or more of a registered place or object	\$12,597.00		\$21,330.00

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Table 9: Fee options (continued)

Fee	Full cost recovery (Option 1)	Flat fees (Option 2)	Modified (Option 3)
Archaeological consents			
Consent to uncover and expose an archaeological site or part of an archaeological site recorded in the Heritage Inventory or an archaeological site or part of an archaeological site which is not recorded in the Heritage Inventory in order to assess the condition and potential of the archaeology, for the purposes of constructing one domestic residential dwelling on a lot or allotment, or for an extension to one domestic residential dwelling on a lot or allotment	\$1,030.84	\$3,444.81	\$284.40
Uncover and expose an archaeological site or part of an archaeological site recorded in the Heritage Inventory or an archaeological site or part of an archaeological site which is not recorded in the Heritage Inventory in order to assess the condition and potential of the archaeology, for all other purposes	\$1,030.84		\$711.00
Excavate an archaeological site or part of an archaeological site recorded in the Heritage Inventory or an archaeological site or part of an archaeological site which is not recorded in the Heritage Inventory for the purposes of constructing of one domestic residential dwelling on a lot or allotment, or for an extension to one domestic residential dwelling on a lot	\$1,030.84		\$426.60
Excavate an archaeological site or part of an archaeological site recorded in the Heritage Inventory or an archaeological site or part of an archaeological site which is not recorded in the Heritage Inventory for all other purposes	\$1,030.84		\$1,066.50
Damage and disturb an archaeological site or part of an archaeological site for the construction of one domestic residential dwelling on a lot or allotment, or for an extension to one domestic residential dwelling on a lot or allotment	\$2,121.60		\$711.00
Damage and disturb an archaeological site for all other purposes, where damage is less than 50 per cent	\$3,764.79		\$2,844.00
Damage and disturb an archaeological site for all other purposes, where damage is 50 per cent or more	\$7,375.88		\$5,688.00
Possess or dispose of archaeological artefacts, to undertake geotechnical or soil testing, trenching or boring in order to install, maintain or upgrade service utilities to an archaeological site, or a site recorded in the Heritage Inventory, or a test archaeological excavation as part of a Cultural Heritage Management Plan under the <i>Aboriginal Heritage Act</i> , or for all other purposes for which a consent is required in relation to an archaeological artefact, archaeological site, or a site recorded in the Heritage Inventory	\$1,030.84		\$1,066.50

The commencement of the Act will also allow fees to be charged for a number of ancillary matters that are currently not charged (as listed in Table 10 below). The costs for these activities were estimated in nominal terms based on the estimated time currently taken to process these applications/amendments (see Appendix B).

Costs were separately estimated for simple (lowest cost) and complex (higher cost) processes within each type of amendment. It was found that costs of amendments

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were proportional to the costs of the original permits. Therefore, it was considered simpler to set these fees as a percentage of the original permit fee.¹⁷

For reviews, it was noted that the time estimated was likely to reflect only larger scale or more complex proposals that are more commonly subject to review. As such a fixed fee based on this estimated cost would not be appropriate for smaller matters, which are expected to take less time should they arise. Therefore, the department considered it preferable to set the fees for reviews as a percentage of their corresponding original fee, to enable a direct correlation between low risk, low costs activities and the fee for reviewing the decision. This would be a simpler approach for setting these fees. The percentage was calculated as the cost measured for current activities as a percentage of the highest fee category in each fee type.

The cost of reviewing the Executive Director's determination relating to a permit to undertake works or activities in relation to a registered place or object is higher than the fee for the permit itself, because a request for review triggers a number of mandatory steps that the Heritage Council must take under the Act, including the potential to hold a hearing by the Council and various notification requirements, which are costly. On the other hand, a review relating to a consent for archaeological sites does not require holding of hearings and can be managed at less cost.

Under all three options, the fee to amend a permit or permit application or request a review would be set as follows:

Table 10: Ancillary fees

Fee	Per cent of the corresponding application fee
The fee to amend an unadvertised permit application to undertake works or activities to a registered place or object	45%
The fee to amend an unadvertised permit application to demolish or partially demolish a registered place or object	20%
The fee to amend an advertised permit application to undertake works or activities to a registered place or object	75%
The fee to amend an advertised permit application to demolish or partially demolish a registered place or object	30%
The fee to amend a permit to undertake works or activities to a registered place or object	75%
The fee to amend a permit application to demolish or partially demolish a registered place or object	30%
Fee for lodging a review of Executive Director's determination relating to permit to undertake works or activities in relation to a registered place or object	200%
Fee for lodging a review of Executive Director's determination to demolish or partially demolish a registered place or object	40%
Fee for review of Executive Director's determination in relation to a consent	45%

¹⁷ For example, the cost of amending an existing permit was estimated at \$13,130 for 'complex' permits and \$3,150 for 'simple' permits. This equated to 80% of the cost of the original permit for large scale activities, and 75% for the lower scale fee categories. Allowing for some uncertainty in the estimates, it was considered that a fee for amending a permit of 75% of the original fee was most reasonable.

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4.3 Prescribed forms

Sections 27, 44, 58, 59, 77, 78, 80, 90, 93, 105, 124, 143, 147 and 195 of the Act anticipate that there will be prescribed forms or information. There are limited options available other than assessing whether or not the forms should be prescribed. However, consideration is warranted as to the amount of information required in each prescribed form.

The department has prepared the proposed forms on the basis of the minimum information necessary to be collected to meet the requirements of the Act. Some minor changes are proposed for existing forms to align with the change in language in the Act. For the new prescribed forms to nominate a place or object and to apply for a permit, the department has drawn on existing non-prescribed forms and the information most commonly requested as further information. The stakeholder reference group has reviewed draft forms and provided feedback on where these could be simplified. The department has incorporated this feedback into the proposed forms.

5. DETERMINING THE PREFERRED OPTION

5.1 Methodology for assessing fee options

Fee options are not able to be assessed in a formal cost-benefit assessment, but must be assessed qualitatively in terms of how well each option meets the government's objectives.

This qualitative assessment can be done using multi-criteria analysis (MCA). Under this type of analysis, options are scored against a number of decision criteria, which are in turn weighted to reflect policy objectives. This provides a transparent way to demonstrate what factors have been taken into account in determining the preferred option.

Table 11 below sets out the criteria and their weightings used to compare the fee options in this RIS. The criteria are consistent with the objectives of cost recovery and policy effectiveness objectives more broadly. The criteria are weighted evenly (50 per cent each) between the cost recovery objectives¹⁸ and heritage policy objectives. Within the 50 per cent attributed to cost recovery objectives, the extent to which people giving rise to the risk, or directly benefiting from the service, are required to pay the full actual cost associated with the service, makes up 40 per cent of the overall assessment, while affordability (ability to pay) makes up 10 per cent. This reflects that for the proposed fees, affordability is likely to be less of a problem.

¹⁸ For further information on the government's cost recovery objectives, see the *Cost Recovery Guidelines* available at <http://www.dtf.vic.gov.au/Publications/Victoria-Economy-publications/Cost-recovery-guidelines>.

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Table 11: MCA criteria and weightings

	Criterion	Description	Weighting
Cost Recovery objectives	People giving rise to the risk, or directly benefit from the service, are required to pay the full actual cost associated with the service sought	This criterion measures the extent to which the fees for an activity that pose a risk to the state's cultural heritage, reflect the actual cost of regulating this activity. It incorporates the costs of administering government regulation, and the cost to the individual of undertaking the activity. It also seeks to ensure that the resources used to allow the regulated activity to take place will become apparent to producers and consumers. Full cost recovery ensures that all the relevant costs are incorporated in the relevant price signals. This achieves an efficient use of resources in the economy. For example, activities that require high levels of regulation are not favoured over activities that require low levels of regulation. If fees are set significantly below the cost of regulating the activities, there is a tendency for too much of the regulated activity to be done, causing a drain on government resources to regulate the activities. In relation to cost recovery, fees that match actual costs also means those that give rise to the need for government regulation have to pay the associated costs while avoiding the situation where all taxpayers have to pay the associated costs regardless of whether or not they give rise to the need for the government regulation.	40%
	Affordability/ Ability to pay	This criterion measures how the fee structure reflects the ability of different groups to pay fees. In particular, where fees are considered significant and a potential cost barrier, those with greater means should contribute proportionately more than those with lesser means.	10%
Heritage policy objectives	Effectiveness	This criterion measures the extent to which the fees may support or go against policy objectives. In this case, fees may detract from heritage policy objectives if they lead to non-compliance (e.g., people undertaking works to heritage places without seeking a permit), which creates additional risk to protecting the state's cultural heritage.	50%

The options are scored for each criterion between -10 and +10. Options are scored relative to the base case (no regulations, and therefore no fees); a score of zero indicates an option is the same as the base case. Scores can be positive or negative depending on how the option compares to the base case: a score of +10 indicates an option is much better than the base for the given criterion (and fully satisfies the stated objectives), while a score of -10 indicates it is much worse than the base case. In practice, scores will be somewhere along the scale and some judgment is needed when determining an appropriate score.

5.2 Assessment of options

The following table provides the department's view on how each option rates against these criteria. As required by the above methodology, each option is scored between -10 and +10 for each criterion. Each score is then multiplied by the weighting and then added together to arrive at the total score for that option.

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Table 12: Results of multi-criteria analysis

Criterion	Option 1 - Full cost recovery	Option 2 – Simplified full cost (flat fees)	Option 3 – Modified full cost recovery
People giving rise to the risk, or directly benefit from the service, are required to pay the full actual cost associated with the service sought	Fees fully recover costs for each fee type, although the use of broad classes within fee types means that the fee does not necessarily match the exact cost for each individual transaction. This option goes a long way to ensure that those who give rise to the need for regulating activities that pose a risk to cultural heritage pay the costs of that regulation, while those that do not (the general public) do not pay. However, the use of broad classes within fee types does mean a very small degree of cross-subsidisation between some applicants. Score: 8	As with Option 1, this option fully recovers all costs in total, however there is a much greater number of transaction where the fees do not match costs for each transaction because of the use of flat fees. As with Option 1, this option ensures that those who give rise to the need for regulating activities that pose a risk to cultural heritage pay the costs of that regulation, however there is a higher degree of cross-subsidisation by use of flat fees. Score: 5	This option recovers all costs in total, however has been deliberately structured for some fees to under-recover while others over-recover. This means that some transactions will face a fee that does not equal the actual cost for each transaction—more so than Option 1, but not as much as Option 2. While recovering the costs of regulation from all fees as a whole meets this criterion, the use of deliberate under-recovery and over-recovery of some fees introduces a new form of cross-subsidisation between fee categories (although likely to be less cross-subsidisation than Option 2). Score: 6
Affordability/ Ability to pay	Compared to the base case, all options which involve fees have a negative score on affordability as they introduce new costs to people who may have limited means to pay them. In this option, the impact is likely to be moderate as there would be exemptions and waivers for a range of circumstances, and in most cases the fee is proportion to the value of works or the type of activity. It is therefore considered moderate for most people and does not represent a significant financial burden relative to the nature of the activity proposed. Score: -3	Compared to Option 1, this is a clearly inferior option in terms of affordability as it means higher fees for smaller-scale activities and lower fees for larger-scale activities. The fees do not reflect the relative capacity to pay. Score: -5	This option has been designed to set fees below full cost for activities that involve smaller values of works or activities unlikely to be related to commercial operations. It is therefore considered an improvement over Option 1, although still represents a cost (and therefore a negative score) compared to the base case. Score: -1
Effectiveness	In many cases, this option involves fees that are relatively high compared to the scale of activities. This is likely to result in an increased risk of non-compliance (e.g., people undertaking works without a permit). Further, high fees associated with low value of works may result in some works not being done at all that may have had an associated wider economic or social benefit. Score: -2	This option would exacerbate the non-compliance risk of Option 1 by imposing even higher fees on smaller-scale and non-commercial activities. Score: -4	This option has been designed to minimise the incentives for non-compliance by making fees more in proportion with the scale and nature of the activity being undertaken. However, some risk of non-compliance is inherent in any fee structure. On the other hand, this option increases some fees where there would be a high risk to cultural heritage places and objects and as a consequence would discourage the destruction or damage of heritage sites. Overall, this option is expected to preserve the exiting policy position (the base case). Score: 0
TOTAL WEIGHTED SCORE	1.90	-0.50	2.30

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This analysis finds that the adjusted cost recovery (Option 3) has a higher overall score than the other options. It is noted this outcome is dependent on the weights and scores used, and minor changes in these could produce a different outcome. For example, if greater importance were given to cost recovery objectives, Options 1 and 3 become closer. Stakeholders may therefore wish to comment on the weightings and scores used in the above table.

On the basis of this analysis, the department considers that the adjusted cost recovery option (Option 3) is preferred, noting that this option involves a trade-off between matching the full cost to those that benefit from the activity and other policy objectives (most notably being the ability for smaller non-commercial activities to pay fees and the risk of non-compliance).

5.3 Assessing the prescribed forms

There is no material increase in the regulatory burden associated with prescribing the proposed forms. In the absence of regulations there would be no forms prescribed per se, however the department and the Heritage Council may nevertheless develop and encourage the use of standardised forms. This already occurs with a number of forms that are not yet prescribed. New forms could be developed that address the current known information gaps but not be prescribed. In other words, under the base case, the department would still use the proposed forms albeit they would not be mandated in the regulations.

On this basis, the prescribing of forms in the regulations that would be used in any case would not result in any material additional burden to people making applications. If forms are not prescribed, people could theoretically not use the standard forms and the department would still be required to process the application in accordance with the Act. Therefore, compared to what an applicant is legally required to do, the prescribing of forms would provide an additional burden—providing the information in the standard form may take more time than the information they would otherwise provide. However, if the information is not provided in the prescribed form then it may not contain enough information to allow the application to proceed. Given the department's experience in requiring the use of a number of forms that are not prescribed, this is considered a very small impact.

The proposed regulations also include prescribed forms for the issue of an interim protection order and for the form of site cards issued under the Act. These are forms that must be used by government, and therefore there is no cost for people completing these forms. Prescribing the information in these forms ensures people relying on these forms are provided with the appropriate information.

Therefore, the department considers there is likely to be no material burden created by prescribing in the regulations the proposed forms. On this basis, this RIS provides only limited analysis of these forms, although the department encourages stakeholders to provide any comments on where the proposed forms could be made simpler to use.

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The department considers that using the proposed forms would provide a benefit to applicants through increased certainty of the information that they must provide. Preparation of applications may occur over a long period and prescribing forms means that the information required is unlikely to change at short notice.

For completeness, the department estimated the additional costs associated with using the standard forms (whether prescribed in the regulations or not) and the estimated value of time saved in requests for further information that are expected to be achieved. In total, the additional cost of using the forms is estimated at \$60,364 per annum. The total time savings are estimated at \$152,977 per annum. This is a net benefit of \$92,612 per annum. See Appendix C for calculations of each proposed form.

6. PREFERRED OPTION

Based on the analysis in the preceding sections, the preferred option involves:

- setting fees according to the ‘modified’ cost recovery option (Option 3), which provides a balance meeting cost recovery objectives while ensuring heritage policy objectives are met
- prescribing the relevant forms required under the Act to make applications and collection of relevant information more efficient
- setting the infringements and penalties as outlined in chapter 2.

6.1 Comparison of proposed fees and existing fees

Full details of the proposed fees compared to the current fees are set out at Appendix A (see page 45).

Fees related to permit and consent application are, in some cases, set below the full cost, while others are set to recover more than the actual cost. This reflects the department’s consideration that the person generating the risk should pay, whilst striking an appropriate balance of cost sharing (particularly where some types of activities are likely to have a greater public good element), and effectiveness (avoiding incentives for non-compliance). Overall, there will be some minor cross-subsidisation between different fee groups.

The department also considered an option to set fees at full cost recovery, under the same fee structure or under a streamlined fee structure (removing different classes within a fee type). These approaches were found to be inferior. While full cost recovery provides a more efficient option, it would have undesired effects in terms of compliance (e.g. large fees for small value works is likely to increase the incentive for people to not seek a permit).

The department proposes that some fees (mostly for permits for smaller value works, consents related to single dwellings, or to drive recreationally in a protected zone) are set below full cost recovery to reflect that the wider community continues to benefit from the cultural heritage value of these places.

To offset the revenue impacts of these fees being set below their full cost, it is proposed to increase the fee for heritage certificates to slightly more than full cost recovery. This reflects that heritage certificates are used far more frequently than any other fee type and would allow the costs of administering activities under the Act to be spread over a wider group.

A small number of fees are set above their full cost. These relate to activities that would involve or may risk significant or complete destruction or damage to the heritage value of items. The fee therefore seeks to capture this increased risk and thereby act as a better price signal to those wishing to undertake such activities.

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The outcome of these adjustments is that there will be a degree of cross-subsidisation between fee groups. The extent of cross-subsidisation is shown in Table 13 below.

Table 13: Cross-subsidisation within preferred fee option

Fee type	Full cost	Proposed fee revenue	Extent of cross-subsidisation
Heritage certificates	\$373,311.50	\$597,240.00	\$223,928.50
Permits related to shipwrecks and protected zones	***	***	***
Permits for works on registered places	\$1,125,828.67	\$954,588.60	-\$171,240.07
Consents for activities on archaeological sites or artefacts	\$192,909.54	\$155,353.50	-\$37,556.04

*** due to only a small number of fees charged for these permits each year, it is not practical to predict future revenue, however it is expected to be very minor in comparison to other fees categories.

6.2 Revenue impact

It is estimated that the proposed fees will generate revenue in 2017-18 of around \$1.7 million. As discussed previously fee revenue is paid into the Heritage Fund rather than going into government consolidated revenue. The Heritage Fund, which is administered by the Heritage Council is used to provide assistance for the conservation and management of cultural heritage of places and objects, the making of loans and grants, and to cover various Heritage Council expenses in relation to administering the Act.

6.3 Groups affected

The direct impacts of the preferred option will be to impose costs on people making applications—through both the proposed fees and the burden of completing the relevant prescribed forms.

The largest group affected is people applying for a heritage certificate (by far the highest frequency of application). This fee is proposed to increase by around 50 per cent. This group is not a fixed group of people, as the people seeking a certificate changes each year. It is likely that most people who would pay this fee would do so only a few times in their lives, e.g. when selling or purchasing property. Importantly, there is no obligation for anybody to obtain a heritage certificate, and therefore seeking this information is wholly voluntary.

The proposed restrictions in relation to protected zones and shipwreck artefacts is not expected to have any impact on the level of activities sought. There are only a small number of shipwrecks in protected zones, and the prohibitions in relation to protected zones are allowable with a relevant permit, and the prohibitions on interfering with shipwreck artefacts should not interfere with the enjoyment of those sites.

It is unlikely that the fees are significant in the context of the activities sought to be undertaken, and as such it is not expected that the proposed fees will materially change the number of permits or consents sought.

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6.4 Competition assessment

The department believes the proposed regulations will have no material impact on competition.

The proposed fees are not sufficiently high as to prevent commercial activities or restrict new entrants to any market.

The fee for heritage certificates is effectively voluntary as there is no requirement to obtain a heritage certificate in relation to property transactions.

The prohibitions concerning protected zones potentially affect businesses who operate diving activities. However, given the small number of protected zones and the even smaller number of permits sought by applicants, the department considers that the prohibitions do not have a material impact on any business operation, and therefore could not be considered a material impact.

6.5 Small business impact assessment

Sometimes, small businesses may experience a disproportionate impact from regulatory requirements for a range of reasons, including limited resources to interpret compliance requirements, or to keep pace with regulatory changes and the cumulative effect of different requirements.

For the proposed regulations, the department believes there is unlikely to be a disproportionate impact on small businesses. While small businesses will always have less capacity to pay fees than larger businesses, the proposed fees have been scaled to be proportionate to the activities being undertaken, and are small relative to the likely cost of the corresponding activities. As noted in this RIS, there is no material additional cost associated with prescribing the various forms, and no particular higher burden is expected for small businesses.

There is no component of the proposed regulations that is expected to apply disproportionately more to small businesses than other groups.

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7. IMPLEMENTATION

The proposed new regulations will coincide with the commencement of the Act. A number of activities are planned to support the implementation of the Act including the preparation of information materials and information session proposed. The specifics of the proposed regulations will be included as part of these activities.

No new administrative arrangements are necessary for the proposed fees, as the department already has systems in place to collect fees from people making applications. The current fees are published on the website and clearly indicated in the process for lodging an application. All prescribed forms will be available on the website as currently occurs.

As there are no disproportionate impacts expected for small businesses, no special implementation arrangements are considered necessary to assist small businesses in complying with the regulations.

The proposed penalties and infringement offences continue the current arrangements, for which there is already a dedicated enforcement team and inspectors are familiar with the issuing of infringement notices.

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8. EVALUATION STRATEGY

The department is accountable to the Minister for Planning for the effective administration of the regulations. This includes fees collected and the department's costs in relation to its regulatory functions under the Act.

The effectiveness of setting fees is determined by:

- the degree to which the fees recover the expected amount of costs
- whether or not any unexpected or adverse outcomes occur caused by the fees (e.g. a rise in non-compliance).

The proposed regulations will sunset after ten years, providing an appropriate point to undertake a complete evaluation. This will be undertaken by the department.

In the interim, the department will review fee data on an annual basis to assist in determining whether:

- the current arrangements remain relevant given changes in circumstances (such as government policy changes)
- the objectives of cost recovery are still being met and/or there are better ways of achieving the objectives
- cost recovery charges are based on efficient and transparent costs.

The Heritage Council will maintain a record of fee revenue and the activities for which fees are collected and report on this annually as part of its financial management responsibilities. The department will review on an annual basis data on breaches to identify any relevant patterns of concern.

A key component of the monitoring process will include consultation with stakeholders and affected parties to obtain feedback on cost recovery arrangements. This will be done through existing consultation processes.

The proposed regulations include fees for new processes that will not begin until the commencement of the Act in November 2017. They also make changes to the use of waivers. Both of these will require particular focus within the first few years. For new processes, the department will need to actively monitor in the first few years to confirm that the estimated costs of these processes align with the actual costs. The first few years will allow trends to be identified and evaluated, particularly in relation to the use of waivers and exemptions. If the use of these provisions increases significantly under the new regulations, the department will review their use to determine if there are options to further simplify the management of these processes.

Finally, the structure of the proposed fees increases the fee for heritage certificates above its actual cost, to partially offset the lower revenue associated with setting some other fees below their actual cost. While the department considers it an unlikely risk, the department will monitor the demand for heritage certificates to determine if a fall in demand creates an overall revenue imbalance.

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APPENDIX A: The proposed fees

The following table sets out the proposed fees for each fee type and class. Note that fee classes marked with an asterisk (*) will be new fee classes, and in such cases the current fee reflects the fee that a similar activity would attract under the current regulations (if any).

The table shows each fee in fee units as well as the dollar amount of the fee in 2017-18. The value of a fee unit increases annually as determined by the Treasurer. For 2017-18, one fee unit has been set at \$14.22, an increase of 2 per cent from the 2016-17 fee unit value.

Table 14: Fees included in the proposed regulations

Fee	Current fee (from 1 July 2017)		Proposed fee (from 1 November 2017)		% change
	Fee units	Fee amount	Fee units	Fee amount	
Review of ED refusal					
Request for review of the Executive Director's refusal of nomination	new	new	250	\$3,555.00	NA
Heritage Certificates					
Applying for a certificate stating relevant heritage information about a place or object	4	\$56.88	6	\$85.32	50%
Underwater cultural heritage permits					
Enter a protected zone to conduct any form of recreational diving or snorkelling		\$50.00 per permit	1	\$14.22 per diver	NA**
Enter a protected zone to conduct any form of recreational diving or snorkelling that requires the use of moorings within that protected zone		\$250.00 per permit	2	\$28.44 per diver	NA**
* Commercial operators to convey divers and snorkelers to dive sites for a fee, to enter a protected zone - 1 time, for recreational diving during a specified period, with maximum of 10 divers		\$50.00	8	\$113.76	128%
* Commercial operators to convey divers and snorkelers to dive sites for a fee, to enter a protected zone - 5 times for a period not exceeding 12 months, for recreational diving, max 12 divers		\$300.00	40	\$568.80	90%
Enter a protected zone for any other purpose		\$300.00	90	\$1,279.80	327%
Take, destroy, damage, remove, disturb or otherwise interfere with less than 50 per cent of any registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact		\$1,300.00	750	\$10,665.00	720%
Take, destroy, damage, remove, disturb or otherwise interfere with 50 per cent or more of any registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact		\$1,300.00	1500	\$21,330.00	1541%
Possess, dispose of, or remove from Victoria any registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact		\$20.00	15	\$213.30	967%
Use of registered shipwrecks, historic shipwrecks, registered shipwreck artefacts or historic shipwreck artefacts		\$20.00	8	\$113.76	469%
Possess or use equipment, instruments or explosives of a kind referred to in section 76 of the Act in a protected zone		\$600.00	1500	\$21,330.00	3455%
* Any other activity on or below land within a protected zone or any other underwater activity in a protected zone		new	100	\$1,422.00	NA

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Fee	Current fee (from 1 July 2017)		Proposed fee (from 1 November 2017)		% change
	Fee units	Fee amount	Fee units	Fee amount	
Permits for works or activities at registered places					
Subdivision, consolidation or realignment of a boundary of a registered place or the subdivision of a building	25	\$355.50	100	\$1,422.00	300%
Undertake works or activities to a registered place or registered object, if the estimated cost of the works or activities is less than \$10 000	9***	\$127.98	20	\$284.40	122%
Undertake works or activities to a registered place or registered object, if the estimated cost of the works or activities is at least \$10 000 but less than \$20 000	9	\$127.98	75	\$1,066.50	733%
Undertake works or activities to a registered place or registered object, if the estimated cost of the works or activities is at least \$20 000 but less than \$100 000	9	\$127.98	200	\$2,844.00	2122%
Undertake works or activities to a registered place or registered object, if the estimated cost of the works or activities is at least \$100 000 but less than \$250 000	13	\$184.86	300	\$4,266.00	2208%
Undertake works or activities to a registered place or registered object, if the estimated cost of the works or activities is at least \$250 000 but less than \$500 000	30	\$426.60	400	\$5,688.00	1233%
Undertake works or activities to a registered place or registered object, if the estimated cost of the works or activities is at least \$500 000 but less than \$1 000 000	35	\$497.70	500	\$7,110.00	1329%
Undertake works or activities to a registered place or registered object, if the estimated cost of the works or activities is at least \$1 000 000 but less than \$5 000 000	130	\$1,848.60	800	\$11,376.00	515%
Undertake works or activities to a registered place or registered object, if the estimated cost of the works or activities is at least \$5 000 000 but less than \$10 000 000	130	\$1,848.60	900	\$12,798.00	592%
Undertake works or activities to a registered place or registered object, if the estimated cost of the works or activities is at least \$10 000 000 but less than \$30 000 000	339	\$4,820.58	1050	\$14,931.00	210%
Undertake works or activities to a registered place or registered object, if the estimated cost of the works or activities is \$30 000 000 or more	551	\$7,835.22	1200	\$17,064.00	118%
Demolish 50 per cent or more of a registered place or object	127	\$1,805.94	1500	\$21,330.00	1081%
Amend an unadvertised permit application to undertake works or activities to a registered place or object	new		45%		NA
Amend an advertised permit application to undertake works or activities to a registered place or object	new		75%		NA
Amend an unadvertised permit application to demolish or partially demolish a registered place or object	new		20%		NA
Amend an advertised permit application to demolish or partially demolish a registered place or object	new		30%		NA
Amend a permit to undertake works or activities to a registered place or object	new		75%		NA
Amend a permit application to demolish or partially demolish a registered place or object	new		30%		NA
Review of Executive Director's determination relating to permit to undertake works or activities in relation to a registered place or object	new		200%		NA
Review of Executive Director's determination to demolish or partially demolish a registered place or object	new		40%		NA

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Fee	Current fee (from 1 July 2017)		Proposed fee (from 1 November 2017)		% change
	Fee units	Fee amount	Fee units	Fee amount	
Archaeological consents					
* Consent to uncover and expose an archaeological site or part of an archaeological site recorded in the Heritage Inventory or an archaeological site or part of an archaeological site which is not recorded in the Heritage Inventory in order to assess the condition and potential of the archaeology, for the purposes of constructing one domestic residential dwelling on a lot or allotment, or for an extension to one domestic residential dwelling on a lot or allotment	15	\$213.30	20	\$284.40	33%
Uncover and expose an archaeological site or part of an archaeological site recorded in the Heritage Inventory or an archaeological site or part of an archaeological site which is not recorded in the Heritage Inventory in order to assess the condition and potential of the archaeology, for all other purposes	15	\$213.30	50	\$711.00	233%
* Excavate an archaeological site or part of an archaeological site recorded in the Heritage Inventory or an archaeological site or part of an archaeological site which is not recorded in the Heritage Inventory for the purposes of constructing of one domestic residential dwelling on a lot or allotment, or for an extension to one domestic residential dwelling on a lot or allotment	15	\$213.30	30	\$426.60	100%
Excavate an archaeological site or part of an archaeological site recorded in the Heritage Inventory or an archaeological site or part of an archaeological site which is not recorded in the Heritage Inventory for all other purposes	15	\$213.30	75	\$1,066.50	400%
* Damage and disturb an archaeological site or part of an archaeological site for the construction of one domestic residential dwelling on a lot or allotment, or for an extension to one domestic residential dwelling on a lot or allotment	26	\$369.72	50	\$711.00	92%
Damage and disturb an archaeological site for all other purposes, where damage is less than 50 per cent	26	\$369.72	200	\$2,844.00	669%
Damage and disturb an archaeological site for all other purposes, where damage is 50 per cent or more	48	\$682.56	400	\$5,688.00	733%
Possess or dispose of archaeological artefacts, to undertake geotechnical or soil testing, trenching or boring in order to install, maintain or upgrade service utilities to an archaeological site, or a site recorded in the Heritage Inventory, or a test archaeological excavation as part of a Cultural Heritage Management Plan under the <i>Aboriginal Heritage Act</i> , or for all other purposes for which a consent is required in relation to an archaeological artefact, archaeological site, or a site recorded in the Heritage Inventory	new	new	75	\$1,066.50	NA
Review of Executive Director's determination in relation to a consent			45%		

* some fee classes have changed from the current fees. In these cases, the current fees shown above indicate the current fee that most closely aligns with the proposed new fee classes.

** the current fee is on a per permit basis, while the proposed new fee is per diver. Therefore the fee amounts are not directly comparable.

*** works up to \$5,000 currently have a zero fee. Under the proposed fees, this fee category will be expended to works up to \$10,000 and will now pay a fee. The current fee and percentage change shown in the table relate to works over \$5,000.

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APPENDIX B: Estimating cost of government activities

This appendix outlines how the “full cost” of the government activities for which fees are set were estimated, as shown in Table 9 of this RIS (page 31).

STEP 1: Identify the steps involved in each process and estimate the staff time needed to complete each step.

The following tables set out the time involved for completing each type of activity.

NOTE: for departmental staff (VPS2-Exec) the time is shown in hours, while the time for Heritage Council chair and members is shown in days.

Given the small number of transactions that occur each year, it was not feasible to conduct a full ‘time and motion’ study (whereby the actual time spent on activities is tracked and then averaged over a large number of transactions). The estimates were obtained from interviews with staff responsible for each individual function to identify all relevant steps and estimate the amount of time that staff spend on a ‘typical’ activity in each category. Where appropriate, the types of activities were separated between different levels of complexity involved.

Estimates were based on current practices where applicable. For processes that will be new under the Act or where changes to internal processes are expected once the Act commences, the recorded time has made informed estimates based on arrangements developed for those new processes.

Review of ED Refusal of nomination

	VPS2	VPS4	VPS5	VPS6	Exec	HC Chair	HC member
<i>HC costs</i>							
Review of ED decision by Heritage Council members						1	2
Secretariat support (documentation)			5				
<i>HV costs</i>							
Provide information to HC on decision	5				1		

Heritage Certificate

	VPS2	VPS4	VPS5	VPS6	Exec	HC Chair	HC member
Obtain information about property, generate certificate, print or email certificate		0.5					

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Underwater cultural heritage permits

	VPS2	VPS4	VPS5	VPS6	Exec	HC Chair	HC member
Simple permits (activities that are not for a commercial purpose and do not risk damage to shipwreck/artefacts)							
Assessment of permit application, make decision and inform applicant			0.5				
Complex permit - commercial purposes, or likely to damage shipwreck or artefact							
Assessment of permit application, make decision and inform applicant			6				

Permits for works or activities at registered places

	VPS2	VPS4	VPS5	VPS6	Exec	HC Chair	HC member
Simple permit (scale of works up to \$100,000 or subdivisions/consolidations)							
Receiving, checking and logging of application	3						
Assessment and decision	2		28				
Monitoring	0.5						
Notify outcome and conditions	1						
Most complex permit (represented as large scale works >\$30m)							
Receiving, checking and logging of application	3						
Assessment and decision	10		100		5		
Compliance			1				
Monitoring	2						
Notify outcome and conditions	10						

For works permits, time was estimated for two extremes – very simple matters (associated with low-scale works) and very complex matters (large-scale works). Staff indicated that most works up to \$100,000 required about the same amount of time for assessment. HV staff indicated that the amount of effort increases quickly from \$100k to around \$1.5m but then flattens out (i.e., a \$5m proposal is only a bit more than a \$2.5m proposal, not double). This suggests a logarithmic relation rather than a linear relation between the effort of assessing a permit and the proposed scale of works. Therefore, the cost of assessing permits for works between the two extremes was modelled using a fitted logarithmic function.

Review of permit decision

	VPS2	VPS4	VPS5	VPS6	Exec	HC Chair	HC member
HV costs							
Prepare submission on decision		5	25	5			
Attend hearings		20	20	20			
HC costs							
Attend hearings						4	4
Review submissions						2	2
Secretariat			70				

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Amending a permit application

	VPS2	VPS4	VPS5	VPS6	Exec	HC Chair	HC member
Simple permit							
Receiving, checking and logging of application	1.5						
Assessment and decision	3		10	0.8			
Notify outcome and conditions	1						
If need to advertise			10				
Complex permit							
Receiving, checking and logging of application	3						
Assessment and decision			45	4	1		
Notify outcome and conditions	3						
If need to advertise			40				

Amend an existing permit

	VPS2	VPS4	VPS5	VPS6	Exec	HC Chair	HC member
Simple permit							
Receiving, checking and logging of application	2						
Assessment and decision	3		20	0.8			
Notify outcome and conditions	1						
Complex permit							
Receiving, checking and logging of application	3						
Assessment and decision			90	5	1		
Notify outcome and conditions	3						

Archaeological consents

	VPS2	VPS4	VPS5	VPS6	Exec	HC Chair	HC member
Consents for uncovering, exposing, excavating, possess							
Receiving, checking and logging of application	0.5		0.7				
Assessment of application incl. field work and compliance			5		1		
Consents related to damage and disturb less than 50%							
Receiving, checking and logging of application			2				
Compliance			1				
Assessment of application incl. field work and compliance			20		3		
Consents related to damage and disturb more than 50%							
Receiving, checking and logging of application			2				
Compliance			5				
Assessment of application incl. field work and compliance			40		5		
New category - damage and disturb for single dwelling							
Receiving, checking and logging of application			1.4				
Assessment of application incl. field work and compliance			11		2		

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STEP 2: Estimate the costs associated with this staff time, and other costs

For Heritage Victoria staff and the Heritage Council Secretariat staff, the cost of time was estimated using the salaries for each staff grade applicable in 2016-17 as set out in the Victorian Public Service Enterprise Agreement 2016. From these salaries:

- the midpoint of each salary range was used, reflecting the expected average staff level that would perform the functions over the longer term
- the salaries were increased by 75 per cent to account for on-costs (e.g., superannuation) and overheads (e.g., human services, accommodation, IT support, travel)
- the salaries were converted to an hourly rate, based on the expected work hours and leave entitlements.

The following table sets out the hourly rates applied for each staff level.

Staff level	Total hourly cost
VPS2	\$72.85
VPS4	\$104.57
VPS5	\$128.66
VPS6	\$174.55
Executive	\$240.95

For Heritage Council members, daily rates were used to estimate the costs. This is because members are generally paid a daily sitting fee, and use of venues for hearings typically is based on a daily arrangement. The daily costs associated with Heritage Council members (as shown in the table below) was provided by the Heritage Council and includes sitting fees and an allowance for travel and venue costs (hearings).

Daily cost HC Chair	Daily cost HC member
\$875.20	\$791.20

Applying these costs to the estimated hours in Step 1 results in the total staff costs, as at 2016-17. As the proposed fees will commence during the 2017-18 financial year, the resulting costs were increased by 2 per cent to align with the increase in the value of fee units that will apply across all government fees from 1 July 2017.

In addition to these staff-related costs, there are a number of specific other costs that need to be included. These relate to underwater cultural heritage permits and are:

- an allowance of \$150 per permit for the apportioned cost of boat used in enforcement and compliance activities
- for activities that require the use of moorings or other equipment provided at a shipwreck, an additional cost of \$100 was included. This is a notional amount only as currently there are no working moorings in place, but could be in the future so the fees need to allow this. As there are no present moorings, the cost was based on the capital costs used in the 2007 RIS, with staff indicating this would still be a reasonable estimate of the costs should such equipment be provided. Note that no fees have been charged in this category in the last 6 years.

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STEP 3: Determine if the costs are efficient

The costs that result from Steps 1 and 2 are set out in Table 9 of this RIS.

It is important that costs sought to be recovered through fees are only those that are necessarily and efficiently incurred. All the above functions are required to be performed under the Act, which also outlines in most cases the processes to be followed and matters to be considered, although there is some discretion as to the amount of time devoted to considering some issues. The department considers that the activities are performed as efficiently as possible, having regard to the matters that the Act requires be considered for each type of activity.

The information presented in Step 1, together with their own experiences in dealing with the Heritage Victoria and the Heritage Council, will allow stakeholders to comment on whether they consider the processes are performed efficiently.

Further, Appendix D sets out fees for similar activities in other states and territories. This can be used to benchmark Victoria's costs to some degree. However, a direct comparison should be done with caution, as:

- the legislative requirements differ between jurisdictions
- it is not clear to what extent the fees in other states are designed to (or achieve) recovery of full costs.

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APPENDIX C: Costs and savings of using prescribed forms

The value of time for an applicant was estimated at \$37.36 (based on average weekly earnings, full time ordinary hours, Victoria, May 2016). This assumes the applicant is an individual, rather than an employee applying on behalf of an organisation.¹⁹ The value of time for government was taken as an average indicative hourly rate of \$104.57, based on the salary of a VPS4 as a mean staff level, including oncosts and overheads.

Table 15: Estimated costs and benefits of proposed forms

Prescribed form	Estimate cost of completing form	Estimated savings from completing form
Nomination of a place or object for inclusion in the Victorian Heritage Register	2 hours additional time when making a nomination. For 70 nominations received each year, this is a total additional cost of \$5,379.84 per annum.	Saving in nominator time of 5 hours and government time of 3 hours, saving \$500 per nomination. This saving would only occur in 65% of cases, giving a total cost saving of \$23,423.73 per annum.
Submissions to the Heritage Council on a recommendation of the ED to include or not in the VHR	2 hours additional time when making a submission. This is an additional cost per nomination of \$74.72. For 50 submissions received each year, this is a total additional cost of \$3,736 per annum.	By streamlining the information required, use of a form is expected to save an applicant time of 5 hours (avoided search costs and providing unnecessary information) and government 3 hours in follow up time. This is an annual saving of \$25,025.
Application for a heritage certificate	These are done online, with a typical request (proving all prescribed information) taking around 5 minutes to complete. With around 7000 certificates issued each year, this is a total cost of \$21,793 per annum.	Specific savings were not separately estimated. See below.
Notification of intention to sell	Additional time of 5 minutes (\$3.11) per notification. For 15 notification each year, a total cost of \$46.70.	Saving in notifier time of 30 minutes and government time of 5 minutes per notification. Total savings of \$411 per annum.
Permit for exploration or recovery of shipwrecks and artefacts	1 hour on average to complete the application. With only around 3 per year, the total cost is estimated at \$112.08 per annum.	Use of a form expected to save an applicant 1 hour and government 1 hour in time that would otherwise be used to follow up applicants for further information, expected to occur in around 50% of cases. This would be a total saving of \$212.89 per annum.
Permit for use of registered shipwreck or registered artefact	1 hour on average to complete the application. With only around 3 per year, the total cost is estimated at \$112.08 per annum.	Use of a form expected to save an applicant 1 hour and government 1 hour in time that would otherwise be used to follow up applicants for further information, expected to occur in around 50% of cases. This would be a total saving of \$212.89 per annum.
Notification of discovery of shipwrecks or artefacts	\$37.26 per notification. Total cost of \$37.26 per annum (based on average of 1 notification per year over the past five years)	\$142 per discovery. Total saving of \$142 per annum.
Notice of alteration for religious service purposes	Assumed 1 hour additional time to prepare and provide notice, being a cost of \$37.36 per notice. However,	Estimated saving of half an hour in applicant time and half an hour in government time, in 60% of cases, where further information was

¹⁹ For employees performing tasks within a business or other organisation, there may also be other overhead and related costs to the business associated with the employees time. However, the higher hourly rate would affect both the costs of complying with the forms and the corresponding saved time, so it not likely to change the overall conclusion that use of the forms results in a net benefit in time saved.

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Prescribed form	Estimate cost of completing form	Estimated savings from completing form
	as such notices are rare, a total cost per annum is not able to be calculated (often zero).	required. The gives a saving, averaged over all such notices, of \$70.96 per notice.
Application for a permit to carry out works or activities to a heritage place or object	2 hours additional time when making an application. This is an additional cost per application of \$74.72. For 218 applications received each year, this is a total additional cost of \$16,288.96 per annum.	Saving in applicant time of 8 hours and government time of 5 hours, saving \$822 per application. This saving would only occur in 55% of cases, giving a total cost saving of \$98,524.86 per annum.
Amendment of a permit	1 hour additional time when making an amendment. Assuming around 10% of permits may seek an amendment, this is a total cost of around \$814.45 per annum.	Saving in time of half an hour in applicant time and 1 hour in government time from no longer requiring follow up requests for further information, which could be achieved in 50% of cases. This is a total saving of \$1,343 per annum.
Application for consent	5 hours additional time to complete the form. For around 60 completed each year, this is a total cost of \$11,208.	Savings to each of the applicant and government of 2 hours due to not needing to seek as much further information. Total saving of \$17,031 per annum.
Notice of existence of an interim protection order	1 hour additional time (\$37.36) to prepare and display notice. For 3 such notices each year, the total cost is \$111.	Savings not estimated. See below.
TOTAL	Total cost of \$60,364	Total saving of \$152,977

The prescribed information relating to a request for a heritage certificate is the minimum necessary information needed by the Executive Director to provide the certificate. These requests are done online, with the request portal capturing all relevant information needed to identify the relevant property and match available data. (However, certificates for objects or those to which an exemption apply are required to be processed manually using the paper form.) There is no corresponding saving as such (similar to the other forms) as without the prescribed information, the certificate could not be provided. The cost shown in the table therefore provides the minimum necessary cost of requesting a certificate, whether or not such information is prescribed.

Similarly, there is no direct time saving associated with the form of notice for the existence of an interim protection order. However, without prescribing such information, the IPO notice could not be provided as required under the Act, meaning that people would be unable to comply with the Act, or compliance would not achieve the Act's purpose of requiring the existing of an IPO to be notified. As such, the cost in the above table represents the minimum necessary of giving effect to the Act in relation to IPO notices.

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APPENDIX D: Heritage fees in other Australian jurisdictions

Reg ⁿ	Description	Fee (\$)
NSW: Heritage Regulation 2012		
4(1)	Prescribed fee for application for approval. For the purposes of section 60 of the Act, the prescribed fee that is to accompany an application for approval to carry out an activity referred to in section 57 (1) (a)–(h) of the Act is:	
(a)	if the estimated cost of carrying out the activity is \$100,000 or less and the activity is in relation to an owner-occupied private dwelling	150
(b)	if the estimated cost of carrying out the activity is \$100,000 or less and the activity is not in relation to an owner-occupied private dwelling	300
(c)	\$400 plus \$25 for each \$100,000 (or part \$100,000) of the estimated cost of carrying out the activity, if the estimated cost of carrying out the activity is more than \$100,000 but no more than \$500,000	400-525
(d)	500 plus \$100 for each \$100,000 (or part \$100,000) of the estimated cost of carrying out the activity, if the estimated cost of carrying out the activity is more than \$500,000 but no more than \$1,000,000	500-1,000
(e)	\$1,000 plus \$50 for each \$100,000 (or part \$100,000) of the estimated cost of carrying out the activity, if the estimated cost of carrying out the activity is more than \$1,000,000 but no more than \$2,000,000	1,000-1,500
(f)	\$1,500 plus \$33.33 for each \$100,000 (or part \$100,000) of the estimated cost of carrying out the activity, if the estimated cost of carrying out the activity is more than \$2,000,000 but no more than \$5,000,000,	1,500-2,500
(g)	\$2,500 plus \$10 for each \$100,000 (or part \$100,000) of the estimated cost of carrying out the activity, if the estimated cost of carrying out the activity is more than \$5,000,000 but no more than \$10,000,000	2,500-3,000
(h)	\$3,000 plus \$10 for each \$100,000 (or part \$100,000) in excess of \$10,000,000, if the estimated cost of carrying out the activity is more than \$10,000,000.	3,000+
5(1)	For the purposes of section 140 (2) of the Act, the prescribed fee that is to accompany an application for an excavation permit is:	
(a)	\$100, if the estimated cost of carrying out the development to which the excavation relates is \$100,000 or less, and the development is in relation to an owner-occupied private dwelling,	100
(b)	\$250, if the estimated cost of carrying out the development to which the excavation relates is \$100,000 or less, and the development is not in relation to an owner-occupied private dwelling,	250
(c)	\$500, plus \$10 for each \$100,000 in excess of \$100,000, if the estimated cost of carrying out the development to which the excavation relates is more than \$100,000.	500+
7	Application for evidentiary certificate	100
8	Fee for certain reviews of conservation management plans. There are a number of non-prescribed fees determined on a case by case basis by the Director General of the Department of Premier and Cabinet (or delegate) or the Heritage Council. These fees may be charged in relation to a review of a conservation management plan.	

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Queensland: Queensland Heritage Regulation 2015, Schedule 3		
1	Certified copy of an entry in the Queensland heritage register (Act, s 33(1)(a))	38.60
2	Certificate of affect - Certificate about whether a place or area (Act, s 33(1)(b))— (a) is a state heritage place or a protected area; or (b) is the subject of a heritage agreement; or (c) is the subject of an application to have the place entered in or removed from the register; or (d) is an excluded place	38.60
3	Application for a permit to enter a protected area (Act, s 105(2)(d))	154.80
South Australia: Heritage Places Regulations 2005, Schedule 2		
1	Certified copy of an entry in the Register in relation to a State Heritage Place, or an object identified by the Council under section 14(2) of the Act	32.50
2	Application for a certificate of exclusion in relation to land zoned "residential" under the relevant Development Plan— a) initial application	\$161 plus 1,465
3	Application for a certificate of exclusion in relation to any other land	5% of Valuer-General's assessment of site value
4	Application for a permit under Part 5 Division 1 [archaeological artefacts] of the Act	161
Tasmania: Historic Cultural Heritage Regulations 2016		
4	Application fee for an unregistered place certificate. For section 78(2)(c) of the Act the prescribed fee is 25 fee units, inclusive of GST.	37.75
5	Application fee for affected place certificate. For section 86(2)(c) of the Act, the prescribed fee is 25 fee units, inclusive of GST.	37.75
Australian Capital Territory: Heritage (Fees) Determination 2016, Heritage Act 2004, s 120, Schedule		
1	Application for urgent decision on heritage nomination for provisional registration of an individual place or object	4,330
2	Application for an urgent decision on a heritage nomination for provisional registration of a Precinct	10,400
3	Application for Heritage Council endorsement of a conservation management plan for a government-owned heritage place or object	4,162

Notes:

The *Northern Territory Heritage Act 2011* permits fees to be charged under its regulation making powers (s 149); however, to date no fees have been prescribed under the Northern Territory Heritage Regulations 2012.

The *Heritage of Western Australia Act 1990* refers to 'prescribed fees' in several places. However, it appears that no fees have been prescribed under the act (see: Heritage of Western Australia Amendment Regulations 2012). That said, a new heritage bill has been circulated for public comment, the Heritage Bill 2015. Section 129 of the Bill provides for "Recovery of Costs by [Heritage] Council" and provides that powers be delegated in the Regulations to collect fees (s 69). It therefore appears that Western Australia is contemplating a move towards cost recovery and the introduction of fees.

