

**Submission  
No 161**

## **INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977**

**Organisation:** Professional Historians Association (NSW & ACT)

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This submission is made on behalf of the Professional Historians Association (NSW & ACT) and has been endorsed by the Executive Committee.

## About us

The Professional Historians Association (NSW & ACT) represents 109 professionally accredited historians practising in New South Wales and the Australian Capital Territory. Professional historians are trained to research and present history in a variety of formats. They work in museums, government departments, universities, schools, private firms and as freelance writers. They research an array of subjects, from community and company histories to all forms of heritage work. They undertake oral history projects and curate museums. Their work is published in a variety of formats such as books, information pamphlets, exhibitions, walking tour apps, or websites. There is also a range of work undertaken by historians that does not end up published, for example a variety of reports and advice; films and documentaries; research for Native Title claims, mining leases and other litigation, and as expert witnesses.

A significant number of the Professional Historians Association (NSW & ACT) membership work directly in the heritage sector, providing place histories, thematic studies, assessments of significance, statements of heritage impact, contributing to conservation management plans and provide advice about adaptive re-use in relation to the importance of a place and its fabric. Much of this work takes place under the regulatory framework of the *Heritage Act 1977*. Others work extensively with Aboriginal stakeholders around issues of cultural heritage. The proposed reforms directly impact the professional livelihood and practice of our members.

The Professional Historians Association (NSW & ACT) is committed to inculcating an ethos of high standards of professional and ethical practices among professional historians. We advocate for historical perspectives in public debates and in government, and the keeping and protection of historic places for future generations.

## Submission Summary

- PHA (NSW & ACT) trusts that the *Heritage Act 1977* remains sound legislation that delivers on the objectives as outlined in the Act.
- PHA (NSW & ACT) questions the ‘perceptions’ of property owners discontent and encourages the Minister to survey both property owners and other heritage stakeholders.
- PHA (NSW & ACT) dispute the Discussion Paper’s position that the problem lies in an overburdened regulatory framework.
- PHA (NSW & ACT) implore the Minister to find a way to fund Heritage NSW and Heritage Council in order that they can deliver the regulatory environment that will meet the needs of property owners.
- PHA (NSW & ACT) encourages the minister to resource the Heritage Council to facilitate its effectiveness, especially in introducing a dedicated secretariat.
- PHA (NSW & ACT) believe that the Heritage Council should return to having a dedicated general member position for a historian with appropriate heritage expertise and experience.
- PHA (NSW & ACT) recommends the reinstatement of the history committee to ensure the availability of specific advice on historical matters critical to good heritage governance.
- PHA (NSW & ACT) recommend the creation of a role for a State Historian, to contribute to and provide support about heritage matters to the Minister and to heritage property owners.
- PHA (NSW & ACT) agree activation is valid for appropriate places, where heritage significance is centred in all aspects of design, development and use.
- PHA (NSW & ACT) asks the Minister to be mindful of the ways the inability of some heritage places to be framed through economic

activity excludes many property owners from activation and potential government funding.

- PHA (NSW & ACT) agrees that funding could be made available through grant schemes, and contends that such funding should be in line with the needs of all property owners.
- PHA (NSW & ACT) does not endorse an increase in Ministerial Power.
- PHA (NSW & ACT) maintains that the current listing arrangements incorporate the flexibility to list a full range of items and precincts. There is no need to overlay categories onto the current scheme.
- PHA (NSW & ACT) endorses the NSW Government consultation with peak Aboriginal bodies to create new legislation to protect Aboriginal cultural heritage across the state.

## Response to the Discussion Paper

### Role and Purpose of the Heritage Act 1977

The *Heritage Act 1977* was a community driven, legislative response to the destruction and threat of destruction of places considered to be culturally significant and worthy of protection for future generations. The *Heritage Act 1977* provides the mechanisms for identifying, assessing, and registering items and precincts across New South Wales. Once an item is listed on the State Heritage Register the *Heritage Act 1977* regulates changes that can be made to items, with reference to retaining significance into the future.

### Timely delivery of regulatory services

The discussion paper raises problems faced by property owners when the regulatory mechanisms are triggered as items and precincts are considered for development. No evidence is cited to support the assertion that heritage is considered a burden by owners.

It seems the most common claimed complaint is the length of time it takes to have applications reviewed. This does not, however, mean that there are property owners and heritage professionals who support the broadscale overhaul of the *Heritage Act 1977*. Have studies been undertaken to substantiate this position? A quantitative survey of all heritage property owners and other stakeholders would provide concrete evidence of the views of this group, in preference to relying on perceptions, which may give dangerously unsound information from which to base a review.

The *Heritage Act 1977* has never been antithetical to the development of places, for economic or other means. Heritage NSW officers and heritage professionals have always worked within the regulations to deliver a preservation of significance balanced with meeting modern needs of heritage owners.

We are not in agreement with the discussion paper that the fault lies in the regulation itself. Instead, we see a shortfall in the funding provided for Heritage NSW to employ adequate government officers to execute this work efficiently and effectively. In real terms, funding has decreased for the operation of the *Heritage Act 1977*, with a inadequate amount of staff on short contracts at Heritage NSW administrating larger regional divisions. Heritage NSW no longer has a dedicated portfolio, with, for example, the current Minister holding a range of other portfolios that must compete with his attention for heritage matters, especially where decisions about some regulations already rest in this office. While it may appear to property owners that the processes themselves are slow, the most prudent measure of rectifying these time frames is to increase the budget for Heritage NSW, such that approvals, assessments and communication can be done in a timely manner.

It is admirable that the discussion paper refers to the creation of jobs post the 2019-20 bushfires and a desire to contribute to the community and economic recovery from the ravages of the COVID-19 pandemic. This should start with the Minister ensuring that Heritage NSW has an annual increase in funding from the Treasury to provide employment for officers. This should include a vote for a secretariat for the Heritage Council, ensuring the work of the council and the department are kept at an arm's length. A budget increase for Heritage NSW should flow to an increase in staff at all levels in the branch, but particularly in the areas where bottlenecks are identified. This would have the flow on effects of creating jobs in the areas where property owners are planning the development and other uses of heritage places and items. This would see the public sector providing the private sector with the concrete support they need to keep the economy growing.

This approach will also meet the vision of this government for its three goals of customer service, strong economy and well-connected communities. The reduction in wait times for applications for change in heritage properties serves heritage owners efficiently and effectively resulting in more satisfaction with the government's interaction with its customers.

The efficient and effective work of the bureaucracy contributes to stronger economic outcomes. Enabling timely passage of applications ensures that any activations, or longer term adaptive re-use can proceed in a timely fashion. This allows owners of those places that are feasible for economic use, to do so in line with community expectations for economic growth of the state.

Heritage items and places have always contributed to a sense of place and when they are used in ways that are fit for purpose, such as schools, museums, workplaces, cemeteries, sports grounds, parks, and other places of significance then they provide places that connect people to their histories, in the present. In addition, designers that hold the significance of a place at the heart of an adaptive re-use project inevitably connect to their communities.

The support of a well-functioning, appropriately resourced Heritage Council along with Heritage NSW can contribute to these three visions of the New South Wales government.

## Composition of the Heritage Council

We agree that it is important to review the composition of the Heritage Council. From 1977 to 2009, the *Heritage Act 1977*, included the requirement for one general member to be a historian. Although we acknowledge that there has always been a historian on the council since that time, there is no guarantee this will be the case into the future. We recommend the Minister return to a dedicated position for a historian with the appropriate qualifications and experience in the Heritage sector to ensure appropriate input and advice to the Minister through the Heritage Council.

We also recommend a reinstatement of the history advisory committee to provide advice to both the Heritage Council and Heritage NSW. This committee was amalgamated into the Heritage Advisory Committee, which provides more generalised advice about heritage management rather than specific advice about historical matters critical to good heritage governance.

To reinforce the importance of history, we also recommend that the Minister supports the creation of a State Historian in line with the arrangements for the current NSW Chief Scientist, Professor Durrant-Whyte. Like the chief scientist, this role would consult with industry, academia and across government to facilitate better

understanding of local and state histories for people and economies in New South Wales. There is no doubt that a State Historian could contribute to 'to help the community conserve our heritage', providing much needed support to the Minister and heritage owners.

## Activation

We agree that the activation for economic purposes is valid for appropriate places. When it is done well, uses good design principles and keeps or enhances what is significant about an item or precinct, the PHA (NSW & ACT) support activation. Cultural and heritage tourism contributes \$14 Billion worth of economic activity in New South Wales (according to Destination NSW in 2018 <https://www.destinationnsw.com.au/wp-content/uploads/2019/07/cultural-and-heritage-tourism-to-nsw-snapshot-ye-de-2018.pdf>). Investment in and promotion of this activity is great and should be encouraged, but not at the expense of conserving the significance of items. Heritage is already a viable opportunity for economic growth and employment. Reform which makes it easier to undertake works which impact the significance of items risks impacting what draws people to these items in the first place. For example, a recreation park listed on the State Heritage Register might only be suitable for the purposes for which it was designed. It may not be sensible to open it for weekend markets, or open-air cinemas, music concerts, if this destroys the significance of the place. More importantly these kinds of uses might also destroy the availability of the park for regular recreation activities.

NSW government entities own the majority of heritage items in NSW. The focus on private owner incentives bears the question of whether the Government is more interested in creating a looser regulatory framework in which to divest public heritage assets than with genuine reform?

We would ask the Minister to be mindful of the inequalities that will emerge if too narrow a vision of economic use is applied to activation. Many important heritage items are not open to activation in this narrow economic sense. This will surely create unrest amongst heritage owners, some of whom might have access to available funding, and others who are excluded, but in need of support for care and maintenance.

We also support the increase in funding available for heritage owners for activation, especially if the current Heritage Incentive Fund and Heritage Conservation Fund are injected with new funding from Treasury. The funding should be commensurate with the higher profile desired for heritage conservation indicated in the discussion paper. That is, it should mirror the NSW Regional Cultural Fund (\$100M), NSW Stronger Country Communities Fund (\$400M) or NSW Sports Infrastructure Fund (\$100M). A fund with a substantial budget would allow the Minister to make a significant impact into the support of heritage items and owners.

## Ministerial Power

There is already a high degree of ministerial power of veto and decision-making capacity in the *Heritage Act 1977*. Giving the Minister more responsibilities in the administration of the *Heritage Act*, as suggested in the Discussion Paper, will not result in greater efficiency. If anything, it will create a regulatory bottleneck that would cause additional delays. Decisions made by the Minister already take some time. Empowering and increasing funding to Heritage NSW will deliver a better pathway to improvements in the approvals process.

The PHA (NSW & ACT) do not agree with these changes to the *Heritage Act 1977* on the following grounds:

- It leaves current and future ministers open to the suggestion of corruption, pork barrelling and bribery.
- The potential for decision making without recourse to professional assessments and advice
- The continued contribution to delays in the processes of heritage regulation, the very practices that the review seeks to solve.

## Categories for Heritage Places

PHA (NSW & ACT) believes that the listing arrangements should stay as they are. The current listing arrangements incorporate a full range of items and precincts. As written, the categories suggested in the Discussion Paper offer no material or best-practice benefit for their implementation. The categories reflect an already established hierarchy of significance between local, state, national and world heritage items which is reflected in present state and federal legislation. Further, categorising items threatens to place the same management framework on items which cannot and should not be managed in the same manner. For example, the Sydney Opera House, the State Theatre in Sydney and Union Royal in Lithgow are all listed theatres. Though, as is plainly evident, they have much different



management needs than one another. Categorisation of them as 'Theatres' to create a management framework for them as theatres would not address their needs.

In fact, the State would be imposing extra difficulties in management of them by heritage property owners, placing expectations of how they are managed based on their type rather than their heritage significance' Again, as written, the suggested categories threaten to hierarchise heritage with the potential to obscure, omit or silence significant aspects of NSW's history which are not considered mainstream or exceptional for whatever reason.

Tailored management of heritage places is already recognised and implemented by site-specific exemptions within the existing heritage framework. Strengthening and streamlining pathways to obtaining these specific exemptions would be a superior and more efficient solution than the implementation of a categories-based system.

## Aboriginal Cultural Heritage

PHA (NSW & ACT) endorses the NSW Government consultation with peak Aboriginal bodies to create new legislation to protect Aboriginal cultural heritage across the state.

## Contact Person

This submission has been reviewed by the Executive Committee of the Professional Historians Association (NSW & ACT) on 26 June 2021.

Dr Jodi Frawley, Chair, Professional Historians Association (NSW & ACT)