

**Submission  
No 187**

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

**Name:** Dr Cameron Logan

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Hon Shayne Mallard MLC  
Chair, Standing Committee on Social Issues  
Upper House Committees | Legislative Council  
Parliament of New South Wales

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July 3, 2021

Dear Mr. Mallard,

Thank you for your invitation to make a submission to the NSW Government review of the Heritage Act (1977).

In my role at the University of Sydney I am responsible for overseeing and delivering course content to students studying the Masters of Heritage Conservation. This includes a dedicated unit on heritage law and policy that deals in some detail with the Heritage Act (1977) as well as related legislation containing heritage provisions such as the National Parks and Wildlife Act (1974) and the Environmental Planning and Assessment Act (1979). My research on the development of the heritage conservation movement in the United States and Australia also closely attends to the legal frameworks and policy directions in heritage that have shaped the environment over the past 50 years. In these capacities, and as a citizen, I am anxious to see NSW develop the best possible system for protecting heritage as an integral part of our stewardship of the environment.

Broadly speaking I believe that NSW could have a much more robust heritage system that enjoys greater social legitimacy than the one we now have. But to arrive at such a system will require a dedicated period of policy development and public consultation. The process established in relation to this review does not appear to me to flag serious intent in that respect. For global best practice I would urge the Committee to look to the example provided by Scotland over the past five or six years in working methodically towards a new policy framework for heritage.

My submission is based around seven key points. Each of these is linked to one or more clauses in the terms of reference as well as to the “focus questions” in the discussion paper. I have identified these clauses and questions in connection with each of my points below.



1. **Functioning of the Heritage Act** (This point relates to 1.a, 1.b and 1.d (iv) in the terms of reference.)

The Heritage Act (1977) is mostly fit for purpose. The problems identified in the discussion paper are, in most cases, related to the way in which the Act is administered by the responsible area of government. At present Heritage NSW enjoys very limited capacity to provide service to other arms of government and applicants from the private sector. Most of those problems, therefore, can be resolved without making significant changes to the Act.

2. **Aboriginal Cultural Heritage** (This point relates to 1.c in the terms of reference and Focus Question 2 in the discussion paper.)

The NSW government should prioritise the passage of standalone Aboriginal Cultural Heritage legislation. This is not only the right thing to do, and aligned with the Minister's own commitment, it will guide the government in making necessary changes to other heritage and planning legislation. If the system is to be properly integrated across all domains of heritage, and meaningfully protect the state's heritage, all laws concerned with environmental planning will need to be carefully aligned with the proposed new Aboriginal Cultural Heritage framework. That legislation should, and inevitably will, foreground social value and living culture much more than earlier waves of heritage legislation. Any changes to the Heritage Act (1977) would logically follow that lead and focus on people, place connection, and the living value of heritage.

3. **Classification system for heritage listings** (This point relates 1.d (i) in the terms of reference and the Reform Proposal on p.14 of the discussion paper as well as Focus Questions 8&9)

Separate classifications within the system are not needed. In fact, research internationally suggests that classifications systems are not associated with good development and heritage outcomes. The core principle of values-based conservation can and should work via robust heritage assessments. The government should consider how to revise and improve its significance assessment guidelines to better serve cultural landscapes and other types of places that it feels are badly served by the current system. This might also be supported by updating the system of permit exemptions.

4. **Publicly owned heritage listed places** (This point relates 1.a in the terms of reference and the Focus Questions 17, 18 & 19)

To the extent that the NSW government is concerned about barriers to revitalising and reusing its own assets, it should consider how creating incentives for design excellence in association with the permitting process under Part 4 of the Act might assist in giving places of state heritage significance new life and greater value than they have at present.

5. **Impact on private property owners** (This point relates 1.b in the terms of reference and Focus Questions 5 & 6 in the discussion paper.)

To the extent that the NSW government is concerned about the impact of the Heritage Act (1977) on owners of private property it should look at the Interim Heritage Order provisions in the Act and consider tightening their use by local consent authorities.

6. **Heritage Council powers** (This point relates 1.e in the terms of reference and Focus Question 1 in the discussion paper.)

The Heritage Council should be expert led, and the Act would be stronger and more independent if the Council had decision-making power, rather than simply an advisory function. This would bring it into line with best practice in other jurisdictions.



**7. Public participation** (This point relates to 1.a and 1.b in the terms of reference and Focus Question 10 in the discussion paper.)

I would encourage the NSW government to explore all avenues to increase public engagement with heritage listing and management. However, there is nothing stopping the government from achieving this right now under the current legislation.

Sincerely,

Cameron Logan

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