At a glance – Enforcement and compliance under the *Heritage Act 2017*

Guidance for Victorian Government agencies managing heritage assets

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### Acknowledgement

We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

We are committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the protection of Country, the maintenance of spiritual and cultural practices and their broader aspirations in the 21st century and beyond.

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# Introduction

The *Heritage Act 2017* provides statutory protection to all places and objects of State-level cultural heritage significance included in the Victorian Heritage Register, historical archaeological sites, and shipwrecks and shipwreck artefacts included in Victorian coastal waters. It is the responsibility of asset managers to ensure that all applicable legislative requirements are complied with.

This document has been developed to promote greater understanding of enforcement and compliance under the *Heritage Act 2017*. It provides a comprehensive, quick reference guide for Victorian Government agencies which consolidates existing guidance material relating to this area of focus into a singular point of reference.

For further guidance on the management of heritage assets, please refer to the [Government Asset Managers Program website](https://www.heritage.vic.gov.au/our-programs-and-initiatives/government-asset-managers-program).



#### What is the role of the Investigations and Enforcement team?

Heritage Victoria’s Investigations and Enforcement team ensure that stakeholders, including Victorian Government agencies, comply with their obligations under the [*Heritage Act 2017*](https://www.legislation.vic.gov.au/in-force/acts/heritage-act-2017/004) and the [*Planning and Environment Act 1987*](https://www.legislation.vic.gov.au/in-force/acts/planning-and-environment-act-1987/155) where the Minister for Planning is the Responsible Authority. This includes monitoring and investigating allegations of non-compliance under both Acts.

The team also enforce the [*Underwater Cultural Heritage Act 2018*](https://www.legislation.gov.au/C2018A00085/latest/text) (Cth) in Victoria under delegation from the Australian Government.

#### Are Victorian Government agencies exempt from investigation or enforcement action by Heritage Victoria?

No. Agencies are expected to lead by example in the management of heritage assets. Heritage Victoria provides resources and support via the [Government Asset Managers Program](https://www.heritage.vic.gov.au/our-programs-and-initiatives/government-asset-managers-program) to assist agencies in fulfilling their heritage asset management obligations.

#### What is voluntary compliance?

Heritage Victoria actively supports agencies to voluntary comply with their obligations under all relevant legislative and policy frameworks.

A key function of the Investigations and Enforcement team is to proactively work with agencies to help them better understand their obligations. Education, training and the provision of policy and guidance documentation are tools at the team’s disposal.

#### How do I find out if my agency is the subject of a current enforcement action or investigation?

To find out if your agency is the subject of a current enforcement action or investigation, please [refer to the Heritage Victoria website.](https://www.heritage.vic.gov.au/protecting-our-heritage/current-enforcement-actions-and-investigations) This lists serious contraventions in accordance with Heritage Victoria’s [*Compliance and Enforcement Strategy*](https://www.heritage.vic.gov.au/__data/assets/pdf_file/0027/509544/Compliance-and-Enforcement-Strategy.pdf)(PDF, 1.4MB) Alternatively, you can also [contact the Heritage Victoria Investigations and Enforcement team.](mailto:heritage.compliance@transport.vic.gov.au)

#### How does Heritage Victoria detect and monitor non-compliance by Victorian Government agencies?

Heritage Victoria engages with a range of stakeholders using a variety of methods to detect and monitor non-compliance by agencies, including:

* Site visits and inspections
* Desktop audits
* Community, employee and owner advice
* Data monitoring and sample collection
* Observations and reports from other agencies or regulatory authorities
* Analysis of intelligence and reports.

#### How does Heritage Victoria investigate an allegation of non-compliance by a Victorian Government agency?

An initial assessment will be conducted to determine if a contravention has occurred, its seriousness, and any probable consequences.

An initial assessment is a preliminary review of the allegation. This involves evaluating any studies or condition reports associated with the heritage asset in question, its permit and grants history, and any prior or existing instances of enforcement action.

#### What is a comprehensive investigation?

A comprehensive investigation involves the collation of a brief of evidence and is reserved for the most serious incidents of non-compliance that are likely to result in a prosecution or other serious response.

All evidence that forms part of a brief of evidence is reviewed to determine if there is sufficient evidence to suggest that an offence has been committed. All evidence must be credible and admissible in court if required.

A criminal prosecution may be commenced by Heritage Victoria based on its findings.

#### My agency has been issued a permit to undertake works to a heritage asset. Will this be monitored by Heritage Victoria?

Heritage Victoria aims to take a proactive, risk-based approach when monitoring permits and consents. This focusses on evaluating the likelihood of non-compliance alongside the potential for risk or harm to your heritage asset.

Agencies must comply with all conditions set out by a permit or consent. Be aware that some conditions require agencies to notify or submit further information to Heritage Victoria.

#### What is Heritage Victoria’s approach to enforcement and compliance?

Heritage Victoria uses a range of escalating sanctions, from compliance advice (least severe) to prosecution (most severe). The type of enforcement action is dictated by both the risk or harm to the cultural heritage values of your heritage asset and the culpability of the offender. Further advice on sanctions can be found in Heritage Victoria’s [*Compliance and Enforcement Strategy*](https://www.heritage.vic.gov.au/__data/assets/pdf_file/0027/509544/Compliance-and-Enforcement-Strategy.pdf) (PDF, 1.4MB).

#### My agency has been issued with a preliminary warning. What does this mean?

Your agency has been issued with a preliminary warning because:

* Further non-compliance could result in increasingly severe sanctions being applied
* The harm or potential harm to the cultural heritage values of your heritage asset is currently considered minimal
* Breaches are of an administrative nature.

Your agency should address a preliminary warning by complying with the recommended actions contained in the warning within the stated timeframes. If your agency fails to comply with a preliminary warning, this will be considered in any further potential enforcement action.

#### My agency has been issued with an official warning. What does this mean?

Your agency has been issued with an official warning because:

* The harm or potential harm to the cultural heritage values of your heritage asset is moderate
* Breaches are considered intentional or negligent.

Your agency should address an official warning by making immediate [contact with Heritage Victoria](mailto:heritage.compliance@transport.vic.gov.au) and complying with the required actions in the official warning within the stated timeframes.

#### Streetscape depicting the Theatre Royal in Castlemaine, Victoria, with plants and umbrellas in foreground.

#### My agency has been issued with a rectification order. What does this mean?

A rectification order requires your agency to remedy unlawful works to your heritage asset.

Your agency has been issued with a rectification order because:

* It has undertaken works without a permit or permit exemption
* A warning has been deemed insufficient or has not been complied with
* The harm or potential harm to your heritage asset can be fully remediated.

A rectification order will specify its compliance requirements. Your agency should address all aspects of the rectification order.

#### Can my agency dispute a rectification order?

The *Heritage Act 2017* provides that the Victorian Civil and Administrative Tribunal (VCAT) can review Heritage Victoria’s decision to issue a rectification order. A review application must be made to VCAT within 28 days of the serving of the order.

#### My agency has been issued with a stop order. What does this mean?

A stop order requires your agency to immediately cease works that will harm or are harming your heritage asset. A stop order is issued where there is a moderate to severe impact to your heritage asset and works are underway or imminent.

Your agency should address a stop order by complying with all actions set out in the stop order. Failure to comply with a stop order is an offence under the *Heritage Act 2017* and carries significant penalties.

#### Can my agency dispute a stop order?

The *Heritage Act 2017* does not provide any review powers for a stop order. However, stop orders cease effect if a permit or permit exemption has been granted. Stop orders can be revoked by Heritage Victoria.

#### My agency has been issued with a show cause notice. What does this mean?

Your agency has been issued with a show cause notice because the conservation of your heritage asset is threatened, or it has fallen into disrepair. The notice requires your agency to show cause as to why a repair order should not be issued.

A show cause notice will outline the works that your agency is required to undertake to your heritage asset that will address its disrepair and eliminate the threat to its conservation.

Your agency must notify the Executive Director, Heritage Victoria, in writing within 21 days of the date on the show cause notice of the works that will be undertaken that address your asset’s disrepair and conservation threatened status. For further information, [contact the Heritage Victoria Investigations and Enforcement team](mailto:heritage.compliance@transport.vic.gov.au).

If your agency fails to show cause within 21 days of the notice, the Executive Director, Heritage Victoria, may seek the consent of the Minister for Planning to issue a repair order.

#### Can my agency dispute a show cause notice?

There is no means of disputing a show cause notice. It is an administrative precursor to a repair order. This type of notice only requires your agency to show cause.

#### My agency has been issued with a repair order. What does this mean?

Your agency has been issued with a repair order because it has failed to satisfactorily comply with a show cause notice. It requires your agency to undertake specified works that will address the disrepair of your heritage asset and eliminate the threat to its conservation. These are the same works that were outlined in the show cause notice.

Your agency must undertake the specified works within the stated timeframes, of which there are likely to be several. Failure to comply with a repair order is an offence under the *Heritage Act 2017* and carries significant penalties.

#### Can my agency dispute a repair order?

The *Heritage Act 2017* provides that VCAT can review a repair order. A review application must be made to VCAT within 28 days of the serving of the order.

VCAT’s powers of review are limited to setting aside the repair order if it is satisfied that an owner has not allowed a heritage asset to fall into disrepair or has not failed to maintain the heritage asset to the extent that its conservation is threatened. If VCAT is not satisfied of either of these things, then it must confirm the repair order.

#### Will Heritage Victoria seek to prosecute my agency for non-compliance?

Heritage Victoria imposes sanctions that are appropriate for the level of non-compliance.

Prosecution may occur where other enforcement measures have failed, or the level of harm caused to your heritage asset through non-compliance is significant. It is very much a last resort and must be considered to be in the interest of the public.

#### Where can I find out more information?

Heritage Victoria’s [*Compliance and Enforcement Strategy*](https://www.heritage.vic.gov.au/__data/assets/pdf_file/0027/509544/Compliance-and-Enforcement-Strategy.pdf) (PDF, 1.4MB) outlines in greater detail the issues covered in this document. The [Government Asset Managers Program](https://www.heritage.vic.gov.au/our-programs-and-initiatives/government-asset-managers-program) also has a range of useful documents relating to the management of heritage assets.

Should you have any further questions, [contact the Investigations and Enforcement team.](mailto:heritage.compliance@transport.vic.gov.au)

