

Review of the Heritage Act of Western Australia (1990) Stage 2

History Council of Western Australia

Julia Wallis, Executive Officer

Email: office@historycouncilwa.org.au

Phone: 0421 477 034

Q1 - Objects of the Act - as per s 3.2 of the Discussion paper - adequate yes/no?

The first object is a motherhood statement - a vision rather than an object. The objects should include:

- Protection of State heritage registered sites and objects, and enforcement of preservation and protection orders.
- Ensure preservation of State heritage sites and objects in line with International standards and processes.

Do they assist in setting out the 'spirit' of the Act - what it intends to do?

Yes.

Should the objects note that due regard to achieving a balance between the rights and responsibilities of property ownership and recognising the value and importance of cultural heritage to the broader community is a key overarching principle?

No. The objects identify what the Legislation sets out to do. The balance should be identified in the body of the Act. At some stages there may be a need to recognise the broader social and community values - the public good or the public wealth.

Is this the best way to address this issue, or are there other ways for a new Act to promote a balance between private and community interests?

No - Education about heritage values, and provision of incentives to enable heritage items and sites to be protected and preserved.

I think we have all been shouted at, or accused of wrecking someone's investments, life, etc. Adaptive re-use, recognition that heritage provides value both socially and financially need to be better explored. We need to improve the way in which heritage and history are regarded. A greater understanding and promotion of social value rather than a predominantly architectural perspective may assist.

Please refer to Section 3.3 Functions of the Heritage Council in the "Review of the Heritage of Western Australia Act 1990 Discussion Paper - September 2011"

5. Does this represent a comprehensive list of the functions the Heritage Council should perform?

The penultimate four functions of the Council are of less importance than the first 9. The Heritage Council should work with the National Trust and other organisations to provide education and research. National Trust may be better suited to provision of management and maintenance advice for registered sites. DCA portfolio agencies may provide advice on associated objects, while DEC and DIA provide advice on management of environmental and Aboriginal heritage.

6 and 7 - anything they should not do, anything left off - see above.

Please refer to Section 3.4 Composition of the Heritage Council in the "Review of the Heritage of Western Australia Act 1990 Discussion Paper - September 2011".

Examples of relevant areas of knowledge and skills include archaeology, architecture, building/engineering, heritage conservation, heritage interpretation, history, planning, local government, property ownership, property marketing.

8. Are all these relevant to the functions of the Heritage Council?

No. Property marketing is less relevant to the Heritage Council functions.

9. Are there any others that should be included?

Yes. Sociology and anthropology may assist with identification and development of social value.

10. Should these skills only be sought through nominations from relevant peak professional or representative bodies?

No. These skills should not be sought only through nomination, but should be sought first via nomination. A public or professional historian from Professional Historians Association or History Council WA members, Interpretations Australia, Museums Australia, etc.

11. Nominees of the National Trust of Australia (WA) and local government are included in current heritage legislation and membership of the Heritage Council.

12. Should nominees of the National trust and local government have an automatic place on the Heritage Council, or should they be members because of the skills they bring?

The National Trust and local government representatives should have certain skill sets, but it must also be recognised that they represent and speak for their communities.

13. Should certain relevant fields of expertise be permanently represented? If so, why?

It is impractical for all relevant fields of expertise interests to be represented on the Heritage Council.

A qualified and experienced historian is required to ensure that the documentary evidence is properly sourced, analysed and referenced. Recent reviews of assessment documentation has identified that some documentation is not as rigorous as it should be.

An architect with a good background in the history of architecture should also check the physical evidence. Similarly, an historical archaeologist would be able to review and analyse the documentary and physical evidence.

Please refer to Section 3.5 The Register: Definition of a Place in the "Review of the Heritage of Western Australia Act 1990 Discussion Paper - September 2011"

On occasions, it is likely that a place entered in the State Register may also be recognised and protected under other legislation. Therefore, it is important that the Act clarify the relationship when this occurs by noting that nothing in the Heritage Act would affect the operation of the Aboriginal Heritage Act 1972 or the Maritime Archaeology Act 1973. It should also note that a place comprising the natural environment only is not of cultural heritage significance under the Heritage Act, but a feature of the natural environment can be a place that is of cultural heritage significance because of another value.

14. Are there any other possible instances where the Heritage Act may intersect or overlap with other legislation?

Yes. The National Trust Act.

A site that is a 'natural' site is also a cultural heritage site as nature is defined culturally. The Botanic Parks and Gardens, Parks and Reserves Acts and Land Administration Acts relating to reserves may also include sites of high cultural significance. Similarly, the Environment Protection Act may include sites that are of cultural heritage significance. The Local Government Act and Town Planning Acts as well as the many mining development acts would also be affected.

There is also Commonwealth legislation including the identification of National Heritage sites and the protection of Movable Cultural Heritage Act. Also the Tax Act, with respect to charitable and not for profit organisations that are protecting heritage sites.

Please refer to Section 3.6 Criteria for Entering a Place in the State Register in the "Review of the Heritage of Western Australia Act 1990 Discussion Paper - September 2011".

15. Does the Burra Charter definition sufficiently describe the concept of cultural significance?

Yes.

16. Is it appropriate to adopt the charter for the Act

Yes.

17. Should it be in the Act or Regulations?

Act.

18. Should any place included in a National or World Heritage list be considered, by definition, of State significance?

Yes.

19. Should heritage assessment documentation include analysis of both State and national themes, or focus on one or the other? If just one set of themes, which should be adopted and why?

Heritage assessment documentation should include analysis of both State and national themes.

State nomination may lead to National registration or may not. Without considering the National themes, then this determination may not be able to be made, and may contribute to a greater understanding of the sites.

20. Are there other issues that should be considered in the criteria for entering a place in the State register?

Yes. Consideration must also be given to whether or not a site has attained either local or world heritage listing. Assessment of sites should not be limited to the physical, but should include ephemeral or previous uses of a site, and the associated objects and items. A site may have an ephemeral significance. Natural and Aboriginal heritage must be considered, as well as associations with movable cultural heritage. Intangible heritage should also be a consideration.

Please refer to Section 3.7 Entering Places in the Register in the "Review of the Heritage of Western Australia Act 1990 Discussion Paper - September 2011".

21. Which of these models is likely to deliver the best results in terms of efficiency and transparency?

Model 3 is the best of the models proposed, except that the Minister should not be involved, other than for Stop work and conservation orders. The final decision should rest with the Heritage Council, which must be independent of government, and have the necessary expertise to make these decisions. Nor do the models identify a public consultation period. Is the Heritage Council Registration Committee an advisory committee of the Heritage Council?

22. Is there an alternative model that should be considered?

Yes.

A Commissioner, or Commission for Heritage, independent of Government influence. The Heritage Council becomes an advisory committee, and the Heritage Office is given responsibility for administering the Act on a day to day basis.

23. Model 2 includes an option for the minister of the day to delegate the responsibility for decisions on whether to enter a place in the State Register to the Heritage Council. Is this appropriate, or should the minister always remain the responsible decision-maker?

The Minister should not be given the responsibility.

24. Model 3 includes a ministerial 'call in' after the Heritage Council has determined to enter a place in the State register, but before the entry is made. The principle here is that this provides the minister of the day the opportunity to review the Heritage Council's determinations. If this model is adopted, should the Heritage Act specify grounds under which the ministerial 'call in' is exercised?

The Minister should not be called in. Heritage is a social, not a political, issue.

25. Should the minister's decision and reasons be published where a place does not progress to the State register?

Yes. In a democracy, if the Minister is acting for the community, his decisions must be able to be judged by that community.

26. Should there be an owner's right of appeal to the minister?

No. Heritage values are community values - the values of the one, should not overshadow the values of the many. Registration, in and of itself, identifies those values. Conversely, an owner should be involved in the conservation and interpretation of the site (including redevelopment and adaptive re-use).

27. Model 4 includes a ministerial 'call in' early in the process when the Heritage Council has determined the place is likely to cross the threshold for entry in the Register. This provides the minister with the opportunity to review the Heritage Council's decision to proceed with a full heritage assessment prior to the work being commissioned. If this model is adopted, should the Heritage Act specify grounds under which the ministerial 'call in' is exercised?

As before, the Minister should not be involved. The circumstances where this might required must be proscribed.

28. Should the minister's decision and reasons be published when a place does not progress to being assessed?

Yes. See Q 25 This should be a transparent and open process.

29. What other measures, if any, would promote consistency and predictability of decision-making in the assessment and registration processes under any of these or alternative models?

Publication of the Heritage Council minutes and agendas.

Public hearings, or a public gallery while the decisions are being made.

30. The Heritage Act provides mechanisms such as Stop Work Orders and Conservation Orders for short-term protection of places considered at risk. Does this remove the need for interim registration to be retained as a means of providing short-term protection for places considered at risk?

No.

31. Is interim registration an important part of the process for entering a place in the State register, or should a place simply be entered in the State register once a heritage assessment has been completed and owners and stakeholders consulted?

Interim registration is an important part of the process for entering a place in the State register.

Interim registration should form the first stage of the public consultation process.

32. The transparency and timeliness of Heritage Council processes was a common theme in many responses to the Consultation paper. There are effectively two stages to the registration process: assessment of the place and the decision-making process. The time in which a heritage assessment can be completed will depend on issues such as the amount of information available on the place, scale and accessibility (for example, completing arrangements with owner, remoteness, seasonal issues, number of assessments already in the program). This makes it very difficult to establish a firm timeframe for this part of the process.

In general terms, no time frame should be set. Where a site is the subject of a stop order or conservation order, then a time frame needs to be set.

33. How should the time frame take into account delays in properly assessing a property, arising from difficulties in gaining access to it or obtaining information about it?

No response.

34. Once an assessment is complete, should there be time limits for the remaining steps in the process? If so, what should the time limits be?

Yes. Once an assessment is in place, then the decision making should be undertaken with a set time frame.

This should probably not exceed 6 months to one year. Sites that are subject to stop orders or conservation orders should be expedited.

Please refer to Section 3.8 Amendment or Removal from the State Register in the "Review of the Heritage of Western Australia Act 1990 Discussion Paper - September 2011"

35. Which of these models is likely to deliver the best results in terms of efficiency and transparency?

Without the Minister.

36. Is it appropriate for the decision-maker for an amendment or removal to be the same as the decision-maker for entry in the State register as proposed in models 2 and 3, or should the decision be referred to a higher authority and why?

Yes, it is appropriate for the decision-maker for an amendment or removal to be the same as the decision-maker for entry in the State register as proposed in models 2 and 3.

No decision to remove or delist a site should take place without a public consultation period.

An avenue for appeal should be included, perhaps through the State Administrative Tribunal.

37. Is there an alternative model that should be considered?

Yes. See Q 36.

39. Should there be separate processes for an amendment to a State register entry and removal from the State register? If so, what should the respective processes be?

Yes. An amendment may add value to an assessment, or may diminish the value. An amendment could be the trigger for removal, or for upgrading the status of a site that has not previously been added to the register. An amendment may also merely add information, but not change the registration. For example, the registration documentation for the Perth Esplanade identifies it as being in the Paradise garden style. This is incorrect as the Esplanade was always a recreation space. This information does not diminish the heritage values of the site, merely corrects a mislabelling.

40. Who would be the most appropriate decision-maker on removal from the State register?

Removal should only follow a public comment period of around three months, following advertisement in the public notices in the newspapers, and on the Heritage Council website.

The information leading to the removal should be analysed by the Office of Heritage and a recommendation drafted for the Heritage Council. The Heritage Council should then assess the recommendation, and make an assessment based on the information provided.

The recommendation and decision should be made available on the Heritage Council website and published in the papers.

Please refer to Section 3.9 Development Referral Process in the "Review of the Heritage of Western Australia Act 1990 Discussion Paper - September 2011"

41. The proposal retains the scope of referral stipulated in the current Act, but provides that it should be clarified to eliminate the confusion and uncertainty arising under the current Act. Should this scope be broader or narrower?

Broader scope. The Heritage Council needs not to just provide advice, but to make decisions regarding the retention, adaptive re-use or demolition of a State registered heritage site. At the same time, minor changes of use of a heritage site, may be better left at an administrative level.

42. The proposal also retains the current Act's requirement that the decision-making authority's decision must be consistent with the Heritage Council's advice, but clarifies that the Heritage Council's advice is limited to matters of heritage impacts and mitigation measures, consistent with the objects of the Act. Does this give the Heritage Council too much power or not enough power over other government agencies?

Not enough power over other government agencies.

Dependent on the level of change, the Heritage Council needs broad powers that affect the use of the whole of a heritage site, including the curtilage and surrounding buildings.

43. Are the series of four broad criteria against which to assess development proposals sufficient to guide the assessment process and assist all parties in understanding the approach?

YES, these criteria ARE sufficient.

44. What are the particular issues that would need to be addressed in a policy framework that supports the assessment criteria?

Development proposals need to be considered as part of a planning agenda. Referral to the Heritage Council should involve a change of purpose or a significant alteration to the fabric or use of a place that may affect the cultural values.

45. What should be the time frame for the Heritage Council to process referrals?

Three to six months.

46. What are the sorts of actions that should be considered for exemption from development referral?

Minor changes to tenants in a site, or use of a site.

47. Although the submissions were inconclusive as to the desirability of allowing delegations, should the Heritage Council be able to exempt some places from the referral requirement, such as places that are owned or managed by a statutory authority (for example, National Trust, Rottnest Island Authority) where there are appropriate protocols, practices and processes in place?

The Heritage Council should assess and approve the processes by which a site is managed. These processes should be reviewed and reported on, on a regular basis.

The recent Auditor General's report into management of mining sites has shown that mere oversight is not enough, for those sites, and may not be enough for these.

48. What sorts of checks and balances, documentation and reporting standards would be required to ensure exemptions or delegations are appropriately used?

The Heritage Council must require a conservation plan and an interpretation plan to be prepared for major developments. Exemptions and delegations should only be approved with full and openly accessible documentation of the reasons for the exemption or delegation, an agreed period for the delegation or exemption and a mechanism for review and revocation of the exemption or delegation.

Please refer to Section 3.10 Encouraging Conservation of Heritage Places in the "Review of the Heritage of Western Australia Act 1990 Discussion Paper - September 2011".

49. What should the criteria be for an owner to apply for revaluation or rate remissions?

An owner whose site is assessed as being of State significance should be able to apply for the remission of rates to the value of the work being undertaken on a site, to the full value of the rates for a year, or over a period of up to five years. The Cultural Gift Register of the ATO provides a model under which this process might be undertaken. Documentation should indicate how the cultural values are being retained.

50. What obligations should be placed on an owner who receives a financial incentive (for example, before any benefit is contributed to the conservation of the place, the place must be adequately insured and the owner must enter into a heritage agreement that sets out the obligations)?

The owner must demonstrate that a conservation plan or report has been prepared (and may seek compensation or assistance in preparing the plan) and that the development or conservation work is in keeping with the identified heritage values. Assistance and advice on preparing a conservation plan should be available through the Heritage Council.

The owner must provide receipts for work undertaken to preserve a heritage place (insurance is not preservation).

51. Will the proposed incentives provide a meaningful level of support for owners who undertake conservation works on their heritage properties?

Provided the incentives are directly related to work undertaken, and not to general maintenance or administration associated with ownership of a site generally.

52. Do the proposed financial incentives strike a realistic balance between the need of owners for such incentives and the costs to State and local government of providing such incentives?

No. Heritage funding for owners is generally under-resourced and difficult to obtain. The proposed incentives do not appear sufficiently different from those currently available.

53. Is there a better funding model to cover the cost of income foregone by relevant revenue agencies?

Consideration could be given to reduction in Stamp Tax or revaluation of Capital Gains Tax on the sale of a conserved heritage building.

54. How can the process for rate remission be simplified?

Not answered.

55. Should other financial incentives be provided? If so, what are they and how would they promote heritage conservation?

See Q 53. Please refer to Section 3.11 Repair Orders in the "Review of the Heritage of Western Australia Act 1990 Discussion Paper - September 2011".

56. Is the proposed repair order provision likely to provide a reasonable and effective deterrent to demolition by neglect?

Yes. The Repair Order should be issued by the Heritage Council for State registered sites, and by the Local Government Authority for sites on the Municipal Inventory.

57. Before the minister issues a repair order, should there be a public advertisement of the proposed order and a public comment period?

No. The Repair Order should be issued by the Council and be publicly available via a public notice and on the website.

58. What should be the minimum extent of deterioration of a place in order to issue a repair order?

This will depend on the character and style of the place and the heritage values associated with it. Some sites may have a high social value but minimal physical value.

59. What should be the maximum extent of repairs that may be required in a repair order?

Same as 58.

60 and 61 - no answer.

Please refer to Section 3.12 Municipal Heritage Inventories in the "Review of the Heritage of Western Australia Act 1990 Discussion Paper - September 2011".

62. Do you believe removing the requirement from the Heritage Act to compile and maintain a municipal inventory will reduce or increase confusion among owners and other stakeholders, or have no effect?

No effect. The Municipal Inventory provided the basis for the State Heritage Register and to raise awareness of heritage issues generally. It should still be reviewed but as part of the local and regional development and town planning schemes.

63. Will the proposal detract from or improve a local government's ability to identify and protect places of local heritage significance, or have no effect?

No effect.

64. Should the Heritage Council be empowered to establish mandatory standards and processes for identifying places for inclusion in a local planning scheme heritage list, or would this give the Heritage Council too much involvement in local heritage matters?

No.

65. Alternatively, should municipal inventories continue to be mandated by the Heritage Act and why?

No. Please refer to Section 3.13 State Government Heritage Asset Management in the "Review of the Heritage of Western Australia Act 1990 Discussion Paper - September 2011".

67. Would identifying places with cultural heritage significance across the portfolio as a whole rather than at a point when an agency wishes to either dispose or adapt a place be a useful strategy, or is it unnecessary? If so, why?

Please refer to Section 3.13 State Government Heritage Asset Management in the "Review of the Heritage of Western Australia Act 1990 Discussion Paper - September 2011".

67. Would identifying places with cultural heritage significance across the portfolio as a whole rather than at a point when an agency wishes to either dispose or adapt a place be a useful strategy, or is it unnecessary? If so, why?

It would assist in budget considerations, business cases and capital works funding.

69. Whilst the Strategic Asset Management Framework has been established to inform use and maintenance requirements, it has not been uniformly implemented or adopted across the sector. Would enabling the Heritage Council to set standards and guidelines for heritage asset management across the sector be the best way to help improve the management of the portfolio?

Yes.

70. Would a system for State government agencies to provide regular reports on the use and condition of identified heritage assets promote greater focus on good management?

Yes.

73. Many government agencies are familiar with the Government Heritage Property Disposal Process, however there are instances that this is overlooked or it is initiated very late in the disposal process, which can create difficulties and uncertainties for vendors and purchasers. Would mandating the GHPDP in the Act clarify the Government's intention that this applies to all places over a certain age?

No. This could be covered in a Premier's Circular, Treasurer's instructions and the FAAA.

Has the Auditor General reported on this?

74. Is 60 years an appropriate benchmark to trigger GHPDP?

No. A heritage site is not dependent on age.

Please refer to Section 3.14 Archaeological sites in the "Review of the Heritage of Western Australia Act 1990 Discussion Paper - September 2011".

75. Will it be sufficient to clarify the registration criteria applicable to archaeological sites, or should a new Act include additional provisions specifically directed to archaeological heritage?

This area needs to be considered in the context of the Maritime Archaeology Act and the Aboriginal Heritage Act. A new section or new Act is required.

Please refer to Section 3.15 Moveable Heritage in the "Review of the Heritage of Western Australia Act 1990 Discussion Paper - September 2011".

78. The proposal assumes that other entities, such as libraries, museums, historical societies and so on are very likely to be in a better position to care for moveable and intangible heritage. Is this approach likely to improve the identification and protection of this form of heritage?

State organisations are under-resource and volunteer organisations may lack both resources and expertise.

79. What specific types of heritage should be considered by the working group?

State records are identified in the State Records Act and Legal Deposit legislation is being considered. However, movable cultural heritage may significantly contribute to the value of a site, and may be better preserved and retained as part of the site.

Consideration also needs to be given to limiting the ability to move cultural heritage from Western Australia - this is currently only protected at a national level.

80. What specific agencies, organisations and/or societies should be represented on the working group?

National Trust, RWAHS, RAIA, Professional Historians, Interpretations Australia, ICOMOS.

Please refer to Section 4 A State Heritage Strategy in the "Review of the Heritage of Western Australia Act 1990 Discussion Paper - September 2011".

81. Is the establishment of a non-statutory committee to consider broader heritage issues with terms of reference to develop and recommend strategies to Government a worthwhile idea?

Yes.

84. Apart from the State Government agencies with statutory responsibilities, what other organisations, bodies or groups should be involved in a Committee?

See q 80.