

HERITAGE AND PLANNING LEGISLATION AMENDMENT BILL 2010

Introduction and First Reading

Bill introduced, on motion by **Mr G.M. Castrilli (Minister for Heritage)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MR G.M. CASTRILLI (Bunbury — Minister for Heritage) [12.11 pm]: I move —

That the bill be now read a second time.

Western Australia is fortunate to have a rich and varied cultural heritage, which is embodied in thousands of buildings, structures and places. We recognise the heritage value of these places by listing them in the state Register of Heritage Places and in heritage lists maintained by local governments.

The Heritage of Western Australia Act was enacted in 1990 to provide the means to identify and conserve places of cultural heritage significance to the state. Over 1 300 places are now listed in the Register of Heritage Places and enjoy the recognition and protection afforded by the act. Thousands more places of local significance are included in local government heritage lists maintained under the respective town planning schemes that derive authority from the Planning and Development Act 2005.

Our state heritage legislation is now outdated. In particular, the fines that can be imposed for damaging or demolishing heritage places have not kept up with the rapid increases in land prices. The Heritage of Western Australia Act provides that a maximum fine of only \$5 000 applies for damaging or despoiling a place listed in the Register of Heritage Places. Unauthorised development or demolition is subject to a maximum fine of \$50 000 under the Planning and Development Act. These fines are too low compared with the market value of an empty block.

Members of this house may remember the outrage caused in August 2007 by the unauthorised demolition of a local heritage place at 5 Victoria Avenue, Claremont. Whereas the maximum fine for this offence would have been only \$50 000, the land has since been subdivided into three lots, which are each worth over \$1 million. Our current fines are hardly a deterrent. Indeed, an owner could see the fines as merely a cost of doing business, and a rather small cost at that.

Heritage penalties in Western Australia lag far behind those of other states. In Queensland, the maximum fine for damage or demolition to a state-registered place is \$1.275 million, while in New South Wales the maximum fine is \$1.1 million. Western Australia's penalties are the lowest in the nation. This sends a message that Western Australians do not value our historic heritage. However, this does not reflect community sentiment. In 2005, the Allen Consulting Group conducted a national survey on Australia's historic heritage, with the results broken down by state and territory. In Western Australia, 57.2 per cent of respondents felt that too little was being done to protect our historic heritage and a massive 94 per cent of respondents stated that it was important to protect heritage places, even if they never visited them.

Under section 61 of the Heritage of Western Australia Act 1990, if a conservation order is in place and an owner or his agent "damages or despoils that place", an offence is committed and the owner is liable to a maximum penalty of \$10 000 and imprisonment for two years. If a person is convicted of the offence, the court can impose a restoration order under section 62, and the Minister for Heritage can seek the Governor's approval for a development moratorium for up to 10 years under section 80, unless the court recommends otherwise.

A conservation order can be put in place by the minister when he or she believes it is necessary or desirable to provide special protection under section 59. These provisions rely on the minister being made aware that special protection is required in advance of any damage being done. Without a conservation order, the penalty for damaging or despoiling a place listed in the Register of Heritage Places is a maximum fine of \$5 000. In addition, a person who has not obtained the necessary planning approvals from a local council is liable to a maximum fine of \$50 000 under the Planning and Development Act 2005. These fines are inconsequential and send the wrong message.

Most owners highly value their heritage properties and spend much time and money on restorations. These owners are to be congratulated and assisted. The heritage grants program is in place to assist financially. Expert advice is available from the Heritage Council and excellence is recognised through the annual Western Australian heritage awards. Unfortunately, there are a few unprincipled owners who do the wrong thing; it is to these properties that this legislation will afford increased protection.

Part 2 of the Heritage and Planning Legislation Amendment Bill increases the maximum fine under the Heritage of Western Australia Act to \$1 million and the daily maximum fines for a continuing offence from \$500 to \$50 000. Further, this bill allows for the imposition of a restoration order and a development moratorium, in addition to a fine for offences relating to any state-registered place. As I said earlier, these additional penalties are currently available only if the place, whether registered or not, is subject to a conservation order. In order to bring these fines in line with increased penalties for offences relating to a state-registered place, the bill increases the maximum fine for contravention of a conservation order from \$10 000 to \$1 million and the maximum daily fine from \$1 000 to \$50 000.

The actual penalties levied against a convicted offender—that is, the amount of the fine and whether or not to impose a restoration order—remain at the discretion of the convicting court. A development moratorium is imposed only by the Governor on advice from the minister, as is currently the case for imposing this penalty for the contravention of a conservation order.

Part 3 of the Heritage and Planning Legislation Amendment Bill increases the maximum fine for offences under the Planning and Development Act 2005 from \$50 000 to \$200 000 and the maximum daily fine for a continuing offence increases from \$5 000 to \$25 000.

A public consultation process on increased penalties began in March 2009 and included telephone interviews and focus group sessions to canvass the views of local governments, community groups, and property development industry associations. Participants included the Real Estate Institute of WA, the Property Council of Australia (WA), the Urban Development Institute of Australia (WA), the Western Australian Local Government Association, the Royal Western Australian Historical Society, the National Trust of Australia (WA), the Art Deco Society of Western Australia and a number of metropolitan and regional local governments. All agreed that higher penalties are necessary. In fact, it was the property industry associations who pointed out the need for development moratoria as an effective deterrent to illegal demolition. With this legislation, properties that have been recognised for their heritage value through entry on the state Register of Heritage Places will be assured of meaningful protection for current and future generations. This provides significant benefits to society as a whole and reflects the increasing interest that the community is taking in its heritage properties. Increasing the penalties sends a message to the community that this state and this government value its heritage. I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.