

Heritage Bill 2017

EXPLANATORY MEMORANDUM

Overview of Heritage Bill 2017

This Bill will repeal in its entirety the *Heritage of Western Australia Act 1990* (the current Act) and replace it with a modern, clearly-written *Heritage Act 2017* (the new Act) that addresses contemporary needs and reflects best practice in the recognition and management of the state's cultural heritage.

Western Australia was the last Australian state to enact legislation to recognise and protect non-Aboriginal cultural heritage places. The current Act was written at a time when legislators responded to the community's demands for the protection of its heritage places amid the demolition of a significant proportion of Perth's built heritage in the name of progress.

Almost as soon as it came into operation over 26 years ago, the current Act was found to have many flaws and shortcomings that created obstacles to its effectiveness: complex and redundant assessment and consultation processes, inflexible development referral requirements, countless ambiguities and arcane language that is hard to comprehend and expensive to administer. With its origins in the 1970s and 80s, the current Act is notable for the hard-to-interpret phrasing that reflects the statute drafting style of the day and its rigid, adversarial approach to heritage management.

Since the inception of the current Act there has been a very clear shift in attitudes. The broader community is now more engaged and informed about the importance of recognising and preserving its "sense of place" through familiar landmarks, urban spaces and regional areas. These places resonate of past generations and speak to the history and development of the state, its character and cultural identity,

Western Australia has benefited from Government policies and strategies to promote long-term sustainability of our significant heritage places through adaptive re-use that meets contemporary needs, while being sympathetic to the heritage values that make these places important to the community. It is apparent now that property developers in particular understand the value of heritage, accepting heritage conservation as an integral part of the process of redeveloping and adapting heritage places. With few exceptions, they recognise the "point of difference" heritage provides and have become cooperative and even eager to work with the Council to develop and refine proposals that involve changes to registered places. In recent years, numerous exemplars of best-practice adaptive re-use throughout the state have been delivered, with no more compelling evidence than the heritage-led transformation of Perth.

This Bill reflects contemporary attitudes to heritage and modern heritage management practice. It anticipates ongoing change and encourages the use of our heritage places as integral to vibrant communities. It also brings a new level of efficiency and transparency that has consultation and negotiation at its heart, rather than imposition and heavy-handed regulation, to achieve the goal of identifying, recognising and protecting Western Australia's most precious heritage places for current and future generations.

Clause Notes

Part 1 – Preliminary

This Part contains the title of the new Act and the commencement provision as well as definitions of important terms and expressions used throughout the Bill. This Part also sets out the scope of the new Act to establish boundaries between it and other state legislation regarding other types of heritage.

Clause 1. Short title

This clause states the short title of the new Act is the *Heritage Act 2017*.

Clause 2. Commencement

This clause provides that Clauses 1 and 2 come into operation upon Assent and the remaining provisions in the Bill come into operation on a day or days fixed by proclamation. A staged proclamation is necessary to allow time for the drafting and approval of an extensive set of new Regulations required to give effect to many provisions of the new Act.

Clause 3. Objectives

This clause lists the objectives of the new Act. Stating these objectives assists courts and other decision makers to properly interpret provisions of the new Act.

Clause 4. Terms used

This clause defines many terms and expressions used throughout the Act to avoid ambiguity and provide clarity in the context of heritage recognition and management. The discourse of “heritage” in Australia employs a unique vocabulary comprised of terms such as “conservation”, “place”, etc.

Clause 5. Term used: cultural heritage significance

This clause defines “cultural heritage significance” using the Australian standard “Burra Charter” definition. The Burra Charter is a nationally-recognised statement of principles regarding the identification and management of heritage places.

Clause 6. Term used: owner

This clause defines the “owner” of land for the purposes of the new Act. Many provisions require consultation on various matters with the owners of various estates, interests and tenures in land. This definition is comprehensive and also incorporates the Government’s model definition regarding the holders of various interests and tenures in Crown land.

Clause 7. Term used: place

This clause defines “place” to explain the type of place that may be subject to the new Act. The definition is consistent with the nationally-recognised “Burra Charter” definition as well as internationally-recognised best practices.

Clause 8. Act binds Crown

This clause declares that the new Act binds the State, which means that all departments and state agencies are subject to the relevant provisions of the new Act.

Clause 9. Places to which Act does not apply

This clause declares that the new Act does not apply to places that comprise only the natural environment or places of purely Aboriginal cultural significance. This restates the existing implicit boundaries between the reach of the new Act and the *Conservation and Land Management Act 1984* and the *Aboriginal Heritage Act 1972*.

Clause 10. Other laws not affected

Consistent with Clause 9, this clause declares that the new Act does not affect the operation of the State's other heritage or environmental legislation.

Part 2 – The Council

This part contains provisions dealing with the composition, operation, powers, functions, staff and finances of the Council and the relationships between the Council and the Minister and with other public authorities. These provisions are generally similar to the corresponding provisions of the current Act, though revised for clarity.

There are some substantive changes from the current Act to reflect contemporary best practices as recommended by the Public Sector Commission and the Departments of Finance and Treasury.

Division 1 – Constitution of the Council**Clause 11. Council established**

This clause establishes the Heritage Council of Western Australia, declares the Council to be a corporate body and provides that legal proceedings may be taken by or against the Council in its corporate name.

Clause 12. Status

This clause declares the Council to be an agent of the State, having the status, immunities and privileges of the State, and also describes the Council as the State's expert on places of historic cultural heritage significance.

Clause 13. Execution of documents by Council

This clause provides for the use of a common seal under the Council's direction and declares the weight to be given in judicial proceedings to documents that bear the common seal.

Clause 14. Membership and proceedings

This clause sets out the qualifications required for membership on the Council and the manner of appointment and compensation. It also provides for regulations to prescribe the manner in which the Council is to conduct meetings, manage conflicts of interest and related matters.

Consistent with contemporary best practice as recommended by the Public Sector Commissioner, the new Act will require Council members to possess specific skills, training and/or experience, rather than require members to represent certain interests or groups as does the current Act. Under the current Act, members required to "represent" specified groups or interests inevitably encounter conflicts of interest.

Clause 15. Co-opted members and role of CEO

This clause allows the Council to appoint temporary members for specific meetings. For example, the Council will normally appoint a local government representative to attend a meeting at which the Council will decide whether to recommend to the Minister registration of a place in that local government's district. This clause also allows the CEO of the department tasked with supporting the Council, or their nominee, to attend Council meetings.

Clause 16. Remuneration and allowances

This clause provides for compensation, travel allowances, etc. to be paid to members of the Council and Committees in amounts to be determined by the Minister on the recommendation of the Public Sector Commissioner.

Division 2 – Functions and Powers of the Council**Clause 17. Functions of the Council**

This clause sets out in general terms the functions of the Council. The manner in which many of these functions may be undertaken are detailed elsewhere in the Act.

Clause 18. Powers of the Council

This clause sets out in general terms the powers of the Council. The manner in which these powers are to be exercised is detailed in relevant provisions throughout the Act.

Clause 19. Delegation by Council

This clause sets out the manner in which the Council may delegate to others functions and powers of the Council provided both under this Act as well as any other written law. The Council may not delegate the power to further delegate a power or function.

Division 3 – Relationship with other public authorities**Clause 20. Public authorities must assist Council**

This clause requires other public authorities to provide reasonable assistance to the Council in carrying out its functions and provides for regulations to prescribe certain forms of assistance. This clause is similar to section 10 of the current Act.

Division 4 – Relationship between Minister and Council**Clause 21. Administration of this Act**

This clause declares that advising the Minister on the administration of the new Act is a function of the Council.

Clause 22. Minister's directions

This clause allows the Minister to give the Council directions in regard to its functions and the Council must give effect to such directions, other than directions in regard to the Council's assessment of a place's cultural heritage significance or the substance of its advice to the Minister or to a decision-maker in regard to a place, and also provides that directions received from the Minister under this clause are to be reported in the Council's annual report. This is retained from the current Act.

Clause 23. Minister to have access to information

This clause declares that the Minister is to have full access to all information and documents of any kind in the Council's possession, and the Council is to assist the Minister to locate and retrieve such information.

Clause 24. Delegation by Minister

This clause sets out the manner in which the Minister may delegate to others powers and duties of the Minister under the new Act other than powers and duties listed in this clause.

Division 5 – Staff

Clause 25. CEO to provide assistance, staff and resources

This clause requires the CEO of the Department assisting the Minister in the administration of the new Act to provide any assistance, staff or other resources the Council may require to perform its functions.

Clause 26. Use of other government staff and facilities

This clause allows the Council to arrange to make use of other officers, employees or facilities in the Public Service or a State Agency.

Division 6 – Finance

Clause 27. *Financial Management Act 2006* and *Auditor General Act 2006* apply This clause declares that the Council's finances and operations are subject to the *Financial Management Act 2006* and the *Auditor General Act 2006*.

Clause 28. Funds of Council

This clause sets out the allowable sources of funds available to the Council, being moneys appropriated by Parliament, monies received by the Council in the performance of its functions, money borrowed by the Council and any other monies lawfully received by or payable to the Council.

Clause 29. Heritage Fund

This clause establishes an account to be known as the Heritage Fund which is to hold the funds of the Council and specifies the expenditures that must be charged to the fund.

Clause 30. Borrowing

This clause allows the Council with the Treasurer's approval to borrow monies for purposes of performing its functions.

Clause 31. Guarantee by Treasurer

This clause authorises the Treasurer on behalf of the State to guarantee payment of any monies owed by the Council and sets out the requirements for obtaining such guarantees.

Clause 32. Effect of guarantee

This clause sets out the consequences to the Consolidated Account and to the Council of a guarantee given by the Treasurer under Clause 31.

Clause 33. Notice of financial difficulty

This clause requires the Council to notify the Minister if it believes it will be unable to meet any of its financial obligations and states what actions the Minister must take upon receipt of such notice.

Clause 34. Exemption from rates

This clause declares that any land owned, leased or otherwise controlled by the Council is exempt from local government rates. This is retained from the current Act.

Part 3 – The State Register of Heritage Places

The practice of identifying important cultural heritage places and entering them in registers has been common practice globally for many decades. It enables communities to record and recognise those places that contribute to their “sense of place” and understanding of what has come before. Registers are intended to be developed over time in consultation with stakeholders as a collection of places that, taken as a whole, represent the story of the community’s history and development, and are worthy of being protected and handed on to future generations.

In the twenty-six years since the current Act took effect, just over 1,370 places have been entered in the register.

Part 3 introduces, for the first time, clear national standards of criteria for the assessment of heritage places. Although these criteria do not differ in substance from those stated in the current Act, these national standards will ensure that the threshold for entry in the register is clearly understood by stakeholders, can be applied consistently to maintain the quality of the register, and will promote public confidence and certainty.

Part 3 defines the “register” and the processes for adding, amending or removing register entries. It also clarifies the manner by which a property owner may request amendment of a register entry with respect to their land, or removal of their land from the register.

Part 3 also does away with the current Act’s two-stage registration process, which begins with an interim registration of a place followed by permanent registration of the same place. This is duplicative, costly, confusing to owners and others and does not provide any additional heritage protection. Instead, the new Act will replace this two-stage process with a single process of assessment and consultation, and specifically require consultation with the owner before the Council can recommend to the Minister that a place be entered in the register.

The new Act will also introduce new levels of transparency. The Council will be required to publish its advice to the Minister on whether a place should be entered in the register or whether an existing register entry should be amended or removed, and also publish the Minister’s direction in response to such recommendations. In addition, the Bill retains the current Act’s requirement that a Ministerial direction to remove a place from the register be approved both Houses of Parliament.

The transition provisions of clauses 177 and 178 provide for inclusion of register entries made under the current Act into the register established under the new Act.

Division 1 – The Register

Clause 35. The register

This clause establishes the State Register of Heritage Places and requires the Council to maintain the register and make it available for public inspection.

Clause 36. Form and content of register

This clause provides that a register entry for a place must include a description of the land comprised in the place, a statement of the place’s cultural heritage significance, and any other information required by the regulations.

Division 2 — Entry in the register

Subdivision 1 — Registration conditions

Clause 37. Conditions for registration

This clause provides that, for a place to be entered in the register, the Council must find that it has cultural heritage significance and that none of the land in the place has been removed from the register within the past five years unless the Supreme Court waives this prohibition.

Clause 38. Factors relevant to cultural heritage significance

This clause lists the national-standard criteria to be considered by the Council to determine whether a place has cultural heritage significance.

Subdivision 2 — Process for entry into register**Clause 39. Nomination for entry in the register**

This clause provides that any person may nominate any place for entry in the register, sets out how the Council is to determine whether a nominated place warrants further assessment, and requires the Council to notify the owner and the nominator of its determination.

Clause 40. Review and registration recommendation

This clause sets out how the Council is to consider in detail whether to recommend a place for entry in the register, whether or not the place was first nominated under clause 38. As under the current Act, the Council may consider any place for entry in the register. Before the Council may recommend registration of a place to the Minister, it must first consult with the owner and the public and assess the place against the criteria set out in Clause 38. This clause also requires the Council to notify the public of its recommendation.

Clause 41. Direction by Minister

This clause provides that, upon receipt of a registration recommendation from the Council, the Minister must make a decision within the prescribed time and direct the Council to either enter the place in the register or not, and give reasons for a direction to not register the place. This clause also requires the Council to notify the property owner of the Minister's direction and also make the direction known to the public.

Clause 42. Entry in register

This clause requires the Council, following receipt of a direction from the Minister to enter a place in the register, to register the place, publish a notice of the register entry in the *Government Gazette* and notify the place's owner and the Valuer General. This clause also requires the Council to lodge a memorial with Landgate to be placed on the certificate(s) of title for the land included in the register entry (referred to in this clause as giving "statutory notification" which is defined in Clause 163).

Division 3 — Amendment of register entries**Clause 43. Request for amendment of land description in register entry**

This clause provides that the owner of land in a registered place may request the Council to amend the land description with respect to the owner's land, and sets out how the Council is to determine whether the request warrants further consideration. This clause also requires the Council to notify all of the place's owners of its determination.

Clause 44. Detailed consideration of amendment to land description

This clause sets out how the Council is to consider in detail whether to recommend to the Minister that the land description included in a register entry be amended, including consultation with the owners and the public. This clause also requires public advertisement of the Council's recommendation.

Clause 45. Land description amendment direction by Minister

This clause provides that, upon receipt of a recommendation from the Council to amend a register entry's land description, the Minister must within the prescribed time either direct the Council to make the amendment, subject to any conditions the Minister may impose, or direct the Council not to make the amendment in the register entry, and give reasons for the decision. This clause also requires the Council to notify the owner of the Minister's direction and also publicly advertise the direction.

Clause 46. Amending land description in register entry

This clause provides that, following receipt of a direction from the Minister to amend the land description of a register entry, the Council is to make the amendment in the register, subject to the satisfaction of any conditions imposed by the Minister, and publish a notice of the amendment in the *Government Gazette* and also notify the owner and the Valuer General. This clause also requires the Council to lodge a memorial with Landgate to be placed on the certificate(s) of title for land added to the register entry, and instruct Landgate to remove such memorials from the certificate(s) of title for land removed from the register entry (referred to in this clause as giving "statutory notification" which is defined in Clause 163).

Clause 47. Other amendments

This clause explains that amendments to elements of a register entry other than the land description, such as the statement of significance or other particulars prescribed by the regulations, are dealt with in other provisions of the new Act.

Division 4 — Removal of entries from register**Clause 48. Request for removal**

This clause provides that the owners of all the land in a registered place may request the Council to remove the place from the register, sets out how the Council is to determine whether the request warrants further consideration, and requires the Council to notify the owners and others of its determination. This clause also provides that, if the Council decides the request does not warrant further consideration, the owners may request the matter be referred to the Minister, who within the prescribed time is to either confirm the Council's determination or direct the Council to undertake detailed consideration of the proposal per Clause 49.

Clause 49. Detailed consideration of removal

This clause sets out how the Council, if directed to do so by the Minister or otherwise, is to consider in detail whether to recommend to the Minister to direct the removal of an entry from the register, including consultation with the owners and the public. This clause also requires public advertisement of the Council's recommendation.

Clause 50. Removal direction by Minister

This clause provides that, following receipt of a recommendation from the Council, the Minister is to make a decision within the prescribed time and either direct the Council to remove the register entry, subject to any conditions the Minister may impose, or direct the Council not to remove the register entry, and give reasons for the decision. As with the current Act, a direction to remove an entry from the register does not take effect until approved by a resolution of each House of Parliament. This clause also requires the Council, in accordance with the regulations, to notify the owner of the Minister's direction and also publicly advertise the direction.

Clause 51. Removing entry from register

This clause provides that, upon receipt of a direction from the Minister to remove an entry from the register, the Council is to remove the entry from the register, subject to the satisfaction of any conditions imposed by the Minister, publish a notice of the removal in the *Government Gazette* and notify the owner and the Valuer General. This clause also requires the Council to instruct Landgate to remove the relevant memorial(s) from the certificate(s) of title for the land removed from the register (referred to in this clause as giving “statutory notification” which is defined in see Clause 163).

Division 5 — Statements of cultural heritage significance

The statement of cultural heritage significance is an essential part of a register entry. It explains why the place is included in the register. A statement of cultural heritage significance must be prepared as part of the initial registration process, but it can also be reviewed from time to time and revised as necessary, whether to correct errors or to recognise new information about a registered place.

Clause 52. Adoption of statement of cultural heritage significance

This clause requires the Council to adopt a statement of cultural heritage significance in relation to each registered place. This clause also provides that regulations will specify the information that must be included in a statement of cultural heritage significance.

Clause 53. Updating and amending statements of cultural heritage significance

This clause provides for regulations to prescribe the manner, timing and process by which to amend statements of cultural heritage significance. This clause also provides that, if a substantive amendment is under consideration, the owner must be consulted and, if the owner objects to the proposed amendment, it may not be made without a direction from the Minister following public consultation undertaken by the Council.

Clause 54. Notification of adoption, update or amendment

This clause requires the Council to inform the owner and the general public of any amendment made to a statement of cultural heritage significance.

Part 4 — Protection orders and repair orders

The community expects practical action in response to the risk of loss of significant heritage places. Part 4 brings forward and clarifies features of the current Act that have proven effective in preventing such losses.

Part 4 also introduces a new Repair Order feature, common in all Australian jurisdictions and available to all Western Australian local governments but not available to the Council or the Minister under the current Act. This will enable the Minister, having confirmed that certain pre-conditions have been met, including comprehensive consultation with the land owner, to issue an order to undertake repairs to a heritage place. Such orders may go no further than making the place secure, structurally sound and weather tight. Repair orders may be reviewed by the State Administrative Tribunal.

Division 1 — Protection orders

The provisions relating to protection orders are retained from the current Act, where these orders are known as “conservation orders”.

Clause 55. Consent order

This clause allows the Minister to issue a protection order over a place with the consent of the land owner if the Minister finds it is necessary or desirable to provide special protection for the place. This is retained from the current Act.

Clause 56. Stop work order

This clause allows the Minister to issue a 60-day protection order over a place without the consent of the land owner if the Minister finds it is necessary or desirable to urgently provide special protection for the place where there is a likelihood of imminent damage. This is retained from the current Act, although the duration of the stop work order has been extended, from 42 days under the current Act to 60 days.

Clause 57. Continuing protection order

This clause allows the Minister to issue an indefinite protection order over a place if the Minister finds it is necessary or desirable to provide special protection, but only if the Council has first consulted the owner and the public in regard to the proposed order and advised the Minister on any submissions received. This is retained from the current Act.

Clause 58. Content of protection order

This clause describes what information must be included in a protection order of any kind and also specifies what type of prohibitions may be included, and allows these prohibitions to be absolute, conditional or subject to the exercise of discretion by a specified person or body. This is retained from the current Act.

Clause 59. Notification of protection order

This clause requires the Council to serve a copy of the protection order on the owner, lodge a memorial with Landgate (referred to in this clause as giving “statutory notification” which is defined in Clause 163) and publicly advertise the terms of the order and the place to which it applies.

Clause 60. Coming into effect of protection order

This clause provides that a stop work order has immediate effect when prominently affixed at the affected place or when served on a person carrying out prohibited works at the place. Any other type of protection order takes effect upon publication in the *Government Gazette*.

Clause 61. Duration of protection order

This clause provides that a consent order or a continuing protection order ceases to have effect upon any expiration date stated in the order and a stop work order will cease to have effect 60 days from the date it was issued unless it is extended by the State Administrative Tribunal. Any type of protection order ceases to have effect when the Minister in consultation with the Council revokes it by notice in the *Government Gazette*. This clause also provides that, when a protection order ceases to have effect, the Council must withdraw any memorials and notify the owner.

Clause 62. Tribunal’s powers as to protection order

This clause provides that the owner of a place affected by a protection order other than a consent order may apply to the State Administrative Tribunal for a review of the order and the Tribunal may revoke, confirm or modify the order. This clause also allows the Minister to ask the Tribunal to extend the duration of a stop work order beyond 60 days, and empowers the Tribunal to extend the order for a specified period or make it permanent. This is retained from the current Act.

Division 2 — Repair orders

Repair orders are an entirely new feature, similar to provisions found in the heritage legislation of other states as well as deemed to be included in all Western Australian local planning schemes under planning regulations issued in 2015.

Clause 63. Terms used

This clause defines a number of terms used in this Division.

Clause 64. Repair notice

This clause allows the Council to notify the owner or occupier of a registered place that specified works must be undertaken to prevent irreversible deterioration of the place by a specified date.

Clause 65. Repair order

This clause allows the Minister to order the owner or occupier of a registered place to undertake necessary repairs to the place if the Council has issued a repair notice under Clause 64, the Council's attempts to negotiate a voluntary solution have not resulted in the necessary repairs being made, and the Minister considers that the repairs are necessary and the cost will not impose an undue hardship. This clause forbids issuance of a repair order in respect of a place under the control of a public authority that is responsible to another Minister without the consent of that Minister.

Clause 66. Notification of repair order

This clause requires the Council to serve a copy of the repair order on the person to whom it is directed and lodge a memorial for placement on the affected land title.

Clause 67. Standard of works

This clause requires work undertaken pursuant to a repair order to comply with the *Building Act 2011*, the *Local Government Act 1995*, the *Planning and Development Act 2005* and any other prescribed written law, as well as any other standards and requirements prescribed by the regulations or specified in the order itself.

Clause 68. Termination of repair order

This clause provides that a repair order terminates when it is withdrawn by the Minister, when the Council confirms in writing that is satisfied that the works required by the order have been satisfactorily completed, or if revoked by the State Administrative Tribunal pursuant to Clause 69. This clause also provides that, upon termination, the Council must withdraw the relevant memorials from the affected land titles.

Clause 69. Tribunal's powers as to repair order

This clause allows a person served with a repair order to apply to the State Administrative Tribunal to review the order and the Tribunal may confirm, revoke or modify the order.

Clause 70. Exclusion of liability

This clause excludes the State, the Minister, the Council and its officers or employees from liability for injuries or damages resulting from any person's failure to comply with a repair notice or order.

Part 5 — Proposals affecting places of heritage interest

When a local government or a state agency is considering an application by a third party to undertake works that may affect a registered place or certain other heritage places, or a local government or a state agency itself proposes such works (e.g., “public works”), Part 5 requires referral of the proposal or application to the Council who must, in response, advise on the heritage aspects of the proposal or application with a view to protecting the state’s cultural heritage.

Part 5 corresponds to sections 11 and 78 of the current Act, clarifying the referral process and eliminating ambiguities. As with the current Act, the final decision on a proposal is left to the local government or state agency; the Council very rarely issues an “approval” and does so only when a proposal requires no approval or permit from any other public authority. Like the current Act, the new Act does not create an additional approval...

Division 1 — Preliminary

Clause 71. Terms used

This clause defines a number of terms used in Part 5.

Division 2 — Referral of proposals

Subdivision 1 — Proposals that must be referred

Clause 72. Proposals to which Subdivision applies

This clause specifies the proposals that are subject to referral to the Council, which are proposals that may affect a registered place, a place that is subject to a heritage agreement (See Part 7) to which the Council is a party or a place that is subject to a protection order that allows the Council discretion to approve of works otherwise prohibited by the order.

Clause 73. Referral of certain proposals to Council

This clause requires decision makers (local governments, the WA Planning Commission, etc.) to refer proposals of the kind described in Clause 72 to the Council for consideration and advice. This clause also allows regulations to exempt from referral certain types of proposals, specific decision-makers or proposals in respect of certain places, and specifically exempts proposals to alter church structures for purely “liturgical purposes”.

Clause 74. Advice on referred proposal

This clause requires the Council to render formal advice to the decision-maker in regard to a referred proposal within the prescribed time period, and that the advice may extend to any matter relevant to the place’s conservation, maintenance, retention, interpretation, meanings, adaptive re-use or other recognised heritage considerations. This clause also provides that, if the decision-maker approves the referred proposal, the Council may require the decision-maker as a condition of approval to require the place’s owner to enter into a heritage agreement (See Part 7) on such terms as the Council advises. Finally, this clause also allows the Council to have regard to unrectified errors, omissions, refusals or other failures of the place’s owner, the proposal applicant, or the decision-maker to comply with prior advice or other obligations, and the Council may also withdraw its advice before it has been acted upon if new information or other matters come to light that materially affect the soundness of that advice.

This clause is similar to section 11 of the current Act, but clarifies the nature and scope of the advice the Council provides to decision makers and removes ambiguities.

Clause 75. Decision on referred proposal

This clause details how the decision-maker must incorporate the Council's advice in its decision on a referred proposal, in nearly identical terms to section 11(3) of the current Act: the decision must minimise adverse impacts to the heritage values of the place and must be consistent with the Council's advice unless the decision-maker determines there is no feasible and prudent alternative to making an inconsistent decision. This clause also provides that, if so advised by the Council, a decision-maker's approval of a proposal must require the owner to enter into a heritage agreement as a condition of approval. Finally, this clause also requires the decision maker to notify the Council of its decision.

Clause 76. Effect on certain proposals and decisions when a place becomes registered place

This clause requires a decision maker to cease consideration of a prescribed type of proposal in respect of a place if the place is entered in the register while the proposal is under consideration, and refer the proposal to the Council for advice. This clause also provides that, if the decision maker has recently given approval to such a proposal in respect of a place and the place is entered in the register before the approval has been substantially acted upon, the Council has discretion to suspend the approval until it has been referred to the Council and the Council renders its advice on it to the decision-maker. (If an approval applicant incurs additional costs due to project delay as a consequence of such suspension, the applicant may seek compensation under Part 12).

This clause is similar to section 78 of the current Act, but it does away with the troublesome automatic suspension or revocation of certain approvals upon entry of a place in the register, per section 78(2) or 78(3) of the current Act, respectively, and gives the Council discretion to temporarily suspend a recently-granted development approval in respect of a place upon entry in the register.

Subdivision 2 — Proposals that are not required to be referred**Clause 77. Decision on certain unrefereed proposals**

This clause requires a decision maker considering a proposal affecting a place that is subject to either a heritage agreement to which the Council is not a party or a protection order that does not permit the Council to approve works (and hence does not require referral to the Council) to make a decision that is consistent with the provisions of the heritage agreement or the protection order, respectively.

Subdivision 3 — General**Clause 78. Regulations**

This clause allows regulations to provide for a variety of matters associated with referrals under this Part: forms to be used, information to be provided, matters to be considered by the Council, time limits within which to render advice, persons to be notified of advice, how the Council is to handle requests for reconsideration of its advice and fees that may be charged for reconsideration.

Division 3 — Proposed works for which there is no decision-maker

Some proposals to undertake works do not require the approval of any public authority. For example, archaeological excavations on privately-owned land rarely require local planning approval, yet such projects have the potential to detrimentally affect a registered place, a place subject to a heritage agreement, etc. For these situations, the new Act will allow the Council to issue a "works permit" in the absence of a referral. This is based on similar provisions in the current Act.

Clause 79. Permit for works affecting registered place

This clause authorises the Council to issue a permit for works that would contravene the Act but that are not subject to approval by any other public authority and so will not result in a referral, and also allows the Council to impose conditions on the permit that are consistent with the objects of the Act. This clause also provides that, where the Council itself seeks a permit in respect of works to be undertaken at property owned by the Council, which could create a conflict of interest, the Council is to apply to the Minister who will make the decision in accordance with this clause.

Clause 80. Tribunal's powers as to works permit

This clause allows an applicant for a works permit aggrieved by the Council's decision to apply to the State Administrative Tribunal to review the decision, and the Tribunal may confirm, revoke or modify the order.

Part 6 — Support for conservation

Experience has shown that, on balance, good heritage outcomes require offering owners a combination of incentives, such as grants and other assistance, and disincentives, such as penalties. Part 6 makes available to owners a set of deliverable incentives for the recognition and conservation of heritage places.

Division 1 — Valuation of land

Under the current Act, the owner of property that is made subject to a heritage agreement may obtain re-valuation of the property, for land-tax purposes, to take into account any reduction in value caused by the heritage agreement, and thereby reduce the owner's land tax liability. Under the new Act, this privilege is extended to the owner of any land entered in the register in addition to any land subject to a heritage agreement.

Clause 81. Lands to which this Division applies

This clause provides that this Division applies to any registered land or land that is subject to a heritage agreement.

Clause 82. Valuation of land

This clause requires the Valuer-General when valuing land to which this Division applies to take into account any restrictions imposed on the land by virtue of entry in the register or being made subject to a heritage agreement.

Clause 83. Request for interim valuation

This clause allows the owner of land subject to this Division to request the Valuer General for an interim valuation of that land pursuant to section 23 of the *Valuation of Land Act 1978*.

Division 2 — Conservation assistance**Clause 84. Provision of financial, technical and professional assistance**

This clause allows the Council, with the Minister's approval, to award grants to owners of registered places to assist with the costs of documentation and conservation. The Council may also, without the Minister's approval, provide loans and other forms of financial assistance and provide technical and professional assistance towards the identification, documentation and conservation of places of cultural heritage significance, as well as for education, research and publications that further the objects of the new Act. This clause corresponds to section 33 of the current Act and clarifies the Minister's role in awarding grants.

Division 3 — Modification of planning instruments

This Division retains a modified feature of the current Act, commonly referred to as “Section 38 Orders”. This feature allows the Minister on the advice of the Council and with the consent of the Planning Minister to order that a provision of a planning scheme is either suspended or modified in respect of a particular registered place if the Minister forms the opinion that the provision effectively prohibits or impedes the conservation of that place. This is a significant power that, appropriately, is seldom used: in the 26 years of the current Act’s existence, only one order modifying a planning scheme has been made.

Unlike the current Act’s Section 38 Order, a modification order under the new Act may not modify an Act of Parliament or regulations made under an Act.

Clause 85. Terms used

This clause defines terms and phrases used in this Division.

Clause 86. Council may recommend modification order

This clause allows the Council, on its own initiative or at the request of the owner, to recommend that the Minister make an order to modify the application of a planning scheme provision to a registered place because, in the Council’s opinion, that provision effectively prohibits or impedes the conservation of the place by making it unlawful or economically unviable. This clause also provides that the Council may so recommend only after public consultation and consideration of any submissions received, and consideration of the likely effect of the order upon the public interest, health and safety.

Clause 87. Minister may modify planning instruments

This clause allows the Minister, upon receipt of a recommendation from the Council, to issue an order by publication in the *Government Gazette* to modify a planning scheme, only with the written consent of the Minister responsible for the administration of the written law under the authority of which the planning scheme was made (usually the Minister for Planning). This clause also requires the Council to make public its advice and the Minister’s decision.

Clause 88. Powers of the Tribunal in relation to modification order

This clause allows a person aggrieved by the issuance of a modification order to apply to the State Administrative Tribunal for a review the order and provides that, if the Tribunal is satisfied that any requirement of the new Act relating to the order has not been complied with such that the interests of the applicant have been substantially prejudiced, the Tribunal may set aside or modify the order as it thinks fit.

Part 7 — Heritage agreements

A “heritage agreement” is a contract entered into between a property owner and the Council or another public authority on behalf of the State under which the owner, in exchange for an incentive such as planning approval or a grant, commits to various undertakings intended to preserve and enhance the cultural heritage significance of the place. These might include specified conservation works, routine maintenance, insurance, installation of heritage interpretation features, design guidelines for new development, and so on.

Part 7 of the Bill is retained from Part 4 Division 1 of the current Act (sections 29-32), substantially reworded and reorganised. The main difference is that Part 7 explains more clearly the matters that may be addressed in a heritage agreement while allowing regulations to prescribe implied provisions in heritage agreements and model provisions that may be used in any heritage agreement. Regulations may also specify provisions that may not be included in a heritage agreement to protect property owners from excessively burdensome provisions.

A new feature of Part 7 is a provision giving the State Administrative Tribunal power to enforce heritage agreements.

Clause 89. Terms used

This clause defines terms and phrases used in Part 7.

Clause 90. Heritage agreements

This clause allows the Council or any other public authority on behalf of the State to enter into a heritage agreement with an owner of certain types of land under which the owner, to the extent of the owner's legal interest in the land (e.g., freehold, leasehold, etc.), commits to various undertakings in furtherance of the new Act's objectives. This clause also provides that a heritage agreement does not become operational until certified by the Minister that the agreement is necessary for the purposes of, and complies with, the new Act.

Clause 91. Land to which a heritage agreement may relate

This clause defines the type of land that may be made subject to a heritage agreement: land entered in the register or land that the Council has recommended to the Minister for entry in the register; land that is subject to a protection order; land that is included in a heritage list or heritage area under a local planning scheme; or any other land which the Council considers appropriate to be made subject to a heritage agreement.

Clause 92. Form and content of heritage agreement

This clause details the general form and structure of a heritage agreement and essential provisions and also provides that, subject to the regulations, a heritage agreement may address any matter that furthers the objects of the new Act.

Clause 93. Implied and model provisions for heritage agreements

This clause allows regulations to prescribe heritage agreement provisions in regard to certain matters, with any such provision designated as either an implied provision in all heritage agreements or certain classes of heritage agreements, or as a model provision that may be included in any heritage agreement.

Clause 94. Termination or variation of heritage agreement

This clause sets out how a heritage agreement may be terminated or varied.

Clause 95. Evidential status of certified agreement

This clause declares that, in any legal proceeding, a heritage agreement or variation to a heritage agreement bearing the Minister's certification is to be considered proof of the agreement or variation in the absence of proof to the contrary.

Clause 96. Record of heritage agreements

This clause requires the Council to maintain for public access the text of all heritage agreements in effect.

Clause 97. Notification to Registrar

This clause allows the Council or a public authority who has entered into a heritage agreement with a property owner to give notice of the heritage agreement to Landgate (e.g., by lodging a memorial, as set out in regulations) and further provides that, where such notification has been given, the obligations of each party to the heritage agreement are made binding on that party's successors in title.

Clause 98. Notification to Mining CEO

This clause allows the Council or a public authority who has entered into a heritage agreement with a property owner to give notice of the heritage agreement (as set out in the regulations) to the agency that records mining tenements granted or applied for under the *Mining Act 1978* and further provides that, where such notification has been given, the obligations of each party to the heritage agreement are made binding on that party's successors in title.

Clause 99. Notification to Valuer General

This clause requires the Council to notify the Valuer General of a heritage agreement coming into operation.

Clause 100. Enforcement of heritage agreement by Council

This clause authorises the Council to institute legal proceedings on behalf of the State to enforce a heritage agreement to which it is a party, and also provides that the Council may not participate in legal proceedings arising out of a heritage agreement to which it is not a party without the consent of the public authority who entered into the agreement, or with the Minister's approval.

Clause 101. Powers of the Tribunal in relation to heritage agreement

This clause provides that, where an owner and the Council cannot agree on the terms of a heritage agreement, the owner may apply to the State Administrative Tribunal to resolve the impasse. This clause also empowers the Tribunal to enforce any provision of a heritage agreement and make such order as it considers appropriate to secure performance of the agreement.

Part 8 — Local heritage surveys

Section 45 of the current Act requires each local government to compile and maintain an "inventory" (commonly known as a Municipal Heritage Inventory) of buildings in its district that are or may be of cultural heritage significance. Section 45 is unclear as to the purposes of such inventories, leading to widespread misunderstanding among local governments and confusion and concern in communities.

Part 8 retains the substance of section 45. Unlike the current Act, Part 8 will clear up ambiguities about the scope of such inventories, which are renamed "surveys" to reflect their purpose as a survey of community heritage resources to assist local governments. In particular, a survey made under Part 8 is to include "places" rather than just "buildings" as under the current Act. This has been a source of confusion under the current Act.

Moreover, Part 8 will not impose any requirement or expense on local governments to conduct wholesale reviews of existing inventories compiled under the current Act. Such inventories will be deemed to be valid "surveys" under the new Act by the transition provisions in Clause 181 of the Bill.

Clause 102. Term used: local heritage survey

This clause defines terms and phrases used in Part 8.

Clause 103. Local heritage survey

This clause requires every local government to compile a survey of places within its district that are or may become of local cultural heritage significance, and in doing so have regard to guidelines to be prepared by the Council.

Clause 104. Purposes of local heritage survey

This clause sets out the uses to which a local heritage survey should be put, which includes providing a publicly accessible cultural and historical record of the district, aiding the local government to make decisions that respect local heritage, and assisting the local government to prepare a heritage list and define heritage areas under the authority of its local planning scheme.

Clause 105. Guidelines for local heritage surveys

This clause requires the Council to prepare and publish voluntary guidelines to assist local governments with the preparation, review and updating of local heritage surveys including guidelines on: criteria for inclusion in the survey; processes for assessment and public consultation; processes for reviewing and updating surveys and how often; the manner by which surveys are to be made publicly available; and any other matters the Council deems appropriate.

Part 9 — State Government heritage

Part 9 will encourage – not require – state government agencies to compile inventories of “heritage assets”: properties owned or controlled by an agency that have or may have cultural heritage significance. The Council will issue voluntary guidelines to assist agencies to identify places that should be included in these inventories and also to guide the conservation of state-owned heritage assets.

Part 9 also will bring into regulations a long-standing Government policy regarding the sale or lease of state-owned heritage places into private hands. As well as ensuring that the heritage values of such places are maintained, the regulations will require informing anyone considering the purchase or lease of such a place of its heritage status so they can make informed decisions about possible uses for the place. The regulations will conform to the current heritage property disposal policy and impose no new requirements on state agencies.

Clause 106. Terms used

This clause defines terms and phrases used in this Part, such as *heritage asset*.

Clause 107. Guidelines about State Government heritage

This clause requires the Council to prepare and publish voluntary guidelines to assist State agencies on the preparation, review and updating of inventories of heritage places they own, occupy or control and publish voluntary guidelines to assist State agencies on the management and conservation of these heritage assets.

Clause 108. Disposal of heritage assets

This clause allows regulations to provide for the manner in which state-owned heritage assets may be disposed of. These regulations are intended to be consistent with the current Government Heritage Property Disposal Process policy.

For disposal of an unregistered place, this clause will allow regulations to provide that the Council is to have the opportunity to assess the place for possible inclusion in the register prior to disposal and may require the preparation of appropriate assessment, record or conservation documentation for the place.

If a registered place is to be sold out of state government ownership or leased for a period of at least 10 years, regulations under this clause may provide that the disposing agency is to consult with the Council as to whether any archival or conservation documentation should be prepared and whether the place should be made subject to a heritage agreement as a condition of sale or lease.

Part 10 — Acquisitions and compensation

The provisions of Part 10 retain the intent and scope of similar provisions in Part 7 of the current Act (sections 73, 74 and 76), clarified and simplified where possible. In particular, the provisions relating to compulsory acquisition have been refined for consistency with the relevant provisions of the *Land Administration Act 1997*. Like the current Act, the new Act will rely on Parts 9 and 10 of the *Land Administration Act 1997* for compulsory acquisition purposes.

Clause 109. Compulsory acquisition

This clause allows the Minister on the advice of the Council, having first consulted with the owner, to commence compulsory acquisition of a registered place under Parts 9 and 10 of the *Land Administration Act 1997* if a person has been convicted of failure to comply with a repair order made in respect of the place, if the Minister is of the opinion that the owner of a registered place has failed to comply with a repair order, or if the Council advises the Minister that the place is at risk of irreversible deterioration.

Clause 110. Compensation for compulsory acquisition

This clause provides that, in respect of a compulsory acquisition, if the owner has been convicted of failure to comply with a repair order or if the Minister has reasonable cause to believe that the owner of a registered place has deliberately allowed the place to deteriorate or has acquired the property with the intention of demolishing it, the compensation payable is significantly reduced by various factors set out in this clause.

Like its counterpart in the current Act, this clause prevents “rewarding” an owner’s neglect of a registered place by paying full market value for it in the compulsory acquisition.

Clause 111. Tribunal’s powers as to acquisition and compensation decision

This clause allows a person aggrieved by a decision of the Minister under Clauses 109 or 110 to apply to the State Administrative Tribunal to review the decision, as under the current Act.

Clause 112. Acquisition by consent

This clause allows the Council or any public authority to acquire by purchase or consent any property or interest in property in furtherance of the objects of the new Act, with the Minister’s approval.

Clause 113. Request for acquisition

This clause allows an owner of land who claims to be denied all economically viable use of the land by operation of the new Act to request the Council to acquire the land under Clause 112 and further provides that, if the Council refuses the request or the owner is not satisfied with the terms under which the Council offers to acquire the land, the owner may apply to the State Administrative Tribunal to determine whether the owner is in fact denied all economically viable use of the land and, if so, whether it to require the Council to acquire the land, either on terms agreed to under Clause 112 or compulsorily under Clause 109.

Part 11 — Enforcement

Part 11 of the Bill retains many enforcement features of the current Act, such as the appointment of inspectors and their powers and the use of special penalties for offences such as restoration orders and prohibition orders. These features have been substantially revised for clarity while retaining the essential substance of the original provisions in the current Act. In particular, the fines for offences (See Division 3) remain unchanged because fines were significantly increased by 2011 amendments to the current Act.

Division 1 – Inspectors

Like many other Acts in WA, the Bill allows for the appointment of inspectors to assist with compliance monitoring and enforcement of the new Act. The provisions in this Division are very similar to those found in other Acts that allow for the appointment of inspectors.

Clause 114. Appointment of inspectors

This clause provides that the Minister may appoint a person to be an inspector, and sets out various requirements for making such appointments.

Clause 115. Police officers to have power of inspectors

This clause declares that police officers have the same investigation powers conferred on inspectors under the new Act.

Clause 116. Identity cards

This clause requires that an appointed inspector be issued with an identity card.

Division 2 – Entry and investigation

As with inspectors in Division 1, many other Acts also allow for the use of warrants to assist inspectors with investigation of possible offences of the Act. The provisions in Division 2 are also very similar to comparable provisions in those other Acts.

Clause 117. Term used: *investigation purposes*

This clause defines the purpose of an inspector's activities allowed under the new Act, such as ascertaining whether an offence against the new Act has occurred.

Clause 118. Entry for investigation purposes

This clause allows an inspector to enter any land with the consent of the owner to conduct an investigation.

Clause 119. General powers for investigation purposes

This clause defines the powers an inspector may exercise in conducting an investigation.

Clause 120. Use of assistance

This clause allows an inspector may engage other persons to assist with an investigation activity allowed under the new Act.

Clause 121. Application for entry warrant

This clause allows an inspector to apply to a judge or magistrate for an entry warrant authorising entry to property to carry out an investigation, and sets out the requirements for making such an application. This clause also declares that section 13 of the *Criminal Investigation Act 2006* applies to such applications and any warrant issued.

Clause 122. Issue of entry warrant

This clause allows a judge or magistrate to issue an entry warrant upon the application by an inspector if satisfied that there are reasonable grounds for believing that entry to the property is necessary for making an investigation. This clause also sets out the information that must be included in the warrant.

Clause 123. Duration of entry warrant

This clause declares that an entry warrant is valid for the time period stated in the warrant or, if no period is stated, for 30 days from the date of issue. This clause also provides that the entry warrant ceases to be in force once it is executed.

Clause 124. Effect of entry warrant

This clause declares that an entry warrant comes into force when issued, has effect according to its content, and authorises the inspector who executes it to enter the premises described in the warrant within the stated time period to make an investigation.

Clause 125. Execution of entry warrant

This clause declares that an entry warrant may be executed by the inspector to whom it is issued or by any other inspector, and the inspector executing the warrant must produce the warrant at the request of a person apparently in charge of the premises.

Clause 126. Powers to obtain information

This clause sets out various powers of an inspector to obtain information from an owner, occupier or other person apparently in charge of premises under investigation and requires such persons to provide certain types of information when requested to do so by an inspector.

Clause 127. Obstructing performance of functions

This clause declares that it is an offence to willfully obstruct or delay a person acting in the execution of any function of the Council, or to not comply with any reasonable request made by such person, or to knowingly provide false or misleading information to such person, and specifies the penalty for this offence.

Clause 128. Impersonation

This clause makes it an offence to falsely represent oneself to be an inspector or to be a member, employee or agent of the Council, and establishes the penalty for each offence.

Division 3 – Offences

The offence provisions in Division 3 retain the comparable provisions in the current Act, particularly sections 60 and 79(1), but revised for clarity. The penalties for offences are unchanged from the current Act, which itself was amended in 2011 to increase the penalty amounts so as to provide a realistic deterrence. For example, the maximum fine for damaging a registered place was increased in from \$5,000 to \$1,000,000.

Clause 129. Damaging registered place

This clause declares that it is an offence to demolish, damage or despoil a registered place, or alter the fabric of a registered place or remove any thing from the place to the detriment of the place's cultural heritage significance without prior approval under the relevant provisions of Part 5, and specifies the penalty for this offence.

Clause 130. Contravention of protection order

This clause declares that it is an offence to contravene a prohibition specified in a protection order to the detriment of the cultural heritage significance of the place to which the order applies, and specifies the penalty for this offence. The penalties for contravention of a protection order include imprisonment for up to 1 year, reduced from the current Act's 2-year maximum. In the Council's experience, longer imprisonment could impede heritage conservation by delaying the defendant's compliance with a restoration order (See Clause 133).

Clause 131. Onus of proof in demolition offences

This clause provides that, in a prosecution of an owner under Clause 130 or 131 for the substantial demolition of a building or structure, the owner will be required to prove that the owner was not responsible if it appears that the owner has not suffered a significant financial loss as a result of the demolition.

This provision is included in response to a failed prosecution for the 2008 unauthorised demolition of a local heritage place, where the magistrate chose not to exercise discretion to draw an inference of culpability that was supported by the prosecution's evidence and instead ruled that the defendant had no case to answer.

Clause 132. Contravention of repair order

This clause declares that it is an offence to fail to comply with a repair order issued under Part 4 Division 2 within the time limit specified in the order and establishes the penalty for this offence.

Division 4 – Orders following offences

Division 4 retains two important additional deterrence penalties from the current Act: restoration orders and prohibition orders.

133. Restoration order

This clause provides that, if a person is convicted of an offence arising from the unauthorised alteration, demolition, damage or despoliation of a place or the removal of anything from a place, in addition to or instead of any other penalty that may be imposed, the court may, having regard to the recommendation of the Council, order that person to restore the place to its condition prior to the offending works or make any other restitution determined by the court. This clause also declares it an offence to fail to comply with the order and specifies the penalty for this offence.

Clause 134. Prohibition order

This clause provides that, if a person is convicted of any offence in relation to a place, with the court's approval the Governor may by order published in the *Government Gazette* order that, for a period not to exceed 10 years, no development may occur or be approved at that place or only such development as may be specified in the order may occur or be approved. This clause also declares it an offence to carry out works contrary to the order and specifies the penalty for this offence.

Division 5 – Miscellaneous provisions regarding offences**Clause 135. Time limit for commencing criminal proceeding**

This clause provides that criminal proceedings must be commenced within three years of the date the alleged offence was committed.

Clause 136. Council or authorized person may commence prosecution

This clause states that criminal proceedings may be instituted in the name of the Council and conducted by any officer of the Council authorised by the Council to do so.

Clause 137. Compensation order

This clause provides that, in a criminal proceeding taken against an accused person for an offence, if the court is satisfied that some other person has suffered or will suffer loss or damage by reason of the offence the court may order the accused person to compensate the other person for the loss or damage.

Clause 138. Finding of fact in certain proceedings to be evidence in other proceedings

This clause provides that, in proceedings taken under this Division, a finding of fact by a court made in proceedings against an accused person for an offence is evidence of that fact and the finding may be proved by production of a document under the seal of the court from which the finding appears.

Clause 139. Enforcement of requirement to pay money

This clause provides that a court that has convicted a person of an offence and required payment of money, if the convicted person defaults on that requirement the same court may exercise any other power it has apart from this clause or order the unpaid amount recoverable as a judgment debt.

Clause 140. Continuing offence

This clause sets out the process by which a court may determine the appropriate daily penalty for a continuing offence, if no daily penalty is specified for that offence.

Clause 141. Requirement to mitigate damage

This clause requires a person who is convicted of an offence under the new Act of causing damage to any property to take reasonable steps to prevent any further damage resulting from the offence, and makes it a further offence for the failure to do so.

Clause 142. Liability of successors in title

This clause sets out how to determine, as between the owner of a place and a subsequent owner of the place, who is responsible for complying with an order or notice made and who is liable for an offence arising from failure to comply.

Clause 143. Liability of officers for offences by body corporate

This clause sets out the circumstances in which a corporate officer is guilty of an offence committed by the corporation.

Clause 144. Further provisions relating to liability of officer of body corporate

This clause sets out additional details in regard to criminal proceedings against a corporate officer charged with an offence committed by the corporation.

Clause 145. Liability of principals for offence by agent

This clause sets out the circumstances in which a principal may be charged for an offence committed by an agent acting on behalf of the principal.

Clause 146. Liability of employers for offence by employee

This clause sets out the circumstances in which an employer may be charged for an offence committed by an employee.

Clause 147. Agency or employment no defence

This clause provides that, in a prosecution for an offence under the new Act, it is not a defence for the accused to claim that they were acting as an employee or agent of an employer or principal, respectively.

Clause 148. Defences

This clause sets out various defences available in criminal proceedings involving Clauses 142, 143 and 145-147.

Clause 149. Offence that is also breach of heritage agreement

This clause provides that, where conduct is both an offence and a breach of a heritage agreement, the Council has the option to pursue either a prosecution for the offence or an action for breach of the heritage agreement, pursue both the prosecution and the action for breach in separate proceedings, or pursue both the prosecution and the action for breach in a combined proceeding.

Division 6 – Miscellaneous provisions regarding civil proceedings**Clause 150. Action for damages**

This clause allows a person who suffers loss or damage as a result of a contravention to commence civil action within three years against the person convicted of the offence to recover the amount of the loss.

Clause 151. Securing compliance with Act

This clause allows the Supreme Court, the District Court or the State Administrative Tribunal, on the application of the Minister or the Council, to issue an injunction to prevent an offence from occurring. Allowing the State Administrative Tribunal to issue injunctions is a new feature.

Part 12 — Compensation in relation to work prohibition

Part 12 retains the substance of section 75 of the current Act, which allows a person to seek compensation for losses resulting from the termination or delay of works to a place that are halted as a result of a stop work order (See Clause 56) or suspended upon entry of the place in the register (See Clause 76).

Clause 152. Terms used

This clause defines various terms used Part 12.

Clause 153. Application for compensation

This clause allows a person to apply to the Minister for compensation for a “compensable loss” as defined in Clause 152.

Clause 154. Recommendation by Minister for compensation

This clause sets out the considerations and process by which the Minister is to make a recommendation to the Treasurer in regard to an application for compensation made under Clause 153.

Clause 155. Treasurer’s determination if no recommendation by Minister

This clause sets out the process by which the Treasurer is to determine whether to compensate a person for a compensable loss in the absence of a recommendation made by the Minister under Clause 154 within the prescribed time period.

Clause 156. Restriction on claim for compensation

This clause declares that, except as provided in this Division or Part 10, neither the entry of land in the register nor the operation of the new Act in any other respect gives rise to any action or claim for compensation.

Part 13 — Miscellaneous

Part 13 contains a variety of provisions addressed to several different issues, such as restrictions on lawsuits in respect of actions taken by the Council or by its members or staff, and removing a number of ambiguities to clear up popular misconceptions about the Council and its responsibilities.

Clause 157. No private cause of action

This clause declares that, except for the remedy for damages provided by Clause 150, there is no private cause of action for any offence or for a breach of a heritage agreement by a person who is not a party to the agreement.

Clause 158. Limited effect of processes under the Act

This clause declares that, except as expressly provided in the new Act, no action taken under the new Act gives the State, the Minister, or the Council any interest in, claim to, responsibility for or obligation in respect of any land, nor does such action affect the rights or obligations of any owner of the land or of any other person having an interest in or claim to the land.

This clause was considered necessary to refute the widespread misperception that the State assumes various responsibilities for properties entered in the register.

Clause 159. Confidentiality

This clause declares that any oral, written, electronic or other communication with an owner or occupier of any land is to be maintained in confidence, and may be disclosed only with the written consent of the owner or occupier or as required or allowed by the new Act or any written law.

Under the current Act, whether or not such information must be held in confidence is ambiguous and property owners often have raised concerns about privacy matters.

Clause 160. Challenge to entry in register

This clause declares that no action may be commenced to review an action taken by the Council or the Minister under Part 3 if three years have elapsed from the date of the action concerned.

This clause was considered necessary to set an absolute limit on the length of time within which a register entry may be challenged.

Clause 161. Protection from personal liability

This clause declares that no legal action may be commenced against a person for anything that person has done in good faith in performing a function under the new Act.

This clause was considered necessary to prevent harassment suits against Council members and staff, which has happened in the past. Many other Acts have similar provisions.

Clause 162. Fees and charges for recovery of costs by Council

This clause provides that the Council may by regulation recover certain costs and disbursements incurred in carrying out specific functions, but no costs or disbursements may be recovered that arise from the entry of a place in the register under Part 3 Division 2, or advising on a referral under Part 5 Division 2, except as permitted by regulations pursuant to Clause 78(g) (which allows for recovery of costs arising from the Council reconsidering advice already provided at the request of an applicant or decision-maker).

This clause was considered necessary because the Council provides many services it is not required to provide to assist owners and others with heritage matters but, under the current Act, is unable to recover the costs incurred or disbursements made in providing such services.

Clause 163. Notices and statutory notification

This clause specifies how notices and statutory notifications required or allowed under the new Act are to be made. For example, “statutory notification” will normally involve lodging memorials with Landgate for placement on land titles, or withdrawal of such memorials, when land is entered in the register or removed from the register, and providing a similar notification to the Department administering the *Mining Act 1978* for inclusion in the database of mining tenements and mining tenement applications. The term “statutory notification” is used in this context to allow flexibility in the approach to be taken for notifications to both agencies under regulations to be made under this clause.

Clause 164. Regulations

This is a standard clause that allows the Governor to make regulations prescribing all matters that are required or permitted under the new Act to be prescribed, or that are necessary or convenient to be prescribed for giving effect to the new Act.

Clause 165. Review of Act

This is a standard clause that requires the Minister to carry out a review of the new Act as soon as practicable after the 10th anniversary of its coming into operation, and table in each House of Parliament a report based on the review.

Part 14 — Repeal, transitional and consequential provisions**Division 1 – Repeal****Clause 166. *Heritage of Western Australia Act 1990* repealed**

This clause expressly repeals the *Heritage of Western Australia Act 1990*.

Division 2 – Transitional provisions**Clause 167. Terms used**

This clause defines various terms used in this Division, such as “commencement day”, being the day on which the former Act is repealed, and “interim period” is defined as a period of two years from commencement day.

Clause 168. *Interpretation Act 1984* not affected

This clause provides that the transition provisions in this Division are in addition to relevant provisions of the *Interpretation Act 1984*.

Clause 169. Council a continuation of former Council

This clause provides that the Council to be created under the new Act is a continuation of the Council created under the current Act.

Clause 170. Members of former Council continue in office

This clause provides that members of the Council immediately before the new Act commences continue in office.

Clause 171. Unfinished proceedings: Council

This clause provides that proceedings commenced by or against the former Council are to continue as if the proceedings had been commenced by or against the new Council.

Clause 172. Completion of things commenced

This clause provides that anything commenced to be done by the former Council may be continued by the new Council after commencement of the new Act.

Clause 173. Continuing effect of things done

This clause provides that any act, matter or thing done by, to or in respect of the former Council is taken to have been done or omitted by, to or in respect of the new Council.

Clause 174. First annual report of Council

This clause provides that the first annual report of the new Council is also to report on proceedings of the former Council from 1 July of the preceding year up to the date the new Act commences.

Clause 175. Heritage Fund a continuation of former Heritage Account

This clause provides that the Heritage Fund is to be a continuation of the Heritage Account established and operated under section 14 of the current Act.

Clause 176. Heritage Conservation Incentive Account closed

This clause provides that the unused Heritage Conservation Incentive Account, established under section 14(5) of the current Act, is to be closed when the new Act comes into effect.

Clause 177. Register

This clause provides that the former register as it exists immediately before commencement continues under the new Act as the new register. This clause also provides that no objection to anything done in relation to the former register may be raised or determined in any proceedings commenced after the end of the interim period, which is two years from the date of commencement.

This time limit was considered necessary to set an absolute limit on the time within which indirect court challenges may be made to the validity of register entries made under the current Act.

Clause 178. Interim registration

This clause provides that places that are interim-registered under the current Act are taken to be temporarily registered for the purposes of the new Act, but if not registered under Part 3 Division 2 within two years of commencement these places will no longer be registered places.

It is anticipated that, at the commencement of the new Act, a number of places may still be interim-registered. Because the new Act will have no provision corresponding to the current Act's "interim registration", this clause is necessary to provide a grace period within which the Council may seek to have these places registered under Part 3 of the new Act.

Clause 179. Conservation orders

This clause provides that conservation orders made under the current Act that are still in effect at commencement are deemed to be protection orders under Part 4 Division 1.

Clause 180. Heritage agreements

This clause provides that a heritage agreement made under the current Act remains in effect as if made under the new Act.

Clause 181. Local heritage survey

This clause provides that an inventory prepared by a local government under section 45 of the current Act is taken to be a survey prepared under section 103 of the new Act. This clause is necessary to preserve the time and effort that local governments have put into compiling and maintaining their similar inventories under section 45 of the current Act.

Clause 182. Powers in relation to transitional provision

This clause allows the Governor to make regulations to address transitional matters that are not effectively dealt with in this Division. The Parliamentary Counsel advises that this type of clause is often used in legislation which repeals and replaces an existing complex Act with a new Act.

Division 3 – Consequential amendments**Clause 183. *Building Act 2011* amended**

This clause amends the *Building Act 2011* by replacing references in that Act to the current Act with references to the new Act.

Clause 184. *Constitution Acts Amendment Act 1899* Amended

This clause amends the *Constitution Acts Amendment Act 1899* by replacing references in that Act to the current Act with references to the new Act.

Clause 185. *Liquor Control Act 1988* Amended

This clause amends the *Liquor Control Act 1988* by replacing references in that Act to the current Act with references to the new Act.

Clause 186. *Planning and Development Act 2005* Amended

This clause makes several detailed amendments to the *Planning and Development Act 2005* to replace references in that Act to the current Act with references to the new Act and also to make detailed substantive changes to accommodate new and changed features in the new Act.

Clause 187. *Strata Titles Act 1985* Amended

This clause amends the *Strata Titles Act 1985* by replacing references in that Act to the current Act with references to the new Act.

Clause 188. *Swan Valley Planning Act 1995* Amended

This clause amends the *Swan Valley Planning Act 1995* by replacing references in that Act to the current Act with references to the new Act.