

Heritage Bill 2000

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Defined Terms

Western Australia

LEGISLATIVE ASSEMBLY

Heritage Bill 2000

A Bill for

An Act to provide for the conservation and protection of Western Australia's cultural heritage, to repeal the *Heritage of Western Australia Act 1990* and for related purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Heritage Act 2000*.

2. Commencement

5 (1) Subject to subsection (2), this Act comes into operation on a day fixed by proclamation.

(2) This Act is not to come into operation before the *Planning Appeals Act 2000* and the *Hope Valley-Wattleup Redevelopment Act 2000* have come into operation.

10 3. Definitions

In this Act, unless the contrary intention appears —

“**building**”, in relation to land, includes any man-made structure erected or placed on or in the land, and any part of the building or structure;

15 “**CEO**” means the person appointed as the chief executive officer for the purposes of section 17;

“**conservation**”, in relation to a place or precinct, includes —

(a) the retention of the cultural heritage significance of the place or precinct; and

20 (b) any maintenance, preservation, restoration, reconstruction or adaptation of the place or precinct for that purpose;

“**conservation order**” means an order referred to in section 99(1);

25 “**Council**” means the Heritage Council of Western Australia established under section 7;

“**cultural heritage significance**”, in relation to a place or precinct, means significance to any group or community (including future generations) in relation to the aesthetic,

archaeological, architectural, cultural, historical, scientific,
social or technical value of the place or precinct;

“development” means the development or use of any land,
including any of the following —

- 5
- (a) any demolition, erection, construction, alteration of
or addition to any building on the land;
 - (b) the carrying out on the land of any excavation or
other earthworks;
 - (c) the subdivision or amalgamation of land including
10 buildings or airspace,

but does not include any act or thing or class of act or thing
that is for the time being excluded from this definition by
the regulations;

15 **“fabric”**, in relation to a place, means all the physical material
of the place;

“heritage agreement” means an agreement entered into under
section 77;

“Heritage Fund” means the account referred to in
section 21(1);

20 **“land”** includes —

- (a) any interest in land; and
- (b) any building on or in the land;

25 **“National Trust”** means the National Trust of Australia (W.A.)
established under the *National Trust of Australia (W.A.)*
Act 1964;

30 **“occupier”**, in relation to land, means a person by whom or on
whose behalf the land is lawfully occupied, or if there is no
person in lawful occupation, a person entitled to possession
(which includes the receipt of income or the right to receive
income from the land);

“owner” has the meaning given by section 4;

“place” has the meaning given by section 5;

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“planning authority” means —

- (a) the East Perth Redevelopment Authority;
- (b) a local government administering a town planning scheme;
- 5 (c) the Midland Redevelopment Authority;
- (d) the Subiaco Redevelopment Authority;
- (e) the Western Australian Land Authority; or
- (f) the Western Australian Planning Commission;

“planning law” means any of —

- 10 (a) the *East Perth Redevelopment Act 1991*;
- (b) the *Hope Valley-Wattleup Redevelopment Act 2000*;
- (c) the *Local Government (Miscellaneous Provisions) Act 1960*;
- (d) the *Metropolitan Region Town Planning Scheme Act 1959*;
- 15 (e) the *Midland Redevelopment Act 1999*;
- (f) the *Subiaco Redevelopment Act 1994*;
- (g) the *Town Planning and Development Act 1928*;
- (h) the *Western Australian Planning Commission Act 1985*;
- 20

“precinct” means a group of places;

“protection order” means an order referred to in section 94(1);

“public authority” means —

- (a) a Minister;
- 25 (b) an agency as defined in the *Public Sector Management Act 1994*; or
- (c) a body, whether corporate or unincorporate, or the holder of an office, post or position, being a body, office, post or position that is established or continued

for a public purpose under a written law, including a
local government or regional local government;

“public notice” means bringing a matter to the notice of the
public by —

- 5 (a) publication of a notice in the *Gazette*; and
 (b) a notice published in a daily newspaper circulating
 throughout the State;

“Register” means the Western Australian Heritage Register
referred to in section 28;

10 **“registered place”** means a place entered in the Register under
 section 31(1);

“registered precinct” means a precinct entered in the Register
under section 31(1);

15 **“town planning”** means city, town, suburban, or rural planning
 and development, or any combination of those;

“town planning scheme” means a scheme that has been
approved by the Minister and published in the *Gazette*
under section 7 of the *Town Planning and Development*
Act 1928;

20 **“WAMA”** means the Western Australian Municipal
 Association constituted under section 9.58 of the *Local*
 Government Act 1995;

“works”, in relation to a place or precinct, includes any of the
following —

- 25 (a) development of the place or precinct;
 (b) any physical intervention or action which may result
 in a change to the nature or appearance of the fabric
 of the place or of the precinct;
30 (c) the removal, destruction or lopping of a tree from or
 at the place or precinct;
 (d) the removal from the place or precinct of any
 equipment, furniture or other moveable items

s. 4

specified in the Register in relation to the place or precinct as forming part of the place or the precinct;

- (e) otherwise damaging or despoiling the place or precinct.

5 **4. Meaning of “owner”**

(1) In this Act —

“owner” —

(a) in relation to unalienated land that, under a written law other than the *Land Administration Act 1997* —

10

- (i) is vested in a person or body;
- (ii) is dedicated to a purpose of a person or body; or
- (iii) is placed under the control of a person or body,

15

means that person or body;

(b) in relation to unalienated land other than that referred to in paragraph (a) means the State of Western Australia and, if relevant —

20

- (i) a management body, as defined in the *Land Administration Act 1997*, for the land; or
- (ii) a public authority that is in possession of, or controls, the land;

25

(c) in relation to land that is under the operation of the *Transfer of Land Act 1893* means, subject to subsection (2), a proprietor within the meaning of that Act except a mortgagee who is not a mortgagee in possession; or

30

(d) in relation to land that is subject to the *Registration of Deeds Act 1856*, means the holder of an interest registered by memorial under that Act except a mortgagee who is not a mortgagee in possession.

- (2) If —
- (a) the proprietor of land that is under the operation of the *Transfer of Land Act 1893* is the State of Western Australia; and
 - 5 (b) a public authority is in possession of, or controls, the land,
- the public authority is the owner of the land for the purposes of this Act.

5. Meaning of “place”

- 10 (1) In this Act —
“place” means a defined or readily identifiable portion of land.
- (2) For the purposes of the definition of “place” in subsection (1) —
- (a) the portion of land may be comprised in separate titles and in different ownership; and
 - 15 (b) it is immaterial that water covers the land at any particular time.
- (3) Any of the following things at a place can be treated as forming part of the place —
- (a) an archaeological site;
 - 20 (b) a building and such of the building’s immediate surrounds as may be required for its conservation;
 - (c) a structure that is historically or physically associated or connected with the place if the primary importance of the structure derives in part from its association with the place;
 - 25 (d) equipment, furniture, fittings or other items (whether fixed or not) that are historically or physically associated or connected with any building, or activity conducted, at the place;
 - 30 (e) a garden, man-made park or man-made landscape;

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- (f) a tree or group of trees (whether planted or naturally occurring) in or adjacent to a man-made setting.

6. Act binds Crown and does not apply to Aboriginal heritage or natural heritage

- 5 (1) This Act binds the Crown not only in right of the State but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.
- (2) This Act does not apply to —
 - (a) an Aboriginal site; or
 - 10 (b) Aboriginal cultural material,
as defined in the *Aboriginal Heritage Act 1972*, to the extent to which that Act applies to the site or the material.
- (3) Nothing in this Act affects the operation of the *Aboriginal Heritage Act 1972*.
- 15 (4) This Act does not apply to a place that consists only of the natural environment, except to the extent to which the place is located within a place that is or might be of cultural heritage significance.

Part 2 — The Heritage Council

7. Heritage Council established

- (1) A body called the Heritage Council of Western Australia is established.
- 5 (2) The Council is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Council in its corporate name.
- (4) The Council is an agent of the Crown and enjoys the status, immunities and privileges of the Crown.
- 10 (5) In addition to the name mentioned in subsection (1) the Council may use, and operate under, the name “Heritage WA”.

8. Members

- (1) The Council is to comprise 11 persons appointed by the Minister who have such experience, skills, knowledge and qualifications as are relevant to the functions of the Council.
- 15 (2) The Council members are to comprise —
- (a) the chairperson;
- (b) a person nominated by the National Trust;
- (c) 2 persons chosen from 4 persons nominated by WAMA of whom —
- 20 (i) one is to represent metropolitan interests; and
- (ii) one is to represent non-metropolitan interests;
- (d) a person representing the interests of owners, chosen from persons nominated after public advertisement of the position;
- 25 (e) a person representing organisations with interests relevant to the conservation of places of cultural heritage significance, chosen from persons nominated after public advertisement of the position; and

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- (f) 5 other persons chosen from persons nominated after public advertisement of the positions, of whom —
- (i) at least one is a registered architect as defined by the *Architects Act 1921*; and
 - (ii) at least one other is a professional historian.
- (3) The CEO is not to be appointed as a Council member.
- (4) If, within 60 days of a request to do so, a body referred to in subsection (2)(b) or (c) fails to nominate a person in accordance with that request, the Minister may make such appointment for the purpose of that provision as the Minister thinks fit.
- (5) On the request of a body referred to in subsection (2)(b) or (c), the Minister may extend the period of time referred to in subsection (4) for nominations by the body.

9. Constitution, proceedings etc.

Schedule 1 has effect with respect to the Council and its members.

10. Remuneration of members

- (1) A member of the Council or a committee is to be paid such remuneration and travelling and other allowances as are determined in the member's case by the Minister on the recommendation of the Minister for Public Sector Management.
- (2) A Council member who is an employee (as defined in the *Public Sector Management Act 1994*) is to be paid only such travelling and subsistence allowances as are determined in the member's case by the Minister on the recommendation of the Minister for Public Sector Management.

Part 3 — Functions, powers and accountability

11. Heritage Council functions and powers

- (1) It is a function of the Council —
- 5 (a) to identify and assess places within the State that are of cultural heritage significance;
 - (b) to advise the Minister on the conservation and protection of, and other matters relating to, places in Western Australia that are, or might be, of cultural heritage significance;
 - 10 (c) to represent the Minister in negotiations relating to the matters referred to in paragraph (b);
 - (d) to have regard to the recommendations of, and the lists and records compiled by, the Australian Heritage Commission, the National Trust, the Royal Western
15 Australian Historical Society (Inc.), local governments and other persons that have made available information relating to places that are, or might be, of cultural heritage significance;
 - 20 (e) to provide advice in relation to heritage agreements or proposed heritage agreements and to conduct negotiations in relation to such agreements;
 - (f) to protect places that are, or might be, of cultural heritage significance from destruction, deterioration, damage or injudicious treatment;
 - 25 (g) where development of a registered place or registered precinct or development adjacent to a registered place is proposed, to ensure that the development does not adversely affect the cultural heritage significance of the place or precinct;

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- 5
- (h) to advise and assist local governments in identifying and conserving places that are, or might be, of cultural heritage significance in relation to —
- (i) local government heritage inventories under Part 7; and
- (ii) compiling information about heritage in a local government district that may be required under a town planning scheme;
- 10
- (i) to promote public awareness and knowledge of issues relevant to the conservation of Western Australia's cultural heritage;
- (j) to encourage or provide education or training in respect of Western Australia's cultural heritage;
- 15
- (k) to arrange or conduct research and investigations relating to Western Australia's cultural heritage;
- (l) to promote and assist in the proper management and maintenance of registered places and registered precincts;
- 20
- (m) to deliver any place or thing in the Council's possession or control in relation to cultural heritage into the possession or control of any person for the purpose of making the place or thing accessible to the public or available for study;
- (n) to implement policies to give effect to its functions;
- 25
- (o) to do anything else that it is required or authorised to do under this Act or any other written law.
- (2) The Council has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this Act.

12. Delegation by Minister

- 30
- (1) The Minister may, by instrument, delegate to any person the performance of any of the Minister's functions except —
- (a) this power of delegation; and

(b) the Minister's powers under sections 13 and 14.

(2) A function performed by a delegate is to be taken as being performed by the Minister.

5 (3) A delegate performing a function under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

13. Minister may give directions

10 (1) The Minister may give directions in writing to the Council with respect to the performance of its functions, either generally or, subject to subsection (2), in relation to a particular matter and the Council is to give effect to any such direction.

(2) A direction may not be given under subsection (1) in respect of any of the following —

15 (a) the content or effect of advice to be given by the Council;

(b) an assessment of the cultural heritage significance of a particular place or precinct;

(c) an interim entry in the Register under section 33;

20 (d) an approval or an exemption or revocation of an exemption under Part 8.

(3) The Minister must cause the text of any direction given under subsection (1) to be laid before each House of Parliament, or dealt with under subsection (4), within 14 days after the direction is given.

25 (4) If —

(a) at the commencement of the period referred to in subsection (3) a House of Parliament is not sitting; and

(b) the Minister is of the opinion that that House will not sit during that period,

30 the Minister is to transmit a copy of the direction to the Clerk of that House.

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- (5) A copy of a direction transmitted to the Clerk of a House is to be regarded —
- (a) as having been laid before that House; and
 - (b) as being a document published by order or under the authority of that House.
- (6) The laying of a copy of a direction that is regarded as having occurred under subsection (5)(a) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.
- (7) The text of a direction under subsection (1) is to be included in the annual report submitted by the accountable authority of the Council under section 66 of the *Financial Administration and Audit Act 1985*.
- 14. Minister to have access to information**
- (1) The Minister is entitled —
- (a) to have information in the possession of the Council; and
 - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
- (a) request the Council to furnish information to the Minister;
 - (b) request the Council to give the Minister access to information;
 - (c) for the purposes of paragraph (b) make use of the staff of the Council to obtain the information and furnish it to the Minister.
- (3) The Council must comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of subsection (2)(c).

(4) In this section —

“**document**” includes any tape, disc or other device or medium on which information is recorded or stored;

5 “**information**” means information specified, or of a description specified, by the Minister that relates to the functions of the Council.

15. Delegation by Heritage Council

10 (1) The Council may, by instrument, delegate to any person the performance of any of the Council’s functions under this Act except this power of delegation.

(2) A function performed by a delegate is to be taken as being performed by the Council.

15 (3) A delegate performing a function under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(4) Nothing in this section is to be read as limiting the ability of the Council to act through its staff and agents in the normal course of business.

16. Public referrals to Heritage Council

20 (1) Any person may refer in writing to the Council any matter concerning the conservation or protection of a registered place, a registered precinct or any other place or precinct which is, or might be, of cultural heritage significance.

25 (2) On a referral under subsection (1), the Council —

(a) may request from the person referring the matter such further information as is necessary for the Council to decide how to deal with the matter;

30 (b) may deal with the matter as it thinks fit, including reporting or making recommendations to a public authority or other persons;

- (c) as soon as practicable, is to inform the person referring the matter about how the matter is dealt with; and
- (d) is to deal with the referral expeditiously.

Part 4 — Staff

17. CEO

- (1) A chief executive officer of the Council is to be appointed under Part 3 of the *Public Sector Management Act 1994*.
- 5 (2) Subject to the control of the Council, the CEO is to —
- (a) provide advice and assistance to the Council and the Minister in the administration of this Act; and
 - (b) administer the day to day operations of the Council.

18. Other staff

- 10 (1) The CEO may engage persons as staff of the Council.
- (2) Persons referred to in subsection (1) are to be employed, subject to any relevant industrial award, order or agreement, on such terms and conditions as the CEO determines.
- 15 (3) Nothing in subsection (2) affects the operation of the *Workplace Agreements Act 1993*.
- (4) Part 3 Division 3 of the *Public Sector Management Act 1994* does not apply to the Council but this section does not affect the power of the CEO to engage a person under a contract for services or appoint a person on a casual employment basis
- 20 under section 100 of that Act.

19. Use of other government staff, etc.

- (1) The Council may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee —
- 25 (a) in the Public Service;
- (b) in a State agency or instrumentality; or
 - (c) otherwise in the service of the Crown in right of the State.

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(2) The Council may by arrangement with —

(a) a department of the Public Service; or

(b) a State agency or instrumentality,

make use of any facilities of the department, agency or instrumentality.

5

(3) An arrangement under subsection (1) or (2) is to be made on such terms as are agreed to by the parties.

Part 5 — Finance

20. Funds of Heritage Council

The funds available for the purpose of enabling the Council to perform its functions consist of —

- 5 (a) moneys from time to time appropriated by Parliament;
- (b) moneys received by the Council in the performance of its functions;
- (c) moneys received by the Council by way of fees or charges, or from the sale or rental of property owned by
10 the Council or from the management of property administered by the Council;
- (d) moneys borrowed by the Council under section 22 or 23;
- (e) moneys from Commonwealth sources; and
- 15 (f) other moneys lawfully received by, made available to, or payable to, the Council.

21. Heritage Fund

- (1) The funds referred to in section 20 are to be credited to an account to be called the “Heritage Fund” at the Treasury,
20 forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*.
- (2) The Heritage Fund is to be charged with —
 - (a) the remuneration and allowances payable under section 10;
 - 25 (b) interest on and repayment of moneys borrowed by the Council under section 22 or 23 and any other fees or charges payable in respect of any such borrowing; and
 - (c) all other expenditure lawfully incurred by the Council in the performance of its functions.

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22. Borrowing from Treasurer

- (1) The Council may borrow from the Treasurer such amounts as the Treasurer approves on such terms and conditions relating to repayment and payment of interest as the Treasurer imposes.
- 5 (2) By force of this subsection the Heritage Fund and the assets of the Council are charged with the due performance by the Council of its obligations in respect of a loan under subsection (1).

23. Other borrowing

- 10 (1) In addition to its powers under section 22, the Council may with the prior written approval of the Treasurer and on such terms and conditions as the Treasurer approves, borrow moneys for the purpose of performing its functions.
- (2) Any moneys borrowed by the Council under subsection (1) may
15 be raised —
- (a) as one loan or as several loans; and
- (b) in such manner as the Treasurer approves.
- (3) The total amount of the moneys so borrowed in any one
20 financial year is not to exceed such amount as the Treasurer approves.

24. Guarantee by Treasurer

- (1) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee the payment of any moneys payable
25 by the Council in respect of moneys borrowed by the Council under section 23.
- (2) A guarantee is to be in such form and contain such terms and conditions as the Treasurer determines.

- 5 (3) Before a guarantee is given, the Council is to —
- (a) give to the Treasurer such security as the Treasurer requires; and
 - (b) execute all instruments that are necessary for the purpose.

25. Effect of guarantee

- 10 (1) The due payment of moneys payable by the Treasurer under a guarantee under section 24 is guaranteed by the State.
- (2) Any such payment is to be made by the Treasurer and charged to the Consolidated Fund, and this subsection appropriates that Fund accordingly.
- 15 (3) The Treasurer is to cause to be credited to the Consolidated Fund any amounts received or recovered from the Council or otherwise in respect of any payment made by the Treasurer under a guarantee given under section 24.

26. Charges for guarantees

- (1) The Treasurer may fix charges to be paid by the Council to the Treasurer for the benefit of the Consolidated Fund in respect of a guarantee given under section 24.
- 20 (2) Payment of any charges fixed under subsection (1) is to be made at such time or times as the Treasurer determines.

27. Application of *Financial Administration and Audit Act 1985*

25 The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Council and its operations.

Part 6 — Heritage Register

Division 1 — The Register

28. The Register

5 The Council is to establish and maintain the Western Australian Heritage Register (the “**Register**”).

29. Content and form of Register

- (1) An entry in the Register in relation to a place or precinct must contain —
- 10 (a) an adequate description to enable the place or precinct to be identified;
- (b) the date of interim entry, permanent entry and any change to an entry;
- (c) the name of the local government district in which the place or precinct is located;
- 15 (d) a statement setting out how the place or precinct is of cultural heritage significance;
- (e) a list of the equipment, furniture or other moveable items that form part of the place or the precinct; and
- (f) such other matters as are prescribed by regulation.
- 20 (2) If an entry is removed from the Register, the Register must contain —
- (a) the date of the removal of the entry; and
- (b) a statement as to why the entry was removed.
- (3) The Register is to be in a form approved by the Council.
- 25 (4) The Register is to be a comprehensive register of places and precincts of cultural heritage significance for the State, not merely an index of examples, and a place or precinct is not to be left out of the Register because similar examples are already entered.

30. Public inspection

The Council is to ensure that the Register, or a copy of it, is available for public inspection —

- 5
- (a) at the office of the Council during ordinary business hours; or
 - (b) by such other means as the Council determines.

Division 2 — Entry in the Register

31. Grounds for entry in the Register

- 10
- (1) A place or a precinct may be entered in the Register if, in the opinion of the Council —
 - (a) the place or precinct is of cultural heritage significance for the State; and
 - (b) the place or precinct meets one or more of the assessment criteria determined by the Council under
- 15
- (2) A precinct may be entered in the Register even though each place within the precinct may not itself satisfy the requirements of subsection (1).

32. Assessment criteria

- 20
- (1) The Council is to determine and publish the criteria to be used in assessing the cultural heritage significance of places and precincts.
 - (2) In determining the assessment criteria, the Council is to have regard only to the following matters —
- 25
- (a) the importance of a place or precinct in demonstrating the evolution or pattern of Western Australian history;
 - (b) the importance of a place or precinct in demonstrating rare, uncommon or endangered aspects of Western Australia's heritage;

- 5
- 10
- 15
- 20
- (c) the potential of a place or precinct to yield information that will contribute to an understanding of Western Australia's history;
 - (d) the importance of a place or precinct in demonstrating the characteristics of a broader class of places or precincts;
 - (e) the importance of a place or precinct in demonstrating a high degree of creative or technical achievement;
 - (f) the strong or special meaning that a place or precinct has for any group or community because of social, cultural or spiritual associations;
 - (g) the importance of a place or precinct in exhibiting particular aesthetic characteristics valued by any group or community;
 - (h) the special association that a place or precinct has with the life or work of a person, group or organisation of importance in Western Australia's history;
 - (i) any other matter that in the opinion of the Council is relevant to the assessment of cultural heritage significance.

33. Interim entry

- 25
- 30
- (1) The Council, on its own initiative or on application to it by any person, may enter a place or precinct in the Register on an interim basis if in its opinion the place or precinct satisfies the grounds for entry in the Register.
 - (2) Before entering a place or precinct in the Register on an interim basis, the Council may invite written or oral submissions on any matter relevant to the applicable assessment criteria published under section 32(1) from any owner of the place or any owner of any place within the precinct and any person with a special knowledge of, or interest in, the place or precinct, and may have regard to the submissions in making its decision.

- 5 (3) Before entering a precinct in the Register on an interim basis, the Council is to consult with the local government of the district in which the precinct is located for the purpose of agreeing a conservation management policy for the proposed registered precinct.
- 10 (4) If the Council and the local government have not agreed on a conservation management policy for the proposed registered precinct within 90 days after the day on which the local government was first consulted, the Council may register the precinct on an interim basis without the policy.

34. Procedure following interim entry

If a place or precinct is entered in the Register on an interim basis, the Council must —

- 15 (a) do the things that it is required to do under Division 4;
- (b) in the public notice required under Division 4, invite written submissions to be made to the Council, within 42 days of publication in the *Gazette* or such longer period as specified in the notice, in support of, or objecting to, making the interim entry in the Register permanent;
- 20 (c) as soon as practicable after the interim entry is made, cause a notification of the entry to be prepared in a form approved by the Registrar of Titles or the Registrar of Deeds, as the case requires, and deposited at the Department within the meaning of the *Transfer of Land Act 1893*; and
- 25 (d) notify the Minister as soon as practicable after the entry is made.

35. Submissions to be reported to Minister

30 If submissions have been made in support of, or objecting to, making an interim entry in the Register permanent the Council

is to ensure that a report on the submissions accompanies the Council's recommendation to the Minister.

36. No objection to permanent entry

- 5 (1) This section applies if —
- (a) no submission has been made in relation to making an interim entry in the Register permanent; or
 - (b) the only submissions that have been made are in support of making an interim entry in the Register permanent.
- 10 (2) After having regard to the Council's recommendation and report about an interim entry in the Register, the Minister may direct —
- (a) that the entry be made permanent; or
 - (b) that the entry be removed from the Register.
- 15 (3) The Minister is not to direct that an entry be made permanent unless the Minister is of the opinion that it is appropriate for the place or precinct that is the subject of the entry to have the protection afforded by this Act and in deciding whether or not to give a direction the Minister may take into account any of the following —
- 20 (a) the applicable assessment criteria published under section 32(1);
 - (b) the interests of any owner of the place, or any owner of any place within the precinct, as is relevant to the case; or
 - 25 (c) any other matter that in the opinion of the Minister is relevant to whether a direction should be given.
- (4) The Council is to give effect to the Minister's direction and do the things that it is required to do under Division 4.

37. Heritage Council to take certain action if objection to permanent entry

- (1) This section applies if a submission has been made objecting to making an interim entry in the Register permanent.
- 5 (2) The Council may invite —
- (a) further written or oral communication with the person who made the objection; or
 - (b) written or oral communication with any other person who has a special knowledge of, or interest in, the place
- 10 or precinct.
- (3) If the person who made the objection makes a request to address the Council or a relevant committee of the Council in relation to the objection, the Council is to ensure that the person is given the opportunity to address the Council or committee (as decided
- 15 by the Council) before the Council makes a recommendation to the Minister under subsection (7).
- (4) A person is not to be represented by another person before the Council or a committee under subsection (3) unless the Council determines otherwise on the ground that the process will not
- 20 work effectively without that representation but nothing in this subsection prevents the person from being accompanied by another person when appearing before the Council or a committee.
- (5) The Council may reconsider the interim entry in the Register having regard to any submissions made under subsection (1),
- 25 (2) or (3) and decide whether or not to recommend to the Minister to make the entry permanent.
- (6) If the Council decides that making the interim entry in the Register permanent is not warranted the Council is to —
- 30 (a) remove the entry as soon as practicable; and
- (b) give public notice of the reasons for the decision within 14 days of the day on which the decision was made.

- (7) If the Council decides that making the interim entry in the Register permanent is warranted, it is to make a recommendation to that effect to the Minister.

38. Minister to take certain action if objection to permanent entry

5

- (1) This section applies if —

10

- (a) a submission has been made objecting to making an interim entry in the Register permanent;
- (b) the objection has not been withdrawn after action taken by the Council under section 37(2) or (3); and
- (c) the Council has recommended that the entry be made permanent.

15

- (2) After having regard to the recommendation and report of the Council about the interim entry in the Register, the Minister may direct —

- (a) that the entry be made permanent; or
- (b) that the entry be removed from the Register.

20

- (3) The Minister is not to direct that an entry be made permanent unless the Minister is of the opinion that it is appropriate for the place or precinct that is the subject of the entry to have the protection afforded by this Act and in deciding whether or not to give a direction the Minister may take into account any of the following —

25

- (a) the applicable assessment criteria published under section 32(1);
- (b) the interests of any owner of the place, or any owner of any place within the precinct, as is relevant to the case; or

30

- (c) any other matter that in the opinion of the Minister is relevant to whether a direction should be given.

- (4) The Council is to give effect to the Minister's direction and do the things that it is required to do under Division 4.

39. When an entry in the Register has effect

5 An entry in the Register has effect on and from the day that the relevant notice is published in the *Gazette*.

40. Time limit for making entry in the Register permanent

- (1) If, within 12 months of a place being entered in the Register on an interim basis —

- 10 (a) the entry has not been made permanent; or
(b) there has not been obtained from each owner of the place written consent to the extension of the interim entry beyond 12 months,

the Council must remove the entry forthwith.

- 15 (2) If, within 2 years of a precinct being entered in the Register on an interim basis —

- (a) the entry has not been made permanent; or
(b) there has not been obtained from each owner of each place within the precinct written consent to the extension of the interim entry beyond 2 years,

20 the Council must remove the entry forthwith.

41. Extension of time limit for making entry in the Register permanent

- 25 (1) The Minister may, while a place or precinct is entered in the Register on an interim basis, make a request to extend the time in which the place or precinct remains entered in the Register on an interim basis —

- (a) in the case of a place, up to 2 years after the place was entered in the Register; and

(b) in the case of a precinct, up to 4 years after the precinct was entered in the Register.

(2) A request under subsection (1) is to be dealt with under section 32 of the *Planning Appeals Act 2000*.

5 **Division 3 — Changing or removing an entry in the Register**

42. Updating or correcting an entry in the Register

The Council may change an entry in the Register —

(a) to update any details in the entry; or

(b) to correct any error in the entry.

10 **43. Changing the area of a registered place or registered precinct**

(1) The Council may change a permanent entry in relation to a registered place or a registered precinct to increase the area of the place or precinct but only if —

15 (a) written consent is obtained from —

(i) each owner of the place or each owner of each place within the precinct; and

(ii) the Minister;

or

20 (b) the procedures set out in sections 34, 35, 36, 37, 38 and 48 are complied with as if the references in those sections to making an interim entry in the Register permanent include a reference to changing a permanent entry to increase the area of a registered place or
25 registered precinct.

(2) The Council may change a permanent entry in relation to a registered place or a registered precinct to decrease the area of the place or precinct but only if the procedures set out in sections 34, 35, 36, 37, 38 and 48 are complied with as if the
30 references in those sections to making an interim entry in the

Register permanent include a reference to changing a permanent entry to decrease the area of a registered place or registered precinct.

- 5 (3) Sections 34(c), 36(2)(b), 37(6) and 38(2)(b) do not apply for the purposes of subsection (1) or (2).

44. Special Ministerial direction to remove an interim entry from the Register

- (1) The Minister may direct the removal of an interim entry from the Register at any time.
- 10 (2) If, under subsection (1), the Minister directs the removal of an interim entry from the Register, the Minister must give notice of the direction and the reasons for the direction to both Houses of Parliament within 21 days of giving the direction.
- (3) Nothing in this section affects the Minister's power under
15 section 36(2)(b) or 38(2)(b) to direct the removal from the Register of an interim entry.

45. Removing a permanent entry from the Register

- (1) The Council may remove a permanent entry from the Register but only if the procedures set out in sections 34, 35, 36, 37, 38
20 and 48 are complied with as if the references in those sections to making an interim entry in the Register permanent include a reference to removing a permanent entry from the Register.
- (2) Section 34(c) does not apply for the purposes of subsection (1).

46. When a change to, or removal of, an entry has effect

- 25 A change to an entry in the Register and a removal of an entry from the Register has effect on and from the day that the relevant notice is published in the *Gazette*.

47. Certain places not to be considered for re-entry in the Register for 5 years

5 If an entry for a registered place is removed from the Register the place to which the entry applied must not be considered for re-entry in the Register for 5 years from the day the removal has effect.

Division 4 — Notification and information

48. Public notice and notification of interested persons

- 10 (1) This section applies to the following events —
- (a) an interim entry in the Register;
 - (b) an entry in the Register being made permanent;
 - (c) a change to an entry in the Register to increase or decrease the area of the place or precinct to which the entry applies;
 - 15 (d) the removal of an entry from the Register.
- (2) If an event to which this section applies occurs the Council —
- (a) is to give public notice of the event within 14 days of the event occurring; and
 - 20 (b) within 14 days of the publication in the *Gazette*, is to give the documents set out in subsection (3) —
 - (i) to each owner of the place, or each owner of each place within the precinct, to which the entry applies;
 - 25 (ii) to each lessee of the place, or each lessee of each place within the precinct, to which the entry applies, whose lease —
 - (I) is registered under the *Transfer of Land Act 1893*; or
 - 30 (II) is one for which the approval of the Western Australian Planning

Commission is required under
section 20 of the *Town Planning and
Development Act 1928*;

- 5 (iii) to the local government of the district in which
the place or area to which the entry applies is
located;
- (iv) to the Western Australian Planning Commission;
- (v) to any other relevant planning authority; and
- 10 (vi) if relevant, to the Director General of Mines as
defined in the *Mining Act 1978*.
- (3) The documents to be given under subsection (2)(b) are —
- (a) written notice of the Council's action;
- (b) a copy of the entry or change to the entry, if relevant;
and
- 15 (c) a copy of the text of the public notice.
- (4) If, in the Council's opinion, it is not practicable to comply with
subsection (2)(b)(i) or (ii) in respect of each owner or lessee of
the place or each owner or lessee of each of the places within
the precinct to which the entry applies, the Council must instead
20 cause the text of the public notice to be posted up in a prominent
location on or near the place or precinct.

49. Notifications on title

- (1) If a notification is deposited under section 34(c) —
- 25 (a) the Registrar of Titles is to endorse each certificate of
title in relation to the affected land to that effect; or
- (b) the Registrar of Deeds is to endorse each memorial or
record in relation to the affected land to that effect,
as the case requires.
- (2) Subsection (3) applies if —
- 30 (a) an entry is removed from the Register; or

- (b) there has been a change to an entry in the Register to increase or decrease the area of a registered place or a registered precinct.
- 5 (3) The Council must, as soon as practicable after the removal or change, request the Registrar of Titles or the Registrar of Deeds, as the case requires —
- (a) to remove the endorsements made under subsection (1) in relation to the land; or
- 10 (b) to change the endorsements made under subsection (1) in relation to the land to accord with the change,
- as the case requires.
- (4) A request is to be in a form approved by the relevant Registrar.

50. Informing public authorities

- 15 (1) The Council, so far as is practicable, is to assist local governments, the Western Australian Planning Commission and any other relevant planning authorities to be aware of, and have ready access to, the entries in the Register.
- (2) Nothing in subsection (1) affects any requirement under section 48(2)(b) for the Council to provide documents to a local government, the Commission or other relevant planning authority.
- 20 (3) The Council is to ensure that the Valuer-General is notified of the entry of a place in, or the removal of a place from, the Register or the increase or decrease in the area of a registered place.
- 25

51. Certificates

30 The Council, on receipt of an application to do so, is to provide a certificate to the effect that under section 47, a place cannot be considered for re-entry in the Register until the date set out in the certificate.

Part 7 — Public authorities

Division 1 — Local government heritage inventories

52. Local government heritage inventories

- 5 (1) A local government is to establish and maintain an inventory of places and precincts that —
- (a) are in the local government’s district; and
 - (b) are, or might be, of cultural heritage significance, for the State or for the local government’s district.
- 10 (2) The purposes of a local government heritage inventory include —
- (a) to assist in determining local government conservation policies and other related policies;
 - (b) to provide information about heritage in the local government district that may be required under a town planning scheme for that district;
 - 15 (c) to assist in achieving the heritage conservation objectives of town planning in the State; and
 - (d) to assist the maintenance of the Register.

53. Consultation for local government heritage inventories

- 20 A local government must ensure that its heritage inventory is established only after consultation with —
- (a) each owner of a place that is the subject of a proposed entry in the inventory;
 - (b) each owner of each place within a precinct that is the subject of a proposed entry in the inventory; and
 - 25 (c) with the general public.

54. Local government heritage inventories to be in accordance with joint standards of Heritage Council and WAMA

5 (1) A local government must ensure that its heritage inventory is established in accordance with any assessment criteria and other standards agreed between the Heritage Council and WAMA in relation to the establishment of local government heritage inventories and published by the Heritage Council.

10 (2) A local government is to provide the Heritage Council with a copy of its completed heritage inventory as soon as practicable, and in any event, not later than 3 months after the completion.

55. Time in which local government heritage inventories to be completed

15 A local government must ensure that its heritage inventory is completed within 12 months after the day on which this Act commences.

56. Review and revision of local government heritage inventories

20 (1) Subject to subsection (2), a local government may review and revise its heritage inventory as often as it considers it appropriate to do so.

(2) A local government must ensure that its heritage inventory is reviewed and revised at least every 5 years.

25 (3) A local government must ensure that a new entry in its inventory is made only after consultation with —

(a) each owner of a place that is the subject of the new entry;

(b) each owner of each place within a precinct that is the subject of the new entry; and

(c) the general public.

5 (4) A local government must ensure that each review and revision of its heritage inventory is done in accordance with any assessment criteria and other standards agreed between the Heritage Council and WAMA in relation to the review and revision of local government heritage inventories and published by the Heritage Council.

(5) A local government is to provide the Heritage Council with a copy of its revised heritage inventory as soon as practicable after the revision is completed.

10 **57. Extension of time limit for local governments to complete or revise and review their heritage inventories**

15 (1) A local government may, before the period referred to in section 55 expires, request the Minister to extend the time in which it can complete its heritage inventory up to 18 months after the day on which this Act commences.

(2) A local government may, before the period referred to in section 56(2) expires, request the Minister to extend the time in which it can revise and review its heritage inventory by a further 2 years.

20 (3) The Minister is not to grant an extension of time under subsection (1) or (2) unless he or she is satisfied that the local government is making satisfactory progress towards completing or reviewing and revising its heritage inventory, as is relevant to the case.

25 **58. Heritage Council may establish or revise local government heritage inventories in certain cases**

30 (1) If a local government —
(a) has not completed the establishment of its heritage inventory within the period referred to in section 55 or the extended period, if any, or in accordance with the standards referred to in section 54; or

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Part 7 Public authorities

Division 2 Heritage inventories of public authorities other than local governments

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- (b) has not reviewed and revised its heritage inventory within the period referred to in section 56(2) or the extended period, if any, or in accordance with the standards referred to in section 56(4),

5 the Heritage Council may establish, or review and revise, the local government's heritage inventory, as the case requires.

- (2) Any costs incurred by the Heritage Council under subsection (1) may be recovered from the local government as a debt in a court of competent jurisdiction.

10 **Division 2 — Heritage inventories of public authorities other than local governments**

59. Application of Division

15 This Division applies to a public authority other than a local government that is in possession of, or leases to a person or otherwise controls, a place or precinct that —

- (a) is a registered place or a registered precinct;
- (b) is entered in a local government heritage inventory;
- (c) is the subject of a National Trust recommendation or a list or record compiled by the National Trust; or
- 20 (d) to the authority's knowledge, has been identified by assessment or survey as being of cultural heritage significance.

60. Heritage inventories of other public authorities

- 25 (1) A public authority is to establish and maintain an inventory of the places and precincts referred to in section 59(a) to (d) that are in its possession, leased by it to another person or otherwise under its control.

- (2) The purposes of the heritage inventory of a public authority to which this section applies are —
- (a) to provide information about heritage in the possession or control of the public authority;
 - 5 (b) to assist in the management of assets; and
 - (c) to assist in achieving the heritage conservation objectives of town planning in the State.

61. Public authority inventories to be in accordance with Heritage Council standards

- 10 (1) A public authority must ensure that its heritage inventory is established in accordance with any assessment criteria and other standards set by the Heritage Council in relation to the establishment of public authority heritage inventories and published by the Heritage Council.
- 15 (2) A public authority is to provide the Heritage Council with a copy of its completed heritage inventory as soon as practicable, and in any event, not later than 3 months after the completion.

62. Time in which public authority heritage inventories to be completed

- 20 A public authority must ensure that its heritage inventory is completed as soon as practicable, and in any event, not later than 3 years after the day on which this Act commences.

63. Review and revision of public authority heritage inventories

- 25 (1) Subject to subsection (2), a public authority may review and revise its heritage inventory as often as it considers it appropriate to do so.
- (2) A public authority must ensure that its heritage inventory is reviewed and revised at least every 5 years.
- 30 (3) A public authority must ensure that each review and revision of its heritage inventory is done in accordance with any assessment

criteria and other standards set by the Heritage Council in relation to the review and revision of public authority heritage inventories and published by the Heritage Council.

- 5 (4) A public authority is to provide the Heritage Council with a copy of its revised heritage inventory as soon as practicable after the revision is completed.

64. Heritage Council may establish or revise public authority heritage inventories in certain cases

- 10 (1) If a public authority —
- (a) has not completed the establishment of its heritage inventory within the period referred to in section 62 or in accordance with the standards referred to in section 61; or
 - 15 (b) has not reviewed and revised its heritage inventory within the period referred to in section 63(2) or in accordance with the standards referred to in section 63(3),

the Heritage Council may establish, or review and revise, the public authority's heritage inventory, as the case requires.

- 20 (2) The public authority is to reimburse the Heritage Council for costs reasonably incurred by the Council under subsection (1).

Division 3 — Other matters concerning public authorities

65. Public authorities to cooperate with Heritage Council

- 25 (1) A public authority is to —
- (a) give the Council such assistance in the performance of the Council's functions as is reasonably practicable; and
 - (b) comply with all reasonable requests by the Council for information.

- (2) Nothing in subsection (1) exempts the Council from a requirement to pay fees or charges applicable to its requests.
- 5 (3) Where the Council is of the opinion that a public authority has not complied with subsection (1) or section 64(2) or 75 the Minister of the Crown having responsibility for that public authority may, on the request of the Council and after consultation with the Commissioner for Public Sector Standards, direct that authority to provide the assistance to the Council, reimburse the costs or seek the advice of the Council, 10 as is relevant to the case, and any such direction may require that the services of any person employed or engaged by that authority are to be made available for that purpose.

Part 8 — Approvals and advice of Heritage Council as to works

66. Works to be approved

- 5 (1) A person must not carry out, or cause to be carried out, works to a registered place or a place within a registered precinct unless —
- (a) the Council has approved the works on an application under section 68 and the works are done in accordance with the approval; or
- 10 (b) the Council has granted an exemption under section 67.
Penalty: \$50 000 and imprisonment for 2 years.
Daily penalty: \$5 000.
- 15 (2) It is a defence to a charge of an offence under subsection (1) that the works (other than demolition or partial demolition) are to a place of worship and —
- (a) an owner of the place has given the Council 42 days' notice of the proposed works; and
- 20 (b) the notice includes a declaration by an officer of the place of worship, who is authorised for that purpose, that the works are required for public worship or for purposes directly connected with public worship.

67. Exemptions

- 25 (1) The Council may exempt specified works or specified classes of works from the requirement under section 66 for approval and may revoke an exemption for any reason it considers appropriate.
- (2) An exemption or revocation under subsection (1) must be published in the *Gazette* before it can take effect.

- (3) In subsection (1) —
“specified” means specified in the exemption notice.

68. Application for approval

- 5 (1) A person who wishes to obtain the Council’s approval to carry out works to a registered place or a place within a registered precinct must apply to the Council.
- (2) An application must be in a form and manner approved by the Council and include the information required by the Council.
- 10 (3) Within 7 days of receiving an application the Council is to give a copy of the application to the local government of the district in which the registered place or registered precinct that is the subject of the application is located.

69. Works of significant public interest

- 15 (1) The Council must give public notice of proposed works that are the subject of an application under section 68 if the Council is of the opinion that the proposed works are a matter of significant public interest.
- (2) A public notice under subsection (1) must —
- 20 (a) specify the place at which particulars of the proposed works can be inspected; and
- (b) invite written submissions to be made to the Council within 21 days of the publication of the notice in the *Gazette*.

70. Matters to be considered in deciding applications

- 25 In deciding an application under section 68 the Council must have regard to —
- (a) the extent to which the proposed works, if carried out, are likely to affect the cultural heritage significance of the registered place or precinct;

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- (b) whether there is any feasible and prudent alternative to the proposed works;
- (c) the comments made in relation to the application by the local government of the district in which the registered place or registered precinct that is the subject of the application is located;
- (d) the submissions made in relation to the proposed works in response to the public notice given under section 69; and
- (e) any other matter which in the Council's opinion is relevant to the application.

71. Time limit for deciding applications

The Council must either approve or refuse an application under section 68 —

- (a) within 60 days of receiving the application;
- (b) if public submissions have been invited in relation to the application, within 60 days of the closing date for the making of submissions; or
- (c) within such longer period as is agreed in writing between the applicant and the Council.

72. Conditions etc.

The Council may approve an application under section 68 —

- (a) subject to such conditions as are set out in writing; and
- (b) for a period of time specified in writing.

73. Notification when application decided

Within 7 days of deciding an application under section 68 the Council must notify —

- (a) the applicant;

-
- 5 (b) the local government of the district in which the registered place or registered precinct that is the subject of the application is located;
- (c) any other relevant planning authority; and
- 5 (d) each person who made a submission in relation to the application.

74. Appeals from decisions on applications

10 An applicant who is aggrieved by a decision of the Council on an application under section 68 may, within 60 days of the day on which the applicant is notified of the decision, appeal under the *Planning Appeals Act 2000*.

75. Certain authorities to seek advice of Heritage Council as to works adjacent to registered places

- 15 (1) If, under a planning law, a planning authority receives an application to carry out works on, or in respect of, land that is adjacent to a registered place which, if carried out, are likely to affect the cultural heritage significance of the place, the planning authority must seek the advice of the Heritage Council before making a decision in relation to the application.
- 20 (2) If works are intended to be carried out at a place that is —
- (a) owned or occupied by, or under the control or management of the Crown in right of the State, a department, agency or instrumentality of the Crown in right of the State or a local government; and
- 25 (b) adjacent to a registered place,

and the works, if carried out, are likely to affect the cultural heritage significance of the registered place, the person who proposes to carry out the works must seek the advice of the Heritage Council before proceeding with the works.

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76. Relationship to other laws

Nothing in this Part affects a requirement of any other written law to obtain an approval, authority, consent or permission to carry out works that are the subject of an application under section 68.

5

Part 9 — Heritage agreements

77. Parties to heritage agreements

- (1) A heritage agreement may be entered into between —
- (a) an owner or occupier of land and the Council; or
 - 5 (b) an owner or occupier of land and the Council and one or more of the following —
 - (i) a local government;
 - (ii) any other public authority that is a body corporate; or
 - 10 (iii) the National Trust.
- (2) An owner or occupier of land can only enter into a heritage agreement in so far as that person's interests in the land permit.

78. Places to which heritage agreements can apply

- (1) A heritage agreement may be entered into in respect of any land
- 15 where the land comprises the whole or part of —
- (a) a registered place or a place in a registered precinct;
 - (b) a place, or a place in a precinct, that is entered in a local government heritage inventory or a public authority heritage inventory;
 - 20 (c) a place entered in a heritage list, or a place in a heritage area designated, under a town planning scheme; or
 - (d) a place entered in a heritage inventory or list prepared for the purposes of the *East Perth Redevelopment Act 1991*, the *Midland Redevelopment Act 1999* or the *Subiaco Redevelopment Act 1994*.
- 25
- (2) A heritage agreement may be entered into in respect of any land where the land is adjacent to or otherwise associated with a place referred to in subsection (1) whether or not the land is of cultural heritage significance.

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- 5 (3) For the purposes of subsection (2), land may be said to be associated with a place if town planning development rights or requirements, or other planning considerations or other interests in or affecting the land or the place might be affected as an incentive to, or for the purpose of effecting, the conservation of the place.

79. When heritage agreements have effect

10 A heritage agreement or a variation or termination of a heritage agreement has effect from the day specified in the agreement, variation or termination.

80. Obligations and restrictions run with the land

- 15 (1) The obligations (including positive covenants) and restrictions that bind the owner or occupier of land to which a heritage agreement applies are binding also on that person's successors in title, heirs, executors and administrators except to the extent that the agreement otherwise provides.
- (2) Subsection (1) only applies if, and from the time when, the relevant endorsement is made under section 82(2).

81. Subject matter of heritage agreements

- 20 (1) A heritage agreement may contain provisions promoting the conservation of a place referred to in section 78(1).
- (2) A heritage agreement may, by covenant or otherwise —
- 25 (a) restrict the use of land to which it applies;
- (b) require specified work or work of a specified kind to be done in accordance with specified standards on the land (but the specified standards, if not in accordance with a law that is for the time being in force, must be in accordance with an order under section 91(1));
- 30 (c) restrict the nature of works that can be carried out on the land;

- (d) provide for financial, technical or other professional advice or assistance to an owner or occupier with respect to the maintenance or conservation of the land or the place to which the agreement applies;
- 5 (e) provide for the management of the land or a place to which the agreement applies, in accordance with a particular management plan or in accordance with management plans to be agreed from time to time between the parties to the agreement; or
- 10 (f) if the relevant planning authorities and other public authorities are parties to the agreement, provide, subject to an order under section 91(1), for —
- (i) matters relating to the title, development and planning in respect of the land, including the transfer of town planning development rights;
- 15 (ii) payment of money; or
- (iii) safety, maintenance, inspection or licensing requirements.

82. Notifications on title

- 20 (1) The Council must, as soon as practicable after a heritage agreement has effect, cause a notification of the agreement to be prepared in a form approved by the Registrar of Titles or the Registrar of Deeds, as the case requires, and deposited at the Department within the meaning of the *Transfer of Land Act 1893*.
- 25 (2) If a notification is deposited under subsection (1) —
- (a) the Registrar of Titles is to endorse each certificate of title in relation to the affected land to that effect; or
- (b) the Registrar of Deeds is to endorse each memorial or record in relation to the affected land to that effect,
- 30 as the case requires.

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- (3) The Council must, as soon as practicable after a variation to, or termination of, a heritage agreement has effect, request the Registrar of Titles or the Registrar of Deeds, as the case requires —
- 5 (a) to change the endorsements made under subsection (2) in relation to the land to accord with the variation; or
- (b) to remove the endorsements made under subsection (2) in relation to the land to accord with the termination, as the case requires.
- 10 (4) A request is to be in a form approved by the relevant Registrar.

83. Notification to interested persons

- (1) The Council is to take such steps as are reasonable to ensure that all persons who appear from public records to have an interest in land or a mining tenement in respect of land to which a heritage agreement applies are informed of the existence and effect of the agreement.
- 15
- (2) The Council is to ensure that the Valuer-General is notified of the existence of a heritage agreement or the variation or termination of a heritage agreement.

20 **84. Other rights of action not affected**

A right of action for damages or payment of money that arose before the endorsements referred to in section 82(2) were made in relation to land to which a heritage agreement applies is not affected by the agreement unless the agreement provides otherwise.

25

85. Enforcement of heritage agreements

- (1) If —
- (a) a party to a heritage agreement fails to comply with the agreement; or

(b) there is reason to apprehend that a party to a heritage agreement may fail to comply with the agreement,

any other party to the agreement may apply to a court for an order under this section.

- 5 (2) On such an application, the court may make such orders as are necessary to secure compliance with the heritage agreement, or to remedy the default, and to deal with any related or incidental matters.

86. Damages for breach of heritage agreements

- 10 (1) Damages for contravention of a heritage agreement may be awarded to a party to the agreement who has suffered loss as a result of the contravention unless the person who contravened the agreement shows that the contravention occurred without the person's consent or connivance and that the person
15 exercised all reasonable care to prevent it.

- (2) In assessing damages for contravention of a heritage agreement by an owner or occupier of land to which the agreement applies, a court may, in addition to any actual loss suffered, take into account —

- 20 (a) any detriment to the public interest resulting from the contravention; and
(b) any financial or other benefit sought to be gained by the contravention.

- 25 (3) A court referred to in subsection (2) is to have regard to the following principles when assessing damages —

- (a) the damages are not only to compensate for loss but to ensure that no person benefits from the contravention;
(b) the land should be restored to the extent of the damage or deterioration caused by the contravention; and
30 (c) subsequent or similar contraventions should be deterred.

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87. Records of heritage agreements

- (1) The Council is to cause to be kept a copy of each heritage agreement and the terms of each variation or termination of a heritage agreement.
- 5 (2) The Council is to ensure that the entry in the Register for each registered place or registered precinct that is affected by a heritage agreement or variation or termination of a heritage agreement is noted in respect of the agreement, variation or termination.
- 10 (3) Any person may, without charge, inspect and copy extracts from the records kept under subsection (1).

Part 10 — Conservation incentives

88. Heritage Council may provide assistance or incentives

- 5 (1) The Council may, subject to subsection (2), provide or facilitate financial, technical or other assistance for the identification, assessment, conservation or interpretation of places and precincts that are, or might be, of cultural heritage significance, whether or not a place is a registered place or a precinct is a registered precinct.
- 10 (2) For the purposes of this Act, but subject to the Minister's approval, the Council may offer financial assistance or incentives with or without a requirement for the giving of security and either free of interest or at such rates of interest as the Council determines.

89. Remission of taxes, rates and charges

- 15 (1) The Minister may provide special assistance to an owner of a registered place or a place to which a heritage agreement applies —
- 20 (a) to conserve the place; or
(b) if the use of the place is not economically feasible without the special assistance.
- (2) If the Minister decides to provide special assistance under subsection (1) the Minister may, subject to subsections (3) and (4), by order published in the *Gazette*, remit the whole or part of one or more of the following —
- 25 (a) the tax payable by an owner under the *Land Tax Act 1976* that is attributable to the place or the land where the place is situated;
- 30 (b) the Metropolitan Region Improvement Tax payable by an owner in respect of the place under section 41 of the *Metropolitan Region Town Planning Scheme Act 1959*;

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- (c) any relevant rates or charges payable under any written law in respect of the place or a building on the land where the place is situated.
- 5 (3) The Minister cannot make an order under subsection (2) unless the Council —
- (a) has consulted with the public authority principally assisting the relevant Minister in the administration of the written law under which the tax, rate or charge is payable;
- 10 (b) has reported to the first-mentioned Minister on the results of the consultation; and
- (c) has recommended that the special assistance be provided.
- (4) The Minister cannot make an order under subsection (2)(c) —
- 15 (a) in respect of local government rates or service charges unless the relevant local government consents to the remission of the rates or charges; or
- (b) in respect of charges for water supply, sewerage, drainage or irrigation services (including headworks)
- 20 unless the order specifies a monetary limit to the remission of the charges.
- (5) An order under subsection (2) may, subject to subsections (3) and (4) —
- (a) specify terms and conditions; and
- 25 (b) be varied or revoked.
- (6) An order under subsection (2) and any variation or revocation of the order has effect according to its tenor and is to be complied with despite any other provision of a written law.
- 30 (7) Section 42 of the *Interpretation Act 1984* applies to an order under subsection (2) and an order varying or revoking such an order as if the order were regulations within the meaning of that Act.

(8) No interest can be imposed and no interest accrues under a written law in respect of a tax, rate or charge the payment of which is remitted under an order under subsection (2) unless the order provides otherwise.

5 (9) The Council is not liable to fund a tax, rate or charge, or any part of a tax, rate or charge, that is remitted under this section.

90. Payment of remitted taxes, rates and charges

10 (1) This section applies where the payment of a tax, rate or charge is remitted under an order under section 89(2) in respect of a registered place or a place to which a heritage agreement applies and —

- 15 (a) the order is varied or revoked;
- (b) works are carried out at the place contrary to a provision of this Act or a heritage agreement; or
- (c) on the application or request of an owner, the place ceases to be a registered place or a place to which a heritage agreement applies.

20 (2) The Minister may make an order requiring the immediate payment of any tax, rate or charge that was remitted under the order under section 89(2) in the 5 years preceding the event referred to in subsection (1)(a), (b) or (c).

(3) The Minister cannot make an order under subsection (2) unless —

- 25 (a) the Minister has consulted with the Council and the Council has recommended that the order be made;
- (b) the person against whom the order is to be made —
- (i) has been notified of the proposed order and the reasons for it; and
- (ii) has been given 21 days to show cause why the order should not be made;
- 30

and

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- (c) the recommendation of the Council is consistent with any relevant determination under the *Planning Appeals Act 2000*.
- 5 (4) A person who is aggrieved by an order set out in a notice under subsection (3)(b)(i) may, within 14 days of the day on which the person received the notice, refer the matter to be dealt with under section 33 of the *Planning Appeals Act 2000*.
- 10 (5) An order under subsection (2) has effect according to its tenor against the person in whose favour the tax, rate or charge was remitted or any successor in title of that person in accordance with the terms of the order.
- 15 (6) A public authority to which moneys are required to be paid under an order under subsection (2) may recover the moneys in a court of competent jurisdiction as a debt due to the public authority.
- 91. Modification or non-application of laws impeding conservation**
- 20 (1) The Minister may, subject to subsections (2) and (3), by order published in the *Gazette*, declare that a written law or any portion of a written law —
- (a) does not apply; or
- (b) is modified in the manner specified in the order,
- in respect of a registered place, a place in a registered precinct, a registered precinct or a place to which a heritage agreement applies.
- 25 (2) The Minister cannot make an order under subsection (1) unless —
- (a) the Minister is of the opinion that —
- (i) the written law prohibits or impedes the
- 30 conservation of the place or precinct; and

-
- (ii) the order is necessary for the conservation of the place or precinct;
- (b) the Minister to whom the administration of the written law is committed gives written consent to the making of the order;
- (c) the Council has recommended that the order be made; and
- (d) a report by the Council on the submissions received under subsection (3) in support of, or objecting to, the proposed order accompanies the Council's recommendation to the Minister.
- (3) If an order is proposed to be made under subsection (1) the Council must —
- (a) give public notice of the proposed order and invite written submissions to be made to the Council —
- (i) within 14 days of publication in the *Gazette* or such longer period as specified in the notice;
- (ii) in support of, or objecting to, the proposed order; and
- (b) provide a copy of the proposed order to each owner of the place, the local government and any other public authority or other person who or which, in the Council's opinion, is likely to be affected by the order if it is made.
- (4) The Council may amend the proposed order after having regard to submissions received under subsection (3) but that subsection does not apply to the proposed order as amended.
- (5) An order under subsection (1) may, subject to subsections (2) and (3) be varied or revoked.
- (6) An order under subsection (1) and any variation or revocation of the order has effect according to its tenor.

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- (7) Section 42 of the *Interpretation Act 1984* applies to an order under subsection (2) and an order varying or revoking such an order as if the order were regulations within the meaning of that Act.

5 **92. Heritage Council approvals override certain decisions of local governments**

- (1) This section applies where a local government has refused approval or consent for any works that would contribute to the conservation of a registered place or a registered precinct.

- 10 (2) If the Council is of the opinion that —

(a) the cultural heritage significance of the registered place or registered precinct is likely to be adversely affected because the approval or consent for the works has been refused;

15 (b) the refusal was made under the *Local Government (Miscellaneous Provisions) Act 1960*; and

(c) it is in the interests of conservation of cultural heritage that the works be carried out,

20 the Council may approve, or consent to, the works as if it were the local government.

- (3) Despite the provisions of the *Local Government (Miscellaneous Provisions) Act 1960* it is lawful to act or to carry out the works in accordance with the approval or consent of the Council given under this section.

25 (4) The Council may approve, or consent to, the works on an application of an owner of a registered place or a place within a registered precinct or on its own volition.

(5) The Council must consult with the local government before giving its approval or consent under this section to carry out works.

30

93. Revaluations

- (1) This section applies where the Valuer-General has received notice —
- 5 (a) under section 50(3) of the entry of a place in, or the removal of a place from, the Register or the increase or decrease in the area of a registered place; or
- (b) under section 83(2) of the existence of a heritage agreement or the variation or termination of a heritage agreement.
- 10 (2) The Valuer-General must, as soon as practicable, revalue the land affected by a matter referred to in subsection (1)(a) or (b), taking into account any restrictions on the use of the affected land.
- 15 (3) For the purposes of a revaluation under this section the Valuer-General is to assume that —
- (a) all the improvements to or on the land at the date of revaluation are to be conserved and are not to be demolished; and
- 20 (b) no improvements are to be made to or on the land after the date of revaluation.
- (4) Nothing in subsection (3) prevents the Valuer-General from taking into account, in future valuations, the effect of any actual demolition or construction on the land that occurs after the date of revaluation under that subsection.

Part 11 — Protection and conservation orders

Division 1 — Protection orders

94. Protection orders for unregistered places

- 5 (1) The Minister may, on the recommendation of the Council or the
CEO, make an order to protect a place from imminent damage
(a “**protection order**”).
- (2) A protection order may be made in relation to a place that is, or
might be, of cultural heritage significance but cannot be made in
relation to a registered place or a registered precinct.
- 10 (3) A protection order may prohibit or restrict any activity which, in
the opinion of the Minister, is likely to adversely affect the
cultural heritage significance of a place and for that purpose
may prohibit or restrict —
- 15 (a) the commencement or continuation of any works at,
damage to, or removal of fabric from, the place, as
specified in the order;
- (b) the removal from the place of any equipment, furniture
or moveable item that is specified in the order;
- 20 (c) the entry of persons other than an owner or occupier on
to the place;
- (d) the bringing of vehicles, machinery or equipment,
livestock, materials or substances of any kind or of a
kind specified in the order on to the place; or
- 25 (e) anything specified in the order which, in the opinion of
the Minister, is likely to cause disturbance to the land or
any vegetation at the place.
- 30 (4) A protection order may be subject to such conditions as are
specified in the order or to the exercise of a discretionary
authority vested by the order in the Minister or other person
specified in the order.

(5) The Council is to affix a copy of the protection order in a prominent position at the place to be protected by the order.

(6) The Minister may, on the recommendation of the Council, revoke a protection order.

5 (7) If —

- (a) a protection order is revoked; or
- (b) the period of time in which a protection order has effect is extended on a request under section 96,

10 the Council is to affix notice of the decision in a prominent position at the place to be protected by the order.

(8) The Council is to —

- 15 (a) give public notice of each protection order, revocation of a protection order or determination extending the period of time in which a protection order has effect as soon as is practicable after the order, revocation or determination takes effect; and
- (b) cause a copy of the order, revocation or determination to be served, in accordance with section 76 of the *Interpretation Act 1984* —
 - 20 (i) on each owner or occupier of the place if practicable to do so;
 - (ii) the person in charge of carrying out the activity that is prohibited or restricted by the order, if practicable to do so; and
 - 25 (iii) on the local government of the district in which the place is located.

95. Effect of protection orders

(1) A protection order —

- 30 (a) takes effect from the time when a copy of the order was affixed at the place under section 94(5); and

- (b) has effect, subject to earlier revocation —
- (i) for 60 days from the time when the copy was so affixed or a shorter period stated in the order;
 - 5 (ii) for the period of time specified under the *Planning Appeals Act 2000* for the purposes of section 96 or 98; or
 - 10 (iii) until the place becomes a registered place or a registered precinct or a place in a registered precinct if the registration occurs before the period referred to in subparagraph (i) or (ii), as is relevant to the case, expires.
- (2) A protection order cannot be made in relation to any place —
- (a) that was affected by a protection order in relation to a similar matter within the preceding 12 months; or
 - 15 (b) which is a place to which section 47 applies for the time being.

96. Extension of protection orders

- (1) The Minister may, while a protection order has effect, make a request to extend the time in which the protection order has effect.
- 20 (2) A request under subsection (1) is to be dealt with under section 34 of the *Planning Appeals Act 2000*.

97. Contravention of protection orders

If a copy of a protection order has been affixed at a place under section 94(5) a person must not —

- 25 (a) contravene the order; or
- (b) cause any other person to contravene the order.

Penalty: \$50 000 and imprisonment for 2 years.

Daily penalty: \$5 000.

98. Appeals as to protection orders

A person who is aggrieved by a protection order may, while the protection order has effect, appeal under the *Planning Appeals Act 2000*.

5 **Division 2 — Conservation orders**

99. Conservation orders for registered places and registered precincts

- 10 (1) The Minister may, on the recommendation of the Council or the CEO, make an order (a “**conservation order**”) to conserve the cultural heritage characteristics of a registered place or a registered precinct.
- (2) When deciding whether or not to make a conservation order in relation to a registered place or precinct the Minister is to have regard to —
- 15 (a) the interests of each owner or occupier of the registered place, or each owner or occupier of each place within the registered precinct, as is relevant to the case; and
- (b) any other matter that in the opinion of the Minister is relevant to whether a conservation order should be made.
- 20 (3) A conservation order may only require an owner or occupier of a registered place or a place within a registered precinct —
- (a) to protect the place to a standard specified in the order from damage or deterioration which would otherwise result from weather (including the weatherproofing of the place’s roof, doors or windows);
- 25 (b) to prevent fire starting in the place or to protect the place from damage or destruction by fire to a standard specified in the order;
- (c) to secure the place (including fencing or surveillance measures to prevent vandalism) to a standard specified in the order;
- 30

- (d) to effect such maintenance and repair works as are necessary and specified in the order to prevent serious or irreparable damage or deterioration to the place; or
- (e) to cease any action specified in the order.

5 (4) A conservation order must state the period within which anything specified in the order is to be done which must be more than 30 days starting on the day the order is served.

10 (5) The Council is to serve, in accordance with section 76 of the *Interpretation Act 1984*, a copy of a conservation order on the owner or occupier to whom the order is directed but if service cannot be effected in accordance with section 76 of the *Interpretation Act 1984* within 7 days of the day on which the order was made, service may be effected on the person instead by affixing a copy of the order in a prominent position at the place.

15 **100. Notice of proposed conservation order**

A conservation order has no effect unless —

- 20 (a) the Council has given the owner or occupier to whom the order is proposed to be directed written notice of the terms of the proposed order and the reasons for it;
- (b) the owner or occupier is advised that he or she has 14 days from the day on which the notice was received in which to make submissions in relation to the proposed order;
- (c) the Council considers the submissions (if any); and
- 25 (d) in the event that the Council recommends that the order be made, the Council advises the Minister in relation to the submissions before the Minister makes the order.

101. Compliance with conservation orders

30 If a person has been served with a copy of a contravention order the person must not —

- (a) contravene the order; or

(b) cause any other person to contravene the order.

Penalty: \$50 000 and imprisonment for 2 years.

Daily penalty: \$5 000.

102. Appeals as to conservation orders

5 A person who is aggrieved by a conservation order may, within
30 days of the day on which a copy of the order was served,
appeal under the *Planning Appeals Act 2000*.

103. Heritage Council may give effect to conservation orders

10 (1) If an owner or occupier of a registered place or a place within a
registered precinct —

(a) does not comply with a conservation order and has not
lodged an appeal against the order within the required
period; or

15 (b) does not comply with a determination on an appeal
under section 102,

the Council may enter the place or any land where the place is
situated and —

(c) take any action specified in the order;

20 (d) commence or complete any works specified in the order;
or

(e) if any specified action was required by the order to
cease, cause the action to cease.

25 (2) Subject to subsection (4), the Council may charge a person who
has been served with a copy of a conservation order for any
costs incurred in doing anything under subsection (1) in relation
to the order.

(3) A charge under subsection (2) is a debt due to the Council and is
recoverable in a court of competent jurisdiction.

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- 5 (4) If, on an appeal under section 102, a determination is made to the effect that the requirements of a conservation order be set aside solely on the ground of financial hardship the Council may, at its own expense, enter the place or any land where the place is situated and —
- (a) take any action specified in the order;
- (b) commence or complete any works specified in the order;
or
- 10 (c) if any specified action was required by the order to cease, cause the action to cease.

Part 12 — Compensation as to approvals and protection orders

104. Definition

In this Part —

5 “**compensable determination**” means —

- (a) a determination on an appeal from a decision of the Heritage Council on an application to approve works to a registered place or a place within a registered precinct (section 74); or
- 10 (b) a determination on an appeal about a protection order (section 98).

105. Compensation

- (1) An owner of a registered place or a place within a registered precinct may seek compensation under this Part if the owner has
15 incurred loss because an effect of a compensable determination is to —
 - (a) revoke or modify an approval, authority, consent or permission that has been given under a planning law in relation to the place; or
 - 20 (b) suspend or delay the operation of an approval, authority, consent or permission that has been given under a planning law in relation to the place.
- (2) Subsection (1) applies only if the approval, authority, consent or permission was given before —
 - 25 (a) the place became a registered place or part of a registered precinct; or
 - (b) the protection order was made in relation to the place,
as is applicable to the case.

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106. Losses that can be compensated

Compensation is payable under this Part only if the loss incurred by an owner of the place —

- 5 (a) is directly attributable to the revocation, modification, suspension or delay referred to in section 105(1);
- (b) is expenditure reasonably incurred in carrying out work which the compensable determination rendered abortive;
- (c) is capable of being assessed as a liquidated amount;
- 10 (d) arises out of a contractual or statutory obligation incurred before —
 - (i) the place became a registered place or part of a registered precinct; or
 - (ii) the protection order was made in relation to the place,
- 15 as is applicable to the case; and
- (e) is not capable of recovery or mitigation other than under this Part.

107. Assessment of compensation

- 20 (1) Compensation payable under this Part is to be assessed having regard to all of the following —
 - (a) any incentive provided under this Act that mitigates the loss incurred;
 - (b) any expenditure incurred —
 - 25 (i) for the preparation of plans for the purposes of any work; or
 - (ii) in other necessary matters preparatory to the work;
 - (c) the cost of, and the circumstances relating to, the acquisition of the land by the owner;

- (d) any sum payable in respect of a breach of contract by the owner directly attributable to the compensable determination,

5 but no account is to be taken of the prospective use of the land other than for the conservation of a place of cultural heritage significance.

- (2) In determining whether expenditure was reasonably incurred in carrying out work which the compensable determination rendered abortive where —

10 (a) the place affected was included in a publicly available list of places of cultural heritage significance (other than the Register); or

- (b) the owner had received, or ought to have taken, notice of the cultural heritage significance of the place,

15 regard is to be had to that fact and the consequential possibility that this Act was likely to affect the place such that a reasonable person would have been likely to proceed with caution and to consult with the Council before incurring the expenditure.

108. *Commercial Arbitration Act 1985 to apply*

20 (1) The matters of whether compensation is payable, and the amount of compensation payable, under this Part are, in default of agreement between the parties, to be determined by means of a reference to an arbitrator under and in accordance with the provisions of the *Commercial Arbitration Act 1985*.

25 (2) The parties to the arbitration are to be the Council and the owner of a place who seeks compensation under this Part.

- (3) Despite section 20(1) of the *Commercial Arbitration Act 1985*, each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.

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109. Payment of compensation

All compensation awarded and costs to be paid by the Council for the purposes of this Part are to be charged to the Consolidated Fund and this section appropriates the Consolidated Fund accordingly.

5

Part 13 — Enforcement and legal proceedings

Division 1 — Inspectors

110. Appointment of inspectors

- (1) The CEO is an inspector under this Act.
- 5 (2) The CEO may appoint —
- (a) any member of the Council or a committee of the Council; or
- (b) any member of staff of the Council or an officer or employee referred to in section 19(1)(a), (b) or (c),
- 10 to be an inspector under this Act.
- (3) When appointing an inspector, the CEO may limit the inspector's powers to those powers of an inspector under this Act that are specified in the instrument of appointment.

111. Identity cards

- 15 (1) The CEO is to ensure that each inspector is issued with an identity card certifying that the holder is an inspector under this Act and stating the limitations, if any, of the inspector's powers.
- (2) An inspector must, at the request of a person in relation to whom the inspector intends to exercise a power under this Act,
- 20 produce the inspector's identity card for the person's inspection.
- (3) A person who possesses an identity card issued under this section and who is not, or ceases to be, an inspector must cause the card to be returned to the CEO as soon as practicable.
- Penalty applicable to subsection (3): \$500.

112. Powers of inspectors

- 25 (1) An inspector may enter any land (including a building) with the consent of an owner of the land and make such investigation and inquiry and seek such information as the inspector considers

necessary or desirable to ascertain whether there has been compliance with —

- 5
- (a) the provisions of this Act or any approval, order, notice, or other requirement given under the Act; or
 - (b) a determination under the *Planning Appeals Act 2000* relating to an appeal or referral of a matter under this Act.

(2) An inspector may require a person —

- 10
- (a) to tell the inspector the person's name and address; and
 - (b) to produce any document the person is carrying that contains the person's name and address,

if the inspector reasonably believes that person has committed, is committing or is about to commit an offence under this Act.

15

(3) An inspector may require a person who appears to the inspector to be carrying out, or about to carry out, any action that might result in a contravention of this Act to furnish, within the period specified in the notice, either orally or in writing the name and address of any person who, on the date specified in the notice, was —

- 20
- (a) an owner of the land concerned;
 - (b) an occupier of the land concerned; or
 - (c) in control of any equipment, works or activity appearing to relate to the land concerned.

25

(4) An inspector may require a person who the inspector reasonably believes has committed, is committing or is about to commit an offence under this Act to immediately leave the land concerned.

30

(5) In exercising a power under this Act an inspector may be accompanied by another person whose assistance the inspector considers necessary, and the person may do the things that are necessary to assist the inspector in the performance of the inspector's functions, and anything so done is to be taken to have been done by the inspector.

113. Warrants for entry onto premises

- 5 (1) A justice may issue a warrant authorising an inspector or any other person named in the warrant to enter any land (including a building) for the purposes of this Act if the justice is satisfied that —
- (a) the inspector requested entry to the land for the purposes of this Act but was refused; or
 - (b) the land is unoccupied.
- 10 (2) A warrant has effect until —
- (a) the purpose for which it was issued has been satisfied; or
 - (b) the day and time specified in the warrant,
- whichever is the earlier.

114. Police assistance

15 Members of the police force must assist an inspector at the request of the inspector in the performance of the inspector's functions if it is practicable to do so.

115. Offences in relation to inspectors

- A person —
- 20 (a) must comply with a requirement lawfully made by an inspector;
 - (b) must not knowingly furnish to an inspector information that is false or misleading;
 - (c) must not, without reasonable excuse, hinder or obstruct an inspector in the exercise of a power under this Part;
 - 25 or
 - (d) must not pretend to be an inspector.

Penalty: \$10 000.

Division 2 — Legal proceedings

116. Time limit for proceedings

5 Despite section 51 of the *Justices Act 1902*, proceedings for an offence under this Act must be commenced within 3 years after the offence was committed.

117. Who may institute proceedings

- (1) Proceedings in respect of a contravention of this Act may be instituted —
- 10 (a) by any person whose rights have been infringed by, or as a consequence of, the contravention; or
- (b) by the Council and if instituted in the name of the Council, may be conducted by an inspector or a member of the staff of the Council authorised by the Council to do so.
- (2) In any proceedings no proof is required of the authorisation of a person under subsection (1)(b) and an averment in a complaint
- 15 that the person is so authorised is to be taken to be proved in the absence of evidence to the contrary.

118. Committal for trial on indictment

20 If a court of summary jurisdiction hearing a complaint for an offence against this Act is, for any reason, of the opinion that the charge should be dealt with by way of prosecution on indictment, the court may abstain from dealing with the charge and commit the defendant to trial on indictment.

119. Evidentiary provision

- 25 In any proceedings a certificate purporting to be signed by the CEO certifying as to a matter relating to —
- (a) the terms of a heritage agreement or a variation or termination of a heritage agreement;
- 30 (b) the service of a document on behalf of the Council or the Minister;

(c) the contents of the Register at a specified time; or
(d) the contents of a protection or conservation order,
constitutes proof, in the absence of evidence to the contrary, of
the matter so certified.

5 **120. Defences in certain proceedings**

It is a defence in proceedings for a contravention of —

- (a) section 66(1) (carrying out works to a registered place or
place within a registered precinct without, or not in
accordance with, approval); or
10 (b) section 97 (contravening a protection order),
to show that the action taken was urgently necessary —
(c) to avoid an imminent danger to life or health; or
(d) for the prevention of impending damage to a place or its
neighbouring property.

15 **121. Offences by bodies corporate**

- (1) If a body corporate commits an offence under this Act any
person who is concerned or takes part in the management of the
body corporate who was in any way, by act or omission, directly
or indirectly knowingly concerned in, or party to, the
20 commission of the offence also commits the offence.
- (2) A person referred to in subsection (1) may be proceeded against
and convicted of an offence under this Act whether or not the
body corporate has been proceeded against and convicted of the
offence.

122. Court orders in respect of convictions for certain offences

(1) In this section —

“**specified offence**” means an offence under —

- 5 (a) section 66(1) (carrying out works to a registered place or a place within a registered precinct without, or not in accordance with, approval);
- (b) section 97 (contravening a protection order); or
- (c) section 101 (failure to comply with a conservation order).

10 (2) If a person is convicted of a specified offence the court before which the person is convicted may, instead of or in addition to any other sentence imposed, order that —

- 15 (a) the person take the action specified in the order to make good damage or disrepair that is the subject of the offence, including the reconstruction of a demolished building;
- (b) the person pay to a person specified in the order an amount determined by the court as appropriate to enable the action to be taken, including an amount payable by way of a bond; or
- 20 (c) no works be undertaken in respect of the place that is the subject of the offence for a period specified in the order not exceeding 10 years, except for action required to make good damage or disrepair.

25 (3) Part 16 Division 1 of the *Sentencing Act 1995* applies to an order made under subsection (2) as if the order were a reparation order within the meaning of that Part.

30 (4) Nothing in this section prevents a court from making a reparation order within the meaning of Part 16 of the *Sentencing Act 1995*.

123. Enforcement of court orders under section 122(2)

- 5
- (1) Section 119 of the *Sentencing Act 1995* applies if an amount payable under an order made under section 122(2)(b) is not paid within 28 days after the date of the order as if the order were a compensation order made under Part 16 of that Act.
 - (2) Section 122 of the *Sentencing Act 1995* applies to a person who does not comply with an order made under section 122(2)(a) or (c) as if the order were a restitution order made under Part 16 of that Act.

Part 14 — Acquiring land

124. Interests in land may be taken under *Land Administration Act 1997* for conservation purposes

- 5 (1) The Minister or the Council may undertake the conservation of a registered place or a place within a registered precinct and the conservation is to be treated as a public work for the purposes of Parts 9 and 10 of the *Land Administration Act 1997*.
- 10 (2) Subsection (1) does not apply to a place or precinct that has been entered in the Register on an interim basis and the entry has not been made permanent.
- (3) Nothing in subsection (1) prevents an interest in land being taken under Part 9 of the *Land Administration Act 1997* for purposes other than the conservation of a place or precinct entered in the Register on a permanent basis.

15 125. Compensation for land taken

- 20 (1) Despite section 241 of the *Land Administration Act 1997*, in determining the compensation (if any) to be offered, paid or awarded for an interest in land taken under Part 9 of that Act (whether or not by agreement) for the conservation of a place or a place within a precinct entered in the Register on a permanent basis, regard may also be had to —
- 25 (a) whether a building at the place has been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and redevelopment or the redevelopment of the site together with any adjoining land; or
- (b) whether the land was acquired with the intention of demolishing a building at the place.
- (2) In a case referred to in subsection (1)(a) or (b) the value of the land is to be assessed —
- 30 (a) having regard to the actual state of the place and of any building at the place;

5

- (b) on the assumption that approval would not be given under any written law for the demolition of a building referred to in subsection (1)(a) or (b) or for any development other than restoration and conservation; and
- (c) without regard to any amount which a particular purchaser might be prepared to offer.

Part 15 — Miscellaneous

126. Execution of documents by Heritage Council

- (1) The Council is to have a common seal.
- (2) A document is duly executed by the Council if —
 - 5 (a) the common seal of the Council is affixed to it in accordance with subsections (3) and (4); or
 - (b) it is signed on behalf of the Council by a person or persons authorised to do so under subsection (5).
- 10 (3) The common seal of the Council is not to be affixed to any document except as authorised by the Council.
- (4) The common seal of the Council is to be affixed to a document in the presence of 2 of its members, and each of them is to sign the document to attest that the common seal was so affixed.
- 15 (5) The Council may, by writing under its seal, authorise one or more of its members, the CEO or a member or members of staff of the Council to sign documents on behalf of the Council, either generally or subject to such conditions or restrictions as are specified in the authorisation.
- 20 (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.
- (7) When a document is produced bearing a seal purporting to be the common seal of the Council, it is to be presumed that the seal is the common seal of the Council until the contrary is
25 shown.

127. Notice of intention to sell land

- (1) If a certificate of title, or memorial or record, in relation to land has been endorsed following a notification under —
 - (a) section 34(c) (entry in the Register); or

(b) section 82(1) (heritage agreements),

the Registrar of Titles or the Registrar of Deeds, as the case requires, is not to register or note a transfer of the ownership of that land unless the Registrar is satisfied that the Council has been notified of the intention to transfer the land.

- (2) Nothing in subsection (1) affects the transfer of land even though that subsection has not been complied with.

128. Service of documents

If it is impracticable to effect service of a document in the manner referred to in section 76 of the *Interpretation Act 1984*, a Supreme or District Court Judge in chambers may make an order for substituted service or dispensing with the requirement for service.

129. Protection from liability for wrongdoing

- (1) An action in tort does not lie against a person other than the Council for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), neither the Council nor the Crown is relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section a reference to the doing of anything includes a reference to the omission to do anything.

130. Limit on actions

No action lies, and no claim for compensation other than such as is provided for in this Act arises, by reason only of —

- (a) the entry of a place or precinct in the Register; or
(b) the operation of this Act, otherwise.

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131. Commissioner of Titles may take action to keep Register accurate as to entries re heritage or heritage agreements

5 If the Registrar of Titles or Registrar of Deeds has not been requested under section 49(3) or 82(3) (the “**relevant provision**”) to remove or change an endorsement and the Commissioner of Titles is satisfied that there has been a removal or change of a kind to which the relevant provision applies, the Commissioner may direct the Registrar to take the action referred to in the relevant provision.

10 **132. Regulations**

 (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for carrying out or giving effect to the purposes of this Act.

15 (2) Without limiting subsection (1), regulations may provide for the following —

- 20 (a) fees for applications under this Act;
- (b) fees or charges in relation to registered places or places in registered precincts owned or maintained by the Council, or maintained on behalf of the Council;
- (c) fees or charges in relation to activities, matters or things promoted, arranged or controlled by, or on behalf of, the Council.

133. Repeal

25 (1) The *Heritage of Western Australia Act 1990* is repealed.

 (2) The *Heritage of Western Australia Regulations 1991* are repealed.

134. Transitional and savings

Schedule 2 has effect.

135. Review of Act

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from its commencement.
- 5 (2) In the course of that review the Minister is to consider and have regard to —
 - (a) the effectiveness of the operations of the Council;
 - (b) the need for the continuation of the functions of the Council; and
 - 10 (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (3) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause the report to be laid before each House of Parliament.

**Schedule 1 — Constitution and proceedings of the
Heritage Council**

[s. 9]

Division 1 — Constitution and proceedings of the Heritage Council

- 5 **1. Chairperson unable to act**
- (1) The Minister is to appoint a Council member (in and by the instrument of appointment or in and by another instrument executed by the Minister) as deputy chairperson of the Council.
- (2) The Minister may remove a person from the office of deputy
10 chairperson of the Council at any time.
- (3) A person holding office as deputy chairperson of the Council vacates that office if that person —
- (a) is removed from that office by the Minister;
- (b) resigns that office by instrument in writing addressed to the
15 Minister; or
- (c) ceases to be a Council member.
- (4) When the chairperson is unable to act because of illness, absence or other cause, or during any vacancy in that office, the deputy chairperson is to perform the functions of the chairperson.
- 20 **2. Term of office**
- (1) Subject to clause 3, a Council member holds office for such period (being at least one year but not exceeding 5 years) as is specified in the member's instrument of appointment, and is eligible (if otherwise qualified) for reappointment.
- 25 (2) A Council member whose term of office expires by the passage of time continues in office until that member is reappointed or the successor of that member comes into office.
- 3. Resignation, removal etc.**
- (1) The office of a Council member becomes vacant if the member —
- 30 (a) resigns the office by written notice addressed to the Minister;

- (b) becomes ineligible to hold office as a member;
- (c) is an insolvent under administration, as that term is defined in the Corporations Law; or
- (d) is removed from office by the Minister under subclause (2).
- 5 (2) The Minister may remove a Council member from office if the Minister is satisfied that the member —
- (a) has neglected the member's duty;
- (b) has misbehaved;
- (c) is incompetent;
- 10 (d) is suffering from mental or physical incapacity, other than temporary illness, impairing the performance of the member's functions under this Act; or
- (e) has been absent, without leave and reasonable excuse, from 3 consecutive meetings of which the member has had notice.
- 15 **4. Leave of absence**
- The Council may grant leave of absence to a Council member on such terms and conditions as it thinks fit.
- 5. Council member unable to act**
- 20 (1) The Minister may appoint a person to act temporarily in the place of a Council member (other than the chairperson) when the Council member is unable to act because of illness, absence or other cause.
- (2) In the case of a member appointed under section 8(2)(b) or (c), the National Trust or WAMA, as is relevant to the case, is to nominate another person to act temporarily in the place of that member.
- 25 (3) In the case of a member appointed under section 8(2)(d) or (e), the Minister is to appoint another person who is suitable to represent the respective interests referred to in those paragraphs.
- (4) In the case of a member appointed under section 8(2)(f)(i) or (ii), the Minister is to appoint another person who has the respective
- 30 qualifications referred to in those subparagraphs.

Schedule 1 **Constitution and proceedings of the Heritage Council**

(5) While acting according to the tenor of the appointment, the person appointed to act in the place of a Council member is to be treated as a Council member.

5 (6) The appointment of a person to act in the place of a Council member may be terminated at any time by the Minister.

6. Saving

No act or omission of a person acting in place of another under clause 1 or 5 is to be questioned on the ground that the occasion for the person's appointment or acting had not arisen or had ceased.

10 **7. Member not a public service officer by virtue of appointment as member**

Part 3 of the *Public Sector Management Act 1994* does not apply in relation to the appointment of a Council member.

8. Coopted Council members

15 (1) The Council may appoint any person having specialised experience, skills or qualifications as would enable the person to make a contribution to the work of the Council to be a coopted member for such period, or in relation to such matters, as specified in the instrument of appointment.

20 (2) A coopted member is not entitled to vote but while acting according to the tenor of the appointment, the member —

- (a) may take part in the deliberations of the Council; and
- (b) is to be treated as a Council member.

25 (3) Nothing in this clause prevents the Council from arranging for any other person to participate in Council meetings in a consultative capacity.

9. Committees of the Council

(1) The Council may appoint committees to assist it in the performance of its functions, and may discharge or alter any committee so appointed.

30 (2) Persons who are not Council members may be members of a committee but the chairperson of a committee must be a Council member.

- (3) The procedure for calling committee meetings and for the conduct of business at those meetings is to be as determined —
- (a) subject to this Act, by the Council; or
 - (b) subject to this Act, by the committee in accordance with any determination of the Council, or in accordance with the terms of any delegation.

5

10. General procedure

The procedure for the calling of Council meetings and for the conduct of business at those meetings is, subject to this Act, to be determined by the Council.

10

11. Presiding member

- (1) The chairperson of the Council is to preside at all Council meetings at which the chairperson is present.
- (2) If both the chairperson and the deputy chairperson of the Council are absent from a Council meeting the members present are to appoint one of their number to preside.

15

12. Quorum

The quorum for a Council meeting is 6 members.

13. Voting

- (1) At any Council meeting each member present has a deliberative vote.
- (2) The person presiding at any Council meeting has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.
- (3) A decision supported by a majority of the votes cast at a Council meeting at which a quorum is present is the decision of the Council.

20

14. Minutes

The Council is to —

- (a) cause accurate minutes to be kept of the proceedings at each of its meetings; and
- (b) give a copy of those minutes to the Minister as soon as possible after each meeting.

25

30

15. Decisions may be made without meeting

A decision in writing signed or assented to by all the Council members by letter, facsimile transmission or other written means has effect as if it had been passed at a Council meeting.

5 **16. Telephone or video meetings**

(1) Despite anything in this Schedule, a communication between Council members constituting a quorum by telephone, audio-visual or other electronic means is a valid Council meeting.

(2) Subclause (1) only applies if —

10 (a) reasonable notice of the proposed communication has been given to all Council members and each member either participates in, or agrees to, the proposed communication; and

15 (b) each participating member is able to communicate with every other participating member instantaneously at all times while participating in the proceedings.

Division 2 — Disclosure of interests, etc.

17. Disclosure of interests

20 (1) A Council member who has a material pecuniary interest in a matter being considered or about to be considered by the Council must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a Council meeting.

Penalty: \$10 000.

25 (2) A disclosure under subclause (1) is to be recorded in the minutes of the Council meeting.

18. Voting by interested members

A Council member who has a direct or indirect pecuniary interest in a matter that is being considered by the Council —

30 (a) must not vote whether at a meeting or otherwise —

(i) on the matter; or

- (ii) on a proposed resolution under clause 19 in respect of the matter, whether relating to that member or a different member;

and

- 5 (b) must not be present while —
- (i) the matter; or
 - (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),
- is being considered at a meeting.

10 **19. Clause 18 may be declared inapplicable**

Clause 18 does not apply if the Council has at any time passed a resolution that —

- (a) specifies the member, the interest and the matter; and
 - (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.
- 15

20. Quorum where clause 18 applies

- (1) Despite clause 12, if a member of the Council is disqualified under clause 18 in relation to a matter, a quorum is present during the consideration of the matter if at least 3 members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.
 - (2) The Minister may deal with a matter in so far as the Council cannot deal with it because of subclause (1).
- 20

25 **21. Minister may declare clauses 18 and 20 inapplicable**

- (1) The Minister may by writing declare that clause 18 or 20 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.
 - (2) The Minister must within 14 days after a declaration under subclause (1) is made cause a copy of the declaration to be laid before each House of Parliament.
- 30

working for the former Council is to be taken on and after the commencement to be an employee of the new Council.

- 5 (2) Except as otherwise agreed by an employee, the remuneration, existing or accrued rights, rights under a superannuation scheme or continuity of service of the employee are not affected, prejudiced or interrupted by the operation of subclause (1) or the abolition of the former Council.
- (3) A person referred to in subclause (1) is to be regarded as having been engaged under section 18 of this Act.

10 **5. Assets and liabilities of former Council to vest in new Council**

- (1) On the commencement the property of the former Council is, by force of this clause, transferred to the new Council without the need for any conveyance or assignment.
- 15 (2) On and after the commencement the liabilities of the former Council are, by force of this clause, the liabilities of the new Council.

6. Stamp duty

- (1) Stamp duty under the *Stamp Act 1921* is not chargeable on the transfer of property effected by the operation of clause 5.
- 20 (2) The Minister may certify in writing that specified property was transferred by operation of clause 5, and such a certificate is conclusive evidence of that fact, unless the contrary is shown.

7. Proceedings and remedies

On and after the commencement —

- 25 (a) the new Council is a party to any proceedings that were begun before the commencement by or against the former Council; and
- (b) any proceedings or remedy that, but for the repeal effected by section 133(1) of this Act, might have been commenced by, or available against or to, the former Council may be commenced by, and are available against or to, the new Council.
- 30

8. Heritage Fund

(1) The Heritage Fund established under section 14 of the repealed Act is, on and after the commencement, to be taken to be the Heritage Fund as defined by this Act.

5 (2) The Heritage Fund as defined by this Act is charged with any liabilities of the Heritage Fund established under section 14 of the repealed Act which arose before the commencement.

9. Records

10 On the commencement the new Council becomes the owner of all registers, papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to the former Council and the performance of its functions and of any tape, disc or other device or medium relating to those records.

10. Financial reporting of former Council

15 Despite section 54 of the *Financial Administration and Audit Act 1985*, the accountable authority of the new Council is to be the accountable authority of the former Council for the purposes of the report required by section 66 of that Act with respect to the period from 1 July in a financial year to a day that —

- 20 (a) occurs in the same financial year; and
(b) immediately precedes the commencement,

and Division 14 of Part II of that Act applies to that person as the accountable authority of the former Council as if that period were a full financial year.

25 **11. The Register**

The Register of Heritage Places compiled under section 46 of the repealed Act, as it was immediately before the commencement, is to be taken on and after the commencement to be the Western Australian Heritage Register referred to in section 28 of this Act.

12. Local government heritage inventories

5 An inventory compiled by a local government under section 45 of the repealed Act, as it was immediately before the commencement, is to be taken on and after the commencement to be the local government's heritage inventory required under section 52 of this Act.

13. Procedures in relation to entry in the Register or changing or removing an entry

10 If procedures in relation to an entry in the Register as defined by the repealed Act, or the amendment or removal of an entry in that Register have been started but not finished before the commencement a procedural step that has been completed may be taken to be the corresponding procedural step for the purposes of Part 6 of this Act, but otherwise the procedures are to be governed by this Act.

14. Heritage agreements

15 A Heritage Agreement that was entered into under section 29 of the repealed Act that had effect immediately before the commencement has effect, subject to clause 15, on and after the commencement as if the repealed Act had not been repealed.

15. References to the former Council in agreements and instruments

- 20 (1) On and after the commencement agreements and instruments that had effect immediately before the commencement —
- (a) to which the former Council was a party; or
 - (b) which contain a reference to the former Council,
- have effect, by force of this section, as if —
- 25 (c) the new Council were substituted for the former Council as a party to the agreement or instrument; and
 - (d) any reference to the former Council were, unless the context otherwise requires, a reference to the new Council.
- (2) Subclause (1) is subject to clause 16.

16. Conservation and restoration orders

- 5 (1) A Conservation Order as defined in the repealed Act, other than a Stop Work Order as defined in that Act, that had effect immediately before the commencement ceases to have effect on the commencement.
- (2) A Stop Work Order as defined in the repealed Act or an order made under section 62(1) of that Act that had effect immediately before the commencement continues to have effect on and after the commencement —
- 10 (a) subject to paragraph (b), as if the repeal had not been effected by section 133(1); and
- (b) as if a reference in the order to the former Council were a reference to the new Council.

17. Overriding certain decisions of local governments

15 An order made under section 34 of the repealed Act that had effect immediately before the commencement is, on and after the commencement, to be taken to be an approval or consent given by the Council under section 92 of this Act to carry out the work that is the subject of the order.

20 **18. Payments remitted under repealed Act**

An order made under section 36(2) of the repealed Act that had effect immediately before the commencement is, on and after the commencement, to be taken to have been made under section 89(2) of this Act.

25 **19. Ministerial orders as to written laws affecting the conservation of registered places**

30 An order made under section 38 of the repealed Act that had effect immediately before the commencement is, on and after the commencement, to be taken to be an order made under section 91 of this Act.

20. Certain places not entered in Register not to be proposed for registration for 5 years

- 5 (1) If section 55 of the repealed Act applied to a place immediately before the commencement, section 47 of this Act applies in respect of the place even though the event referred to in section 55(a), (b) or (c) of the repealed Act, as is applicable to the case, occurred before the commencement.
- 10 (2) The 5 year period referred to in section 47 of this Act is to be calculated in respect of a place referred to in subclause (1) from the time of the event referred to in that subclause.



Defined Terms

Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

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