

Heritage Bill 2016

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Defined terms

Western Australia

LEGISLATIVE ASSEMBLY

Heritage Bill 2016

A Bill for

An Act to —

- **recognise the importance of and to promote understanding and appreciation of Western Australia’s cultural heritage; and**
- **provide for the identification and documentation of places of heritage significance and for the conservation, use, development and adaptation of such places; and**
- **repeal the *Heritage of Western Australia Act 1990*; and**
- **make consequential amendments to various other Acts, and for related purposes.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Heritage Act 2016*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

In this Act, unless the contrary intention appears —

1990 Act means the *Heritage of Western Australia Act 1990*, repealed by section 157;

CEO means the chief executive officer of the Department;

chairperson means the person appointed under section 16(1) as chairperson of the Council;

consent order has the meaning given in section 53(1);

conservation, in relation to a place of cultural heritage significance, means the conservation of the place so as to retain its cultural heritage significance, including —

- (a) maintenance, preservation, restoration, reconstruction, adaptation and interpretation of the place; and
- (b) retention of the associations and meanings of the place; and
- (c) retention or reintroduction of a use of the place;

continuing protection order has the meaning given in section 55(1);

Council means the body established by section 13;

- 1 **Crown land** has the meaning given in *Land Administration*
2 *Act 1997* section 3(1);
- 3 **cultural heritage significance** has the meaning given in
4 section 4;
- 5 **Department** means the department of the Public Service
6 principally assisting the Minister in the administration of this
7 Act;
- 8 **development**, in relation to land, has the meaning given in the
9 *Planning and Development Act 2005* section 4(1);
- 10 **development approval** means —
- 11 (a) approval under the *Planning and Development Act 2005*
12 for the development of any land; or
- 13 (b) approval, authorisation, consent or permission under any
14 other written law to do anything which would or might
15 significantly affect the physical character of any land;
- 16 **heritage agreement** means an agreement made under
17 section 89;
- 18 **land description**, in relation to a place, means a description
19 sufficient to identify the location and boundaries of the land
20 comprising the place by reference to —
- 21 (a) a certificate of title created for the purposes of the
22 *Transfer of Land Act 1893*; or
- 23 (b) particulars of any lot, plan, diagram or survey set out in
24 such a certificate; or
- 25 (c) in relation to land that is not under the operation of the
26 *Transfer of Land Act 1893* —
- 27 (i) particulars set out in any muniments of title; or
- 28 (ii) other particulars sufficient to identify the
29 location and boundaries of the land comprising
30 the place;
- 31 **local planning scheme** has the meaning given in *Planning and*
32 *Development Act 2005* section 4;

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- 1 **Minister for Lands** means the Minister as defined in *Land*
2 *Administration Act 1997* section 3(1);
- 3 **occupier**, in relation to land, means a person by whom or on
4 whose behalf the land is lawfully occupied or, if there is no
5 person in lawful occupation, a person entitled to possession of
6 the land;
- 7 **owner** has the meanings given in section 5;
- 8 **place** has the meaning given in section 6;
- 9 **prescribed** means prescribed by the regulations;
- 10 **protection order** means —
- 11 (a) a consent order; or
- 12 (b) a continuing protection order; or
- 13 (c) a stop work order;
- 14 **public authority** means any of the following —
- 15 (a) a Minister of the Crown;
- 16 (b) an agency or an organisation as those terms are defined
17 in the *Public Sector Management Act 1994* section 3(1);
- 18 (c) a local government or regional local government;
- 19 (d) a body or instrumentality, whether incorporated or not,
20 or the holder of an office, that is established or
21 continued for a public purpose under a written law and
22 that, under the authority of a written law, performs a
23 statutory function on behalf of the State;
- 24 **register** means the State Register of Heritage Places maintained
25 under section 34(1);
- 26 **registered land** means land which comprises, or is included in, a
27 registered place;
- 28 **registered place** means a place in relation to which there is an
29 entry in the register;
- 30 **repair order** means an order made under section 63;

1 **staff**, in relation to the Council, includes —
2 (a) staff of the Department provided to the Council under
3 section 24(1); and
4 (b) officers and employees of which the Council makes use
5 under section 25(1);
6 **statutory notification** has the meaning given in section 8(4);
7 **stop work order** has the meaning given in section 54(1);
8 **Tribunal** means the State Administrative Tribunal.

9 **4. Term used: cultural heritage significance**

- 10 (1) In this Act —
11 **cultural heritage significance** means aesthetic, historic,
12 scientific, social or spiritual value for individuals or groups
13 within Western Australia.
14 (2) For the purposes of subsection (1) —
15 (a) cultural heritage significance may be embodied in a
16 place itself and in any of its fabric, setting, use,
17 associations, meanings, records, related places and
18 related objects; and
19 (b) a place may have diverse values for different individuals
20 or groups.

21 **5. Term used: owner**

- 22 In this Act —
23 **owner**, in relation to land, means —
24 (a) in relation to Crown land which is a managed reserve,
25 the management body of that reserve; and
26 (b) in relation to Crown land which is vested in a person or
27 body under a written law other than the *Land*
28 *Administration Act 1997*, that person or body; and

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- 1 (c) in relation to Crown land which is a road, whichever of
2 the following persons or bodies has the care, control and
3 management of the road under a written law —
4 (i) the local government in whose district the road is
5 situated;
6 (ii) the Commissioner of Main Roads;
7 (iii) the Minister to whom the administration of the
8 *Public Works Act 1902* is committed;
9 and
10 (d) in relation to Crown land not referred to in
11 paragraph (a), (b) or (c) which is subject to a lease, the
12 Minister for Lands and the lessee under the lease; and
13 (e) in relation to any other Crown land, the Minister for
14 Lands; and
15 (f) in relation to land which is not Crown land —
16 (i) if the land is subject to the *Transfer of Land*
17 *Act 1893* or the *Land Administration Act 1997*, a
18 proprietor within the meaning of the *Transfer of*
19 *Land Act 1893*; and
20 (ii) if the land is subject to the *Registration of Deeds*
21 *Act 1856*, the holder of an estate or interest
22 registered by memorial under that Act; and
23 (iii) a mortgagee or encumbrancee in possession of
24 the land,
25 and, in any case, a person who is the holder of, or has made
26 application for, a mining tenement under the *Mining Act 1978* in
27 respect of the land or a permit or licence under the *Petroleum*
28 *and Geothermal Energy Resources Act 1967* in respect of the
29 land;
30 **owner**, in relation to a place, means an owner of any land
31 included in the place.

1 **6. Term used: place**

2 (1) In this Act —

3 *place* means a defined or readily identifiable area of land.

4 (2) For the purposes of the definition of *place* in subsection (1) —

5 (a) the area of land may include any number of contiguous
6 or non-contiguous parts; and

7 (b) the area of land may be included in any number of lots,
8 in separate titles and in different ownerships; and

9 (c) the area of land includes as much of the land beneath the
10 surface as is required for the purposes of conservation;
11 and

12 (d) it is immaterial that water covers the land at any
13 particular time or at all times.

14 (3) Any of the following things at a place can be regarded as
15 forming part of the place —

16 (a) archaeological remains;

17 (b) buildings, structures and other built forms and their
18 surrounds;

19 (c) equipment, furniture, fittings or other objects (whether
20 fixed or not) that are historically or physically associated
21 or connected with the place;

22 (d) gardens, man-made parks or sites;

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

25 **7. Term used: satisfies the registration conditions**

26 For the purposes of this Act a place satisfies the registration
27 conditions if —

28 (a) the place satisfies the condition set out in section 36(1);
29 and

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- 1 (b) either —
2 (i) the place satisfies the condition set out in
3 section 36(2); or
4 (ii) under an order made under section 36(3) the
5 condition set out in section 36(2) does not apply
6 to the place.

7 **8. Notices, advertisements, consultation and statutory**
8 **notification**

- 9 (1) A requirement under this Act to give notice to any person may
10 be satisfied —
11 (a) by giving notice in writing to that person; or
12 (b) if and as prescribed by the regulations, by giving notice
13 to that person by means of an electronic communication
14 (as defined in the *Electronic Transactions Act 2011*
15 section 5(1)); or
16 (c) if and as prescribed by the regulations, by publishing an
17 advertisement.
- 18 (2) Regulations may prescribe how a requirement under this Act to
19 publish an advertisement may be satisfied, and may provide for
20 an advertisement to be —
21 (a) published in a newspaper circulating generally
22 throughout the State; or
23 (b) published in another newspaper; or
24 (c) published on the Council’s website; or
25 (d) published in another prescribed way.
- 26 (3) Regulations may prescribe procedures for public consultation
27 required under this Act.
- 28 (4) A requirement under this Act to give statutory notification of an
29 event is satisfied, subject to and in accordance with regulations,
30 by taking steps to have the event registered, recorded or noted

1 by the Western Australian Land Information Authority or other
2 agency, as appropriate to the case, under —

- 3 (a) the *Mining Act 1978*; or
4 (b) the *Registration of Deeds Act 1856*; or
5 (c) the *Transfer of Land Act 1893*; or
6 (d) any other written law dealing with the registration of
7 interests in or affecting land.

8 **9. State bound**

9 This Act binds the State and, so far as the legislative power of
10 State permits, the Crown in all its other capacities.

11 **10. Objectives**

12 The objectives of this Act are, with due regard for the rights of
13 property ownership —

- 14 (a) to promote understanding and appreciation of Western
15 Australia's heritage; and
16 (b) to recognise the importance of places of cultural heritage
17 significance and their stories in understanding the course
18 of Western Australia's history; and
19 (c) to provide for the identification and documentation of
20 Western Australia's places of cultural heritage
21 significance; and
22 (d) to encourage and facilitate the conservation, continuing
23 use, development and adaptive reuse of places of
24 cultural heritage significance in ways that represent high
25 standards of heritage conservation and are in harmony
26 with cultural heritage values.

27 **11. Places to which Act does not apply**

28 This Act does not apply to a place, or to land included in a
29 place —

- 30 (a) that comprises only the natural environment; or

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- 1 (b) that has cultural heritage significance solely on account
2 of its connection with Aboriginal tradition or culture.

3 **12. Other laws not affected**

4 Nothing in this Act affects the operation of —

- 5 (a) the *Aboriginal Heritage Act 1972*; or
6 (b) the *Conservation and Land Management Act 1984*; or
7 (c) the *Environmental Protection Act 1986*; or
8 (d) the *Maritime Archaeology Act 1973*.

Part 2 — The Council

Division 1 — Constitution of the Council

13. Council established

- (1) A body called the Heritage Council of Western Australia is established.
- (2) The Council is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Council in its corporate name.

14. Execution of documents by Council

- (1) The Council must have a common seal.
- (2) A document is duly executed by the Council if —
 - (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).
- (3) The common seal of the Council must not be affixed to any document except as authorised by the Council.
- (4) The common seal of the Council must be affixed to a document in the presence of 2 members of the Council each of whom must sign the document to attest that the common seal was so affixed.
- (5) The Council may, by writing under its common seal, authorise any of the following persons to sign documents on behalf of the Council, either generally or subject to the conditions that are specified in the authorisation —
 - (a) a member or members of the Council; or
 - (b) a staff member or members.

1 (6) A document purporting to be executed in accordance with this
2 section is presumed to be duly executed unless the contrary is
3 shown.

4 (7) When a document is produced bearing a seal purporting to be
5 the common seal of the Council, it is presumed that the seal is
6 the common seal of the Council unless the contrary is shown.

7 **15. Status**

8 (1) The Council is an agent of the State and has the status,
9 immunities and privileges of the State.

10 (2) The Council is to be the State's expert body on matters
11 concerning places of cultural heritage significance, other than
12 places —

13 (a) that comprise only the natural environment; or

14 (b) that have cultural heritage significance solely on account
15 of their connection with Aboriginal tradition or culture.

16 **16. Membership and proceedings**

17 (1) The Council consists of up to 9 persons appointed to be
18 members by the Governor on the nomination of the Minister.

19 (2) The Minister must nominate for appointment to be chairperson
20 of the Council a person who in the opinion of the Minister has
21 demonstrated knowledge, experience, skills or qualifications
22 relevant to the position of chairperson.

23 (3) With a view to maintaining a balanced membership reflecting
24 the functions of the Council, the Minister must nominate for
25 appointment to be ordinary members of the Council up to
26 8 persons who in the opinion of the Minister have —

27 (a) demonstrated knowledge of or experience in heritage
28 matters; and

29 (b) demonstrated knowledge, experience, skills or
30 qualifications in one or more of the following fields —

31 (i) archaeology;

- 1 (ii) architecture;
- 2 (iii) construction;
- 3 (iv) engineering;
- 4 (v) governance;
- 5 (vi) heritage conservation or interpretation;
- 6 (vii) history;
- 7 (viii) landscape architecture;
- 8 (ix) local government;
- 9 (x) property ownership, development or marketing;
- 10 (xi) urban and regional planning;
- 11 (xii) any other field prescribed for the purposes of this
- 12 section.
- 13 (4) Subject to subsection (5), regulations may provide for —
- 14 (a) the publication of advertisements seeking candidates for
- 15 nomination to membership of the Council; and
- 16 (b) the term of office, resignation and removal of members
- 17 of the Council; and
- 18 (c) the appointment of alternate members to deputise for
- 19 members who are temporarily unable or unavailable to
- 20 act; and
- 21 (d) the appointment of persons having relevant specialised
- 22 knowledge or experience as temporary ordinary
- 23 members of the Council to serve for fixed periods or to
- 24 consider only particular matters; and
- 25 (e) the disclosure, recording and management of members’
- 26 conflicts of interest; and
- 27 (f) the convening and conduct of meetings of the Council;
- 28 and
- 29 (g) the establishment, membership and proceedings of
- 30 committees of the Council; and
- 31 (h) other proceedings of the Council.

- 1 (5) The CEO, or a nominee of the CEO, is entitled to attend any
2 meeting of the Council and to take part in the consideration and
3 discussion of any matter before a meeting other than a matter
4 concerning the performance of the CEO, but cannot vote on any
5 matter.
- 6 (6) Members of the Council, and of any committee of the Council
7 established under subsection (4)(g), are entitled to be paid out of
8 the funds of the Council any remuneration and allowances that
9 the Minister may from time to time determine on the
10 recommendation of the Public Sector Commissioner.

11 **Division 2 — Functions and powers of the Council**

12 **17. Functions of the Council**

13 The functions of the Council include the following —

- 14 (a) to assess and to document places of cultural heritage
15 significance in Western Australia;
- 16 (b) to advise the Minister on heritage matters and, in
17 particular, on the identification, conservation and
18 protection of places that are, or may be, of cultural
19 heritage significance;
- 20 (c) to provide guidance to public authorities on
21 contemporary best practice for the identification and
22 management of heritage assets;
- 23 (d) to administer the register;
- 24 (e) in accordance with Part 6, to provide or facilitate the
25 provision of financial, technical and professional
26 assistance and other conservation incentives;
- 27 (f) if development or other proposals may affect a
28 registered place, to provide advice to decision-making
29 authorities on ensuring that the place's cultural heritage
30 significance is preserved;

- 1 (g) to endeavour to prevent the destruction, damage,
2 deterioration or injudicious treatment of places that are,
3 or may be, of cultural heritage significance;
- 4 (h) to undertake or provide for the conservation of places
5 that are, or may be, of cultural heritage significance;
- 6 (i) to acquire, own, conserve, arrange for the conservation
7 of, lease, manage and dispose of places that have or may
8 have cultural heritage significance;
- 9 (j) to advise and to assist local governments in identifying
10 and conserving places that have or may have cultural
11 heritage significance;
- 12 (k) to promote public awareness and knowledge in relation
13 to Western Australia's cultural heritage;
- 14 (l) to provide and to encourage education and training in
15 relation to Western Australia's cultural heritage;
- 16 (m) to arrange and to conduct research and investigations in
17 relation to Western Australia's cultural heritage;
- 18 (n) to promote and to assist the management and
19 maintenance of registered places;
- 20 (o) to enter into and to implement heritage agreements;
- 21 (p) to advise and assist the Minister and others in relation to
22 heritage agreements;
- 23 (q) to perform any other functions required of it by the
24 Minister under, or in furtherance of the objectives of,
25 this Act;
- 26 (r) to do anything else that it is required or authorised to do
27 under this Act or any other written law.

28 **18. Powers of the Council**

- 29 (1) The Council has all the powers it needs to perform its functions
30 under this Act or any other written law.

- 1 (2) Without limiting subsection (1), the Council may for the
2 purpose of performing a function —
- 3 (a) acquire, hold, manage and dispose of real and personal
4 property; and
- 5 (b) grant a lease or licence in respect of property that is
6 owned by the Council; and
- 7 (c) carry out, or cause to be carried out, the conservation
8 and development of a place; and
- 9 (d) enter into arrangements for sponsorship; and
- 10 (e) use its expertise and resources to provide consultancy,
11 management, advisory or other services for profit or
12 otherwise.
- 13 (3) The Council may, in accordance with regulations, impose and
14 recover fees, charges and expenses in connection with the
15 performance of its functions.
- 16 **19. Delegation by Council and by chairperson**
- 17 (1) The Council may by resolution of which notice has been given
18 in the *Gazette* in accordance with subsection (3) delegate to a
19 person any power or duty of the Council under another
20 provision of this Act, or under any other written law.
- 21 (2) Subject to the approval of the Minister, the chairperson may by
22 written instrument of which notice has been given in the *Gazette*
23 in accordance with subsection (3) delegate any power or duty of
24 the chairperson under another provision of this Act, or under
25 any other written law to —
- 26 (a) a member; or
- 27 (b) an officer or other person referred to in section 24 who
28 is identified in the instrument by name or title.
- 29 (3) A notice of a delegation under this section published in the
30 *Gazette* must set out the identity of the delegate and the scope of
31 the delegation.

- 1 (4) A person to whom a power or duty is delegated under this
2 section cannot delegate that power or duty.
- 3 (5) The delegate must perform or discharge functions delegated
4 under this section in accordance with the terms of the
5 delegation.
- 6 (6) A person performing a function that has been delegated to the
7 person under this section is taken to do so in accordance with
8 the terms of the delegation unless the contrary is shown.
- 9 (7) Nothing in this section limits the ability of the Council to
10 perform a function through an officer or agent.

11 **Division 3 — Relationship between Minister and Council**

12 **20. Administration of this Act**

13 The Council must advise the Minister on the administration of
14 this Act.

15 **21. Minister's directions**

- 16 (1) The Minister may give the Council written directions of a
17 general character with respect to its functions and, subject to
18 subsection (2), the Council must give effect to any such
19 direction.
- 20 (2) The Council need not give effect to a direction of the Minister
21 with respect to its functions under this Act of —
- 22 (a) evaluating the cultural heritage significance of a place;
23 and
- 24 (b) giving advice to the Minister or to a decision-making
25 authority with respect to a place.
- 26 (3) The text of a direction received by the Council under
27 subsection (1) must be included in the annual report submitted
28 by the accountable authority of the Council under the *Financial*
29 *Management Act 2006* Part 5.

1 **22. Minister to have access to information**

2 (1) In this section —

3 *document* includes any tape, disk or other device or medium on
4 which information is recorded or stored;

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

8 (2) The Minister is entitled —

9 (a) to have information in the possession of the Council;
10 and

11 (b) if the information is in or on a document, to have access
12 to, and to make and retain copies of, that document.

13 (3) For the purposes of subsection (2) the Minister may —

14 (a) request the Council to furnish information to the
15 Minister; and

16 (b) request the Council to give the Minister access to
17 information; and

18 (c) for the purposes of paragraphs (a) and (b) make use of
19 the staff of the Council to obtain the information and
20 furnish it to the Minister.

21 (4) The Council must comply with requests under subsection (3)(a)
22 and (b) and make its staff and facilities available to the Minister
23 for the purposes of subsection (3)(c).

24 **23. Delegation by Minister**

25 (1) The Minister may by written instrument of which notice has
26 been given in the *Gazette* in accordance with subsection (2)
27 delegate to a person any power or duty of the Minister under
28 another provision of this Act other than —

29 (a) this power of delegation; and

30 (b) functions under sections 16, 21 and 22; and

31 (c) functions under Part 3; and

- 1 (d) functions under Part 4; and
2 (e) functions under Part 6 Division 3; and
3 (f) functions under Part 7; and
4 (g) functions under Part 10.
- 5 (2) A notice of a delegation under this section published in the
6 *Gazette* must set out the identity of the delegate and the scope of
7 the delegation.
- 8 (3) A person to whom a power or duty is delegated under this
9 section cannot delegate that power or duty.
- 10 (4) The delegate must perform or discharge functions delegated
11 under this section in accordance with the terms of the
12 delegation.
- 13 (5) A person performing a function that has been delegated to the
14 person under this section is taken to do so in accordance with
15 the terms of the delegation unless the contrary is shown.
- 16 (6) Nothing in this section limits the ability of the Minister to
17 perform a function through an officer or agent.

Division 4 — Staff

18
19 **24. CEO to provide assistance, staff and facilities**

- 20 (1) The CEO must provide the Council —
21 (a) with any assistance; and
22 (b) without limiting paragraph (a), with any staff and
23 facilities of the Department,
24 which the Council may reasonably require to perform its
25 functions.
- 26 (2) This section does not detract from the power that the *Public*
27 *Sector Management Act 1994* section 100 gives the CEO to
28 engage a person under a contract for services or appoint a
29 person on a casual employment basis.

- 1 (3) The CEO may engage persons as wages staff otherwise than
2 under Part 3 of the *Public Sector Management Act 1994* and
3 persons so engaged are to be engaged subject to any relevant
4 industrial award or agreement.

5 **25. Use of other government staff and facilities**

- 6 (1) The Council may by arrangement with the relevant employing
7 authority make use, either full-time or part-time, of the services
8 of any officer or employee —
9 (a) in the Public Service; or
10 (b) in a State agency; or
11 (c) otherwise in the service of the State.
- 12 (2) The Council may by arrangement with —
13 (a) a department of the Public Service; or
14 (b) a State agency,
15 make use of any facilities of the department or agency.
- 16 (3) An arrangement under subsection (1) or (2) must be made on
17 terms agreed to by the parties.

18 **Division 5 — Finance**

19 **26. *Financial Management Act 2006 and Auditor General***
20 ***Act 2006 apply***

21 The provisions of the *Financial Management Act 2006* and the
22 *Auditor General Act 2006* regulating the financial
23 administration, audit and reporting of statutory authorities apply
24 to and in respect of the Council and its operations.

25 **27. Funds of Council**

26 The funds available to the Council for the purposes of this Act
27 are —
28 (a) money from time to time appropriated by Parliament;
29 and

- 1 (b) money received by the Council in the performance of its
2 functions; and
- 3 (c) money borrowed by the Council under section 29; and
- 4 (d) other money lawfully received by, made available to, or
5 payable to, the Council.

6 **28. Heritage Fund**

- 7 (1) An account called the Heritage Fund must be established as an
8 agency special purpose account for the purposes of the
9 *Financial Management Act 2006* section 16.
- 10 (2) The funds referred to in section 27 must be credited to the
11 Heritage Fund.
- 12 (3) The Heritage Fund must be charged with —
- 13 (a) the remuneration and allowances payable under
14 section 16(6); and
- 15 (b) interest on, other fees and charges in respect of, and
16 repayment of moneys borrowed by, the Council; and
- 17 (c) all other expenditure lawfully incurred by the Council in
18 the performance of its functions.

19 **29. Borrowing**

- 20 (1) The Council may with the prior written approval of the
21 Treasurer and on terms and conditions which the Treasurer
22 approves, borrow moneys for the purpose of performing its
23 functions.
- 24 (2) Any moneys borrowed by the Council under subsection (1) may
25 be raised —
- 26 (a) as one loan or as several loans; and
- 27 (b) in any manner the Treasurer approves.

1 **30. Guarantee by Treasurer**

2 (1) The Treasurer may, in the name and on behalf of the State,
3 guarantee the payment of any moneys payable by the Council in
4 respect of moneys borrowed by it under section 29.

5 (2) A guarantee must be in a form, and contain terms and
6 conditions, determined by the Treasurer.

7 (3) Before a guarantee is given, the Council must —

8 (a) give the Treasurer any security which the Treasurer
9 requires; and

10 (b) execute all instruments that are necessary for the
11 purpose.

12 (4) The Treasurer may fix charges to be paid by the Council to the
13 credit of the Consolidated Account in respect of a guarantee
14 given under this section.

15 **31. Effect of guarantee**

16 (1) The due payment of moneys under a guarantee given under
17 section 30 must be —

18 (a) made by the Treasurer; and

19 (b) charged to, and paid out of, the Consolidated Account,

20 and this subsection appropriates the Consolidated Account
21 accordingly.

22 (2) The Treasurer must cause to be credited to the Consolidated
23 Account any amounts received or recovered from the Council or
24 otherwise in respect of any payment made by the Treasurer
25 under a guarantee given under section 30.

26 **32. Notice of financial difficulty**

27 (1) The Council must notify the Minister if it forms the opinion that
28 it is unable to, or will be unlikely to be able to, satisfy any of its
29 financial obligations from the financial resources available to it

1 or likely to be available to it at the time the financial obligation
2 is due.

3 (2) The notice must be in writing, giving reasons for the Council's
4 opinion.

5 (3) Within 7 days after receipt of the notice, the Minister must —
6 (a) confer with the Treasurer and the Council for the
7 purpose of determining what action is required to ensure
8 that the Council is able to satisfy the relevant financial
9 obligation when it is due; and
10 (b) initiate such action as is required to ensure that the
11 Council is able to satisfy the relevant financial
12 obligation when it is due.

13 (4) For the purposes of subsection (3) the Minister may give the
14 Council a direction under section 21 requiring the Council to
15 cease or limit the performance of any function.

16 **33. Exemption from rates**

17 No tax or rate may be charged or levied under the *Local*
18 *Government Act 1995* Part 6 on or in respect of any land which
19 for the time being is vested in, owned by, leased to or placed
20 under the control of the Council and used or preserved by, or by
21 arrangement with, the Council.

1 **Part 3 — The State Register of Heritage Places**

2 **Division 1 — The register**

3 **34. The register**

4 (1) The Council must establish and maintain a register called the
5 State Register of Heritage Places.

6 (2) The register must include places which the Minister, on the
7 advice of the Council, has directed to be entered in the register
8 in accordance with Division 2, having regard to their cultural
9 heritage significance.

10 (3) It is to be the objective of the Council and the Minister that the
11 register be a comprehensive register of places of cultural
12 heritage significance that make an important contribution to
13 understanding the heritage of Western Australia.

14 (4) The Council must make the register available for public
15 inspection in the prescribed manner.

16 (5) The Council must make information regarding amendments to,
17 and removals of, entries in the register available for public
18 inspection in the prescribed manner.

19 **35. Form and content of register**

20 (1) The Council must keep the register in the prescribed form.

21 (2) An entry in the register in relation to a place must contain —
22 (a) a land description of the place; and
23 (b) the current statement of cultural heritage significance
24 adopted in relation to the place; and
25 (c) any other prescribed particulars.

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Division 2 — Entry in the register

Subdivision 1 — Registration conditions

36. Conditions for registration

- (1) It is a condition for the entry of a place in the register that the Council should have determined in accordance with section 37 that the place has cultural heritage significance.
- (2) Subject to subsection (3), it is a condition for the entry of a place in the register that the place not be comprised of or include land that within the preceding 5 years —
 - (a) was removed from a registered place by an amendment made under section 45; or
 - (b) was included in an entry that has been removed from the register under section 50.
- (3) The Council may apply to the Supreme Court for an order that the condition mentioned in subsection (2) is not to apply to a place specified in the order.

37. Factors relevant to cultural heritage significance

- (1) In determining whether a place has cultural heritage significance the Council may have regard to —
 - (a) its importance in demonstrating the evolution or pattern of Western Australian history;
 - (b) its importance in demonstrating rare, uncommon or endangered aspects of Western Australia’s heritage;
 - (c) the place’s potential to yield information that will contribute to an understanding of Western Australia’s history;
 - (d) its importance in demonstrating the characteristics of a broader class of places;
 - (e) any strong or special meaning it may have for any group or community because of social, cultural or spiritual associations;

- 1 (f) its importance in exhibiting particular aesthetic
2 characteristics valued by any group or community;
- 3 (g) any special association it may have with the life or work
4 of a person, group or organisation of importance in
5 Western Australia's history;
- 6 (h) its importance in demonstrating a high degree of
7 creative or technical achievement;
- 8 (i) any other characteristic it may have that in the opinion
9 of the Council is relevant to the assessment of cultural
10 heritage significance.
- 11 (2) A place may have cultural heritage significance despite lacking
12 significant fabric.

13 **Subdivision 2 — Process for entry into register**

14 **38. Nomination for entry in the register**

- 15 (1) In accordance with the regulations, a person may nominate a
16 place for entry in the register.
- 17 (2) Within the prescribed time after receipt of a nomination, the
18 Council must make a preliminary determination as to whether
19 the nominated place warrants review under section 39(1).
- 20 (3) In accordance with the regulations the Council must give
21 written notice of a determination made under subsection (2) and
22 the reasons for it to —
- 23 (a) the owner of the place; and
24 (b) the person that made the nomination; and
25 (c) any other prescribed person or body.

26 **39. Review and registration recommendation**

- 27 (1) The Council may, in accordance with the regulations —
- 28 (a) assess the cultural heritage significance of a place; and
29 (b) consult the owner of the place and undertake public
30 consultation in relation to the entry of the place in the

- 1 register and the content of a statement of cultural
2 heritage significance for the place; and
- 3 (c) consider whether the place satisfies the registration
4 conditions; and
- 5 (d) if necessary and if the Council thinks it appropriate, seek
6 an order under section 36(3).
- 7 (2) When the Council has completed its review under subsection (1)
8 it may recommend to the Minister that the place be entered in
9 the register.
- 10 (3) If the Council recommends to the Minister that a place be
11 entered in the register, it must —
- 12 (a) advise the Minister on the cultural heritage significance
13 of the place and on any submissions received in the
14 course of consultation with the owner and the public;
15 and
- 16 (b) prepare and provide to the Minister a draft register entry
17 (including a draft statement of cultural heritage
18 significance) in relation to the place.
- 19 (4) Regulations must provide for the Council to publish an
20 advertisement in relation to a recommendation made under
21 subsection (2).
- 22 (5) The Council is not to include in an advertisement referred to in
23 subsection (4) information regarding any person consulted, or
24 any submission received, in the course of public consultation
25 without the consent of the person consulted or the person
26 making the submission.
- 27 **40. Direction by Minister**
- 28 (1) If the Council recommends under section 39 that a place be
29 entered in the register the Minister must, within such time as
30 may be prescribed —
- 31 (a) direct the Council to enter the place in the register; or

- 1 (b) direct the Council not to enter the place in the register
2 and state in writing the reasons for the direction.
- 3 (2) In giving a direction under subsection (1) the Minister must
4 have regard to —
- 5 (a) the recommendation and advice of the Council under
6 section 39; and
- 7 (b) any other matter that the Minister considers relevant.
- 8 (3) Regulations —
- 9 (a) must provide for the Council —
- 10 (i) to give notice of a direction under subsection (1)
11 and any statement of reasons to the owner of the
12 place; and
- 13 (ii) to publish an advertisement in relation to the
14 direction and any statement of reasons;
- 15 and
- 16 (b) may provide for the Council to give notice of a direction
17 under subsection (1) and any statement of reasons to any
18 other person.

19 **41. Entry in register**

- 20 (1) As soon as practicable after receiving a direction under
21 section 40(1)(a) in relation to a place the Council must make an
22 entry in the register in relation to that place in accordance with
23 section 35(2).
- 24 (2) The Council must cause a notice to be published in the *Gazette*
25 in relation to the entry in the register setting out a land
26 description of the place and any other prescribed particulars.
- 27 (3) Regulations —
- 28 (a) must provide for the Council to give notice of the entry
29 in the register to the owner of the place; and

- 1 (b) may provide for the Council —
2 (i) to give notice of the entry in the register to any
3 other person; and
4 (ii) to publish an advertisement in relation to the
5 entry in the register.
- 6 (4) Regulations must provide for the Council to give statutory
7 notification of the entry in the register.

8 **Division 3 — Amendment of register entries**

9 **42. Request for amendment of land description in register entry**

- 10 (1) An owner of a registered place may in accordance with the
11 regulations request the Council to amend the land description in
12 an entry in the register relating to the place.
- 13 (2) Within the prescribed time after receipt of a request under
14 subsection (1), the Council must make a determination as to
15 whether the requested amendment warrants consideration in
16 detail.
- 17 (3) In accordance with the regulations the Council must give
18 written notice of its determination under subsection (2) and the
19 reasons for it to —
20 (a) the owner that made the request; and
21 (b) any other prescribed person or body.

22 **43. Detailed consideration of amendment to land description**

- 23 (1) If the Council determines under section 42 or otherwise that an
24 amendment to the land description in an entry in the register
25 warrants detailed consideration it may, in accordance with the
26 regulations —
27 (a) review the cultural heritage significance of the place;
28 and
29 (b) undertake public consultation in relation to the proposed
30 amendment; and

- 1 (c) consider whether the amendment is desirable, having
2 regard to —
- 3 (i) the way in which the place satisfies the
4 registration conditions; and
- 5 (ii) the cultural heritage significance of the place;
6 and
- 7 (iii) any submissions received in the course of public
8 consultation;
- 9 and
- 10 (d) if necessary and if the Council thinks it appropriate, seek
11 an order under section 36(3).
- 12 (2) Where the Council has considered an amendment to the land
13 description in an entry in the register in accordance with
14 subsection (1) it may recommend to the Minister that the
15 amendment be made.
- 16 (3) If the Council recommends to the Minister that an amendment
17 to the land description in an entry in the register be made, it
18 must —
- 19 (a) advise the Minister on the cultural heritage significance
20 of the place, on any submissions received in the course
21 of public consultation and on the Council's reasons for
22 recommending the amendment be made; and
- 23 (b) recommend any conditions that the owner should be
24 required to satisfy before the amendment is made; and
- 25 (c) prepare and provide to the Minister the amendment that
26 it recommends be made.
- 27 (4) Regulations must provide for the Council to publish an
28 advertisement in relation to a recommendation made under
29 subsection (2).
- 30 (5) The Council is not to include in an advertisement referred to in
31 subsection (4) information regarding any person consulted, or
32 any submission received, in the course of public consultation

1 without the consent of the person consulted or the person
2 making the submission.

3 **44. Land description amendment direction by Minister**

4 (1) If the Council recommends to the Minister under section 43(2)
5 that an amendment to the land description in an entry in the
6 register be made, within such time as may be prescribed the
7 Minister, having regard to the advice and recommendation of
8 the Council, must —

- 9 (a) direct the Council to make the proposed amendment; or
10 (b) direct the Council not to make the proposed amendment,
11 and state in writing the reasons for the direction.

12 (2) A direction by the Minister under subsection (1)(a) to make the
13 amendment may be conditional upon the owner —

- 14 (a) discharging any costs associated with making the
15 amendment; and
16 (b) satisfying any other conditions specified by the Minister.

17 (3) Regulations —

- 18 (a) must provide for the Council —
19 (i) to give notice of a direction under subsection (1)
20 and any statement of reasons to the owner of the
21 place; and
22 (ii) to publish an advertisement in relation to the
23 direction and any statement of reasons;
24 and
25 (b) may provide for the Council to give notice of a direction
26 under subsection (1) and any statement of reasons to any
27 other person.

28 **45. Amending land description in register entry**

29 (1) As soon as practicable after receiving a direction under
30 section 44(1)(a) to amend the land description in an entry in the
31 register, and subject to the satisfaction of any conditions

1 imposed under section 44(2), the Council must amend the land
2 description as directed.

3 (2) The Council must cause a notice to be published in the *Gazette*
4 in relation to an amendment made under subsection (1) setting
5 out the amended land description of the place and any other
6 prescribed particulars.

7 (3) Regulations —

8 (a) must provide for the Council to give notice of the
9 amendment to the owner of the place; and

10 (b) may provide for the Council —

11 (i) to give notice of the amendment to any other
12 person; and

13 (ii) to publish an advertisement in relation to the
14 amendment.

15 (4) Regulations must provide for the Council to give statutory
16 notification of the amendment.

17 **46. Other amendments**

18 (1) The Council must make amendments to the statement of cultural
19 heritage significance in an entry to the register in accordance
20 with regulations made for the purposes of section 52(1).

21 (2) Regulations prescribing other particulars to be included in an
22 entry in the register must prescribe procedures for the
23 amendment of those particulars.

24 **Division 4 — Removal of entries from register**

25 **47. Request for removal**

26 (1) The owner of a registered place or, if more than one, all the
27 owners acting jointly may, in accordance with the regulations,
28 request the Council to remove the entry in the register relating
29 to the place.

- 1 (2) Within the prescribed time after receipt of a request under
2 subsubsection (1), the Council must make a determination as to
3 whether the requested removal warrants consideration in detail.
- 4 (3) In accordance with the regulations the Council must give
5 written notice of its determination under subsection (2) and the
6 reasons for it to the owner.
- 7 (4) If the Council determines that the requested removal does not
8 warrant consideration in detail, the owner may in accordance
9 with the regulations request the Council to refer the matter to
10 the Minister, who is within the prescribed time to —
- 11 (a) confirm the Council’s determination; or
12 (b) direct the Council to give detailed consideration to the
13 requested removal under section 48.

14 **48. Detailed consideration of removal**

- 15 (1) If the Minister directs the Council to do so under
16 section 47(4)(b) the Council must, and in any other case the
17 Council may, in accordance with the regulations —
- 18 (a) review the cultural heritage significance of a registered
19 place; and
- 20 (b) undertake public consultation in relation to the removal
21 of the entry in the register relating to the place; and
- 22 (c) consider whether the removal is desirable, having regard
23 to —
- 24 (i) the cultural heritage significance of the place;
25 and
- 26 (ii) the way in which the place satisfies the
27 registration conditions; and
- 28 (iii) any submissions received in the course of public
29 consultation.

- 1 (2) Where the Council has considered the removal of an entry in the
2 register in accordance with subsection (1), it must recommend
3 to the Minister —
- 4 (a) that the entry be removed; or
5 (b) that the entry not be removed.
- 6 (3) When the Council makes a recommendation under
7 subsection (2) it must advise the Minister on —
- 8 (a) the cultural heritage significance of the place; and
9 (b) any submissions received in the course of public
10 consultation; and
11 (c) the Council's reasons for its recommendation; and
12 (d) if the recommendation is for removal of the entry, any
13 conditions that the owner should be required to satisfy
14 before the entry is removed.
- 15 (4) Regulations must provide for the Council to publish an
16 advertisement in relation to a recommendation made under
17 subsection (2).
- 18 (5) The Council is not to include in an advertisement referred to in
19 subsection (4) information regarding any person consulted, or
20 any submission received, in the course of public consultation
21 without the consent of the person consulted or the person
22 making the submission.
- 23 **49. Removal direction by Minister**
- 24 (1) Within such time as may be prescribed after the Council has
25 made a recommendation under section 48(2) the Minister,
26 having regard to the advice and recommendation of the Council,
27 must —
- 28 (a) direct the Council to remove the entry; or
29 (b) direct the Council not to remove the entry,
- 30 and in either case the Minister must state the reasons for the
31 direction.

- 1 (2) A direction by the Minister under subsection (1)(a) to remove
2 an entry may be conditional upon the owner of the place
3 concerned —
- 4 (a) discharging any costs associated with the removal; and
5 (b) satisfying any other conditions specified by the Minister.
- 6 (3) A direction under subsection (1)(a) may not take effect until it
7 has been approved by a resolution of each House of Parliament.
- 8 (4) Regulations —
- 9 (a) must provide for the Council —
- 10 (i) to give notice of a direction under subsection (1)
11 and any statement of reasons to the owner of the
12 place; and
- 13 (ii) to publish an advertisement in relation to the
14 direction and any statement of reasons;
- 15 and
- 16 (b) may provide for the Council to give notice of a direction
17 under subsection (1) and any statement of reasons to any
18 other person.

19 **50. Removing entry from register**

- 20 (1) If the Minister directs the Council under section 49(1)(a) to
21 remove an entry from the register, as soon as practicable
22 after —
- 23 (a) the satisfaction of any conditions imposed under
24 section 49(2); and
- 25 (b) the approval of both Houses of Parliament under
26 section 49(3),
- 27 the Council must remove the entry from the register as directed.
- 28 (2) The Council must cause a notice to be published in the *Gazette*
29 in relation to the removal of a registered place under
30 subsection (1) setting out a land description of the place and any
31 other prescribed particulars.

- 1 (3) Regulations —
2 (a) must provide for the Council to give notice of the
3 removal to the owner of the registered place; and
4 (b) may provide for the Council —
5 (i) to give notice of the removal to any other person;
6 and
7 (ii) to publish an advertisement in relation to the
8 removal.
- 9 (4) Regulations must provide for the Council to give statutory
10 notification of the removal.

11 **Division 5 — Statements of cultural heritage significance**

12 **51. Adoption of statement of cultural heritage significance**

- 13 (1) In relation to each registered place the Council must adopt a
14 statement of cultural heritage significance.
- 15 (2) Regulations must prescribe the form and content of a statement
16 of cultural heritage significance.

17 **52. Updating and amending statements of cultural heritage**
18 **significance**

- 19 (1) Regulations must provide for the Council from time to time to
20 review and update the statement of cultural heritage significance
21 for a registered place.
- 22 (2) Regulations may provide for the Council to update a statement
23 of cultural heritage significance without prior notice to or
24 consultation with the owners of the registered place concerned
25 by —
26 (a) correcting or updating names, titles, designations and
27 the like; or
28 (b) correcting typographical, grammatical and other minor
29 errors of presentation; or

- 1 (c) correcting information which on the face of it is clearly
2 factually erroneous; or
- 3 (d) making any other change to the statement which, in the
4 opinion of the Council, would not be materially relevant
5 to the conservation or management of the place.
- 6 (3) Regulations may provide for the Council to amend a statement
7 of cultural heritage significance in any way not mentioned in
8 subsection (2) provided that —
- 9 (a) the owners of the registered place concerned are notified
10 of the proposed amendment and have an opportunity to
11 make submissions in relation to them; and
- 12 (b) either —
- 13 (i) no owner objects to the proposed amendment; or
14 (ii) the Minister directs that it be made.
- 15 (4) Regulations —
- 16 (a) must provide for the Council —
- 17 (i) to give notice of the adoption, updating or
18 amendment of a statement of cultural heritage
19 significance to the owner of the place; and
- 20 (ii) to publish an advertisement in relation to the
21 adoption, updating or amendment of a statement
22 of cultural heritage significance;
- 23 and
- 24 (b) may provide for the Council to give notice of the
25 adoption, updating or amendment of a statement of
26 cultural heritage significance to any other person.

1 **Part 4 — Protection orders and repair orders**

2 **Division 1 — Protection orders**

3 **53. Consent order**

4 (1) If the Minister considers that —

5 (a) it is necessary or desirable to provide special protection
6 in respect of a place; and

7 (b) the likelihood of imminent damage to the place means
8 that a specific prohibition is urgently necessary,

9 the Minister may make a protection order with the prior written
10 consent of the owner of that place as to the terms of the order (a
11 *consent order*).

12 (2) A consent order must specify an expiry date and, before making
13 the order, the Minister must obtain the recommendation of the
14 Council as to what the expiry date should be.

15 **54. Stop work order**

16 (1) Subject to subsection (2), if the Minister considers that —

17 (a) it is necessary or desirable to provide special protection
18 in respect of a place; and

19 (b) the likelihood of imminent damage to the place means
20 that a specific prohibition is urgently necessary,

21 the Minister may make a protection order without the prior
22 written consent of the owner of the place as to the terms of the
23 order (a *stop work order*).

24 (2) Except with the leave of the Tribunal granted under
25 subsection (3), the Minister is not to make a stop work order in
26 relation to a place if —

27 (a) a stop work order relating to the place in respect of the
28 same or a similar matter has been revoked or has expired
29 within the preceding 12 months; or

1 (b) section 36(2) applies to the place for the time being.

2 (3) On the application of the Minister, the Tribunal may make an
3 order granting leave to make a stop work order of the kind
4 mentioned in subsection (2).

5 **55. Continuing protection order**

6 (1) In any other case where the Minister considers that it is
7 necessary or desirable to provide special protection in respect of
8 a place, the Minister may make a protection order if the
9 requirements of subsection (2) have been satisfied (a *continuing*
10 *protection order*).

11 (2) The Minister is not to make a continuing protection order unless
12 the Council has, in accordance with regulations —

13 (a) given notice in writing to every owner of land which is
14 likely to be directly affected, explaining the nature of the
15 special protection proposed and the reason for it; and

16 (b) undertaken consultation with each owner of land which
17 is likely to be directly affected and public consultation
18 in relation to the proposed continuing protection order;
19 and

20 (c) considered, and advised the Minister on, submissions
21 received in the course of consultation with owners and
22 with the public; and

23 (d) recommended to the Minister to make a continuing
24 protection order; and

25 (e) issued any advertisement that may be prescribed.

26 (3) Regulations must provide that if, after the Council has
27 recommended to the Minister to make a continuing protection
28 order, the Minister determines not to make an order, the Council
29 must publish an advertisement in relation to the Minister's
30 determination and the reasons for it.

31 (4) The Council is not to include in an advertisement referred to in
32 subsection (3) information regarding any person consulted, or

1 any submission received, in the course of public consultation
2 without the consent of the person consulted or the person
3 making the submission.

4 **56. Content of protection order**

5 (1) A protection order must contain a land description of the place
6 to which the order relates.

7 (2) A protection order may contain prohibitions relating to —

8 (a) the entry of persons on to the place to which the order
9 relates, other than entry by an owner or occupier; or

10 (b) the bringing of vehicles, machinery, equipment,
11 materials or substances on to the place; or

12 (c) any activity of a kind which, in the opinion of the
13 Minister, is likely to affect detrimentally the cultural
14 heritage significance of the place, or the capacity to
15 effect conservation of its cultural heritage significance;
16 or

17 (d) the demolition, damage or alteration of the place or any
18 portion of the place, or any building or structure; or

19 (e) anything which, in the opinion of the Minister, is likely
20 to cause disturbance to the place; or

21 (f) any development affecting the place or other matter in
22 respect of which the Minister is satisfied a prohibition is
23 needed to further the objectives of this Act.

24 (3) A prohibition contained in a protection order may be expressed
25 to be absolute or conditional or subject to the exercise of
26 discretion by a person or body specified in the order, and effect
27 shall be given to the prohibition in accordance with the tenor of
28 the order.

29 (4) Regulations may prescribe activities that may be carried out
30 despite the terms of a protection order or of a particular class of
31 protection orders.

1 **57. Notification of protection order**

2 If a protection order is made the Council —

- 3 (a) must serve a copy of the order, where practicable, on the
4 owner and each occupier of the place concerned; and
- 5 (b) must give statutory notification of the making of the
6 order; and
- 7 (c) except in the case of a stop work order, must publish an
8 advertisement containing a summary of the terms of the
9 order and setting out a sufficient description to identify
10 the place to which it refers; and
- 11 (d) may erect signs on or near the place concerned for the
12 purpose of informing the public of the making of the
13 order and of the matters which the order prohibits.

14 **58. Coming into effect of protection order**

15 (1) Subject to subsection (2), a protection order takes effect on
16 publication of a notice in the *Gazette* setting out its terms.

17 (2) A stop work order which —

- 18 (a) is affixed in a prominent position on the place to which
19 it relates; or
- 20 (b) is served on a person carrying out, or causing to be
21 carried out, any works or other activity at the place to
22 which the order refers, whether or not served at that
23 place,

24 has immediate effect, but the Council may cause notice of its
25 terms to be published in the *Gazette* for public information.

26 **59. Duration of protection order**

27 (1) A protection order ceases to have effect —

- 28 (a) in the case of a consent order, on the expiry date
29 specified in the order; or

- 1 (b) in the case of a stop work order —
- 2 (i) on the expiry of 60 days from the making of the
- 3 order; or
- 4 (ii) if the order is continued in force by the Tribunal
- 5 under section 60(5), on the expiry date fixed by
- 6 the Tribunal;
- 7 or
- 8 (c) in the case of a continuing protection order, on any
- 9 expiry date which may be specified in the order; or
- 10 (d) in any case, when the Minister, after consultation with
- 11 the Council, revokes the order by notice in the *Gazette*.
- 12 (2) If a protection order ceases to have effect, the Council must —
- 13 (a) give statutory notification of the cessation; and
- 14 (b) give notice to the owner of the land concerned and to
- 15 other prescribed persons that the order has ceased to
- 16 have effect; and
- 17 (c) remove any signs erected under section 57(d).
- 18 **60. Tribunal's powers as to protection order**
- 19 (1) The owner of a place to which a stop work order or a continuing
- 20 protection order relates may apply to the Tribunal for a review
- 21 of the order.
- 22 (2) The Minister may refer a stop work order to the Tribunal
- 23 seeking a determination that the order continue to have effect
- 24 for a period greater than 60 days from the making of the order.
- 25 (3) The provisions of the *Planning and Development Act 2005*
- 26 Part 14 apply to applications and referrals under this section,
- 27 with any modification that may be necessary, as they apply to
- 28 applications for review under that Act.
- 29 (4) On an application under subsection (1) the Tribunal may —
- 30 (a) revoke the protection order; or
- 31 (b) confirm the protection order; or

- 1 (c) modify the protection order.
- 2 (5) On a referral under subsection (2) the Tribunal may order that
 3 such of the terms of the prohibitions contained in the stop work
 4 order as the Tribunal may determine continue in force —
- 5 (a) permanently; or
 6 (b) for a specified period.
- 7 (6) Despite any application or reference to the Tribunal in respect
 8 of a stop work order, the order continues to have effect unless
 9 and until the Tribunal determines otherwise under
 10 subsection (4) or (5).

11 **Division 2 — Repair orders**

12 **61. Terms used**

13 In this Division —

14 *managed reserve* has the meaning given in the *Land*
 15 *Administration Act 1997* section 3(1);

16 *repair notice* means a notice given under section 62;

17 *unallocated Crown land* has the meaning given in the *Land*
 18 *Administration Act 1997* section 3(1);

19 *unmanaged reserve* has the meaning given in the *Land*
 20 *Administration Act 1997* section 3(1).

21 **62. Repair notice**

22 (1) If —

23 (a) a registered place suffers from neglect of a prescribed
 24 kind or extent; and

25 (b) the Council considers that, in consequence of the
 26 neglect, works are required to prevent irreversible
 27 deterioration to the place,

28 the Council may give written notice to the owner of the place or
 29 the occupier of any land comprised in the place stating that,

- 1 unless specified works are completed by a specified date, the
2 Council will advise the Minister to make a repair order in
3 relation to the place.
- 4 (2) Regulations made for the purposes of this section —
- 5 (a) may prescribe the form and content of notices given
6 under subsection (1); and
- 7 (b) must prescribe steps to be taken by the Council to afford
8 the owner or occupier opportunities for consultation and
9 negotiation with the Council regarding works to be
10 undertaken; and
- 11 (c) may provide for the Council, with the agreement of the
12 owner or occupier, to arrange for works to be
13 undertaken at the expense of the owner or occupier; and
- 14 (d) if the owner or occupier agrees to the Council arranging
15 works, may provide for the Council to —
- 16 (i) accept payment from the owner or occupier in
17 respect of the works; or
- 18 (ii) take a charge over property or other assets to
19 secure payment in respect of the works.

20 **63. Repair order**

- 21 (1) Subject to subsections (2) and (3), the Minister may make a
22 repair order in relation to a registered place requiring the owner
23 or occupier of the place to undertake specified works for the
24 purpose of —
- 25 (a) protecting the place from damage or deterioration due to
26 fire, weather or other causes; or
- 27 (b) securing the place from intrusion or vandalism; or
- 28 (c) maintaining or repairing the place to remedy or prevent
29 serious or irreparable damage or deterioration from any
30 cause.

- 1 (2) The Minister is not to make an order under subsection (1)
2 unless —
- 3 (a) the Council has advised the Minister that —
- 4 (i) it has served a repair notice on the owner or
5 occupier of the place and has taken the
6 prescribed steps for consultation and negotiation;
7 and
- 8 (ii) neither the works specified in the repair notice
9 nor other works satisfactory to the Council have
10 been carried out; and
- 11 (iii) the Council considers that stated works are
12 necessary for any of the purposes mentioned in
13 subsection (1);
- 14 and
- 15 (b) the Minister considers, having regard to the advice of
16 the Council, that —
- 17 (i) an order under subsection (1) is necessary for
18 any of the purposes mentioned in subsection (1);
19 and
- 20 (ii) the order is unlikely to cause undue hardship to
21 the person to whom the order is addressed.
- 22 (3) The Minister is not to make an order under subsection (1) in
23 relation to —
- 24 (a) unallocated Crown land or an unmanaged reserve,
25 except with the consent of the Minister for Lands; or
- 26 (b) a managed reserve placed in the care, control and
27 management of a Minister of the Crown or another
28 public authority that is responsible to a Minister, except
29 with the consent of that Minister; or
- 30 (c) a place that is owned by a Minister of the Crown or
31 another public authority that is responsible to a Minister,
32 except with the consent of that Minister.

- 1 (4) An order made under subsection (1) must contain —
2 (a) a land description of the place to which it relates; and
3 (b) particulars of the works to be undertaken; and
4 (c) a statement of the date by which the works must be
5 completed.
- 6 (5) Subject to subsection (4), regulations made for the purposes of
7 this section may prescribe the form and content of an order
8 under subsection (1).

9 **64. Notification of repair order**

- 10 If a repair order is made the Council —
11 (a) must serve a copy of the order on the person to whom it
12 is directed; and
13 (b) may erect signs on or near the place concerned
14 displaying a copy of the order; and
15 (c) must give statutory notification of the order.

16 **65. Standard of works**

- 17 A person undertaking works under a repair order or pursuant to
18 a repair notice must comply with —
19 (a) any applicable requirements under the *Building*
20 *Act 2011*, the *Local Government Act 1995*, the *Planning*
21 *and Development Act 2005* and any other written law
22 specified in the regulations; and
23 (b) any prescribed requirements or standards; and
24 (c) any standards or requirements specified in the repair
25 order or repair notice.

26 **66. Termination of repair order**

- 27 (1) A repair order terminates if —
28 (a) the Minister withdraws it by written notice to the person
29 to whom it is directed; or

- 1 (b) the Council confirms in writing for the purposes of this
2 section that the works required by the order have been
3 satisfactorily completed; or
4 (c) the Tribunal revokes it under section 67(3)(a).
- 5 (2) When a repair order is terminated the Council must —
6 (a) remove any signs relating to the order erected under
7 section 64(b); and
8 (b) withdraw the notification lodged under section 64(c) in
9 respect of the order.

10 **67. Tribunal's powers as to repair order**

- 11 (1) A person to whom a repair order is directed may apply to the
12 Tribunal within 28 days of the day on which a copy of the order
13 is served under section 64(a) for a review of the order.
- 14 (2) The provisions of the *Planning and Development Act 2005*
15 Part 14 apply to applications under this section, with any
16 modification that may be necessary, as they apply to
17 applications for review under that Act.
- 18 (3) On an application under subsection (1) the Tribunal may —
19 (a) revoke the repair order; or
20 (b) confirm the repair order; or
21 (c) modify the repair order.

22 **68. Exclusion of liability**

23 Neither the State nor the Minister nor the Council nor any of
24 their officers or employees is liable to any person for any injury,
25 loss or damage suffered as a result of the failure of any person
26 to comply with a repair notice or a repair order.

1 **Part 5 — Matters affecting places of heritage interest**

2 **Division 1 — Preliminary**

3 **69. Terms used**

4 In this Part —

5 *approval application* means an application for development
6 approval;

7 *decision-maker*, in relation to a proposal, means a public
8 authority who or which in the course of administering a written
9 law or otherwise carrying on any function makes, or is
10 empowered to make, a decision in respect of the proposal, but
11 does not include a court;

12 *proposal* means —

- 13 (a) an approval application; or
14 (b) a proposal, project, plan, programme, policy, public
15 work, operation or undertaking for or relating to the
16 development of any land owned, occupied or managed
17 by a public authority; or
18 (c) any other proposal by a public authority to exercise any
19 of its powers in a way which would or might
20 significantly affect the physical character of any land; or
21 (d) a submission or application relating to the development
22 of land of a kind which is prescribed to be a proposal for
23 the purposes of Part 5 Division 2.

24 **Division 2 — Proposals affecting places of heritage interest**

25 **Subdivision 1 — Proposals which must be referred**

26 **70. Proposals to which Subdivision applies**

27 (1) This Subdivision applies to a proposal which would, or would
28 be likely to, affect —

- 29 (a) a registered place; or

- 1 (b) a place which is the subject of a heritage agreement to
2 which the Council is a party; or
- 3 (c) a place which is the subject of a protection order, if the
4 terms of the order allow the Council to authorise a
5 proposal that the order would otherwise forbid.
- 6 (2) For the purposes of subsection (1), a proposal may affect a place
7 even if it is not directly related to that place.

8 **71. Referral of certain proposals to Council**

- 9 (1) A decision-maker considering a proposal to which this
10 Subdivision applies must refer the proposal to the Council for
11 its advice in accordance with the regulations as soon as
12 practicable.
- 13 (2) Subject to subsection (4), subsection (1) does not apply to a
14 proposal to alter the interior fabric of a church or other building
15 used primarily for services of worship if —
- 16 (a) the owner of the registered place gives the Council at
17 least 60 days written notice of the proposed alterations;
18 and
- 19 (b) the notice includes a declaration by an officer of the
20 church or denomination concerned that the alterations
21 are required solely for liturgical purposes.
- 22 (3) Subject to subsection (4), regulations may prescribe —
- 23 (a) a class or classes of proposals; or
- 24 (b) a decision-maker or a class or classes of
25 decision-makers; or
- 26 (c) a place or a class or classes of places,
27 in relation to which subsection (1) does not apply.
- 28 (4) Despite subsection (2) or (3), subsection (1) applies in relation
29 to a proposal which would, or would be likely, to affect a place
30 mentioned in section 70(1)(c).

1 **72. Advice on referred proposal**

- 2 (1) In accordance with the regulations, the Council must provide
3 advice on a referred proposal to the decision-maker and, if the
4 proposal is an approval application, to the applicant.
- 5 (2) In its advice provided under subsection (1) the Council may
6 address all aspects of conserving the place concerned so as to
7 retain its cultural heritage significance, including —
- 8 (a) maintenance, preservation, restoration, reconstruction,
9 adaptation and interpretation of the place; and
- 10 (b) retention of the associations and meanings of the place;
11 and
- 12 (c) retention or reintroduction of a use of the place.
- 13 (3) In its advice provided under subsection (1) the Council may
14 have regard to unrectified errors, omissions, refusals or failures
15 in complying with —
- 16 (a) any advice or approval that the Council has previously
17 given relating to the place concerned; or
- 18 (b) any obligation under this Act relating to the place
19 concerned.
- 20 (4) If —
- 21 (a) the Council has provided advice to a decision-maker on
22 a referred proposal; and
- 23 (b) the decision-maker has not made a decision with respect
24 to the proposal; and
- 25 (c) in the view of the Council there has been a material
26 change of circumstances or a substantial lapse of time
27 since it provided the advice,
- 28 the Council may modify the advice provided or withdraw the
29 advice provided and provide new advice.

1 **73. Decision on referred proposal**

- 2 (1) In respect of a referred proposal, a decision-maker is not to
3 make a decision which would, or would be likely to, adversely
4 affect to a significant extent a place mentioned in section 71(1)
5 (even though the decision is not directly related to that place)
6 unless —
- 7 (a) the decision-maker has used its best endeavours to
8 ensure that each person involved in the implementation
9 of the proposal will take all measures to minimise any
10 adverse effect which they can reasonably take; and
- 11 (b) the decision-maker has complied with section 71; and
- 12 (c) the decision-maker has either received advice on the
13 referred proposal from the Council under section 72 or
14 waited the prescribed time to receive advice; and
- 15 (d) subject to subsection (2), the decision made is consistent
16 with advice received from the Council.
- 17 (2) Subsection (1)(d) does not apply if the decision-maker finds that
18 there is no feasible and prudent alternative to the decision made.
- 19 (3) If the Council so advises under section 72, a decision-maker
20 must specify that its decision to approve a proposal relating to
21 any land mentioned in section 90 is conditional upon the owner
22 or occupier of that land entering into a heritage agreement in
23 relation to that land.
- 24 (4) Unless the Council so advises under section 72, a
25 decision-maker may not specify that its decision to approve a
26 proposal relating to any land mentioned in section 90 is
27 conditional upon the owner or occupier of that land entering
28 into a heritage agreement in relation to that land.
- 29 (5) Within the prescribed period after making a decision in respect
30 of a referred proposal, the decision-maker must notify the
31 Council in writing of its decision.

1 **74. Effect on certain proposals and decisions when a place**
2 **becomes a registered place**

3 (1) If, at the time that a place becomes a registered place, a
4 decision-maker is considering a proposal of a prescribed kind or
5 class which would, or would be likely to, affect that place,
6 sections 71, 72 and 73 apply in relation to that development
7 proposal.

8 (2) If, at the time that a place becomes a registered place —
9 (a) a decision-maker has made a decision in respect of a
10 proposal of a prescribed kind or class which would, or
11 would be likely to, affect that place; but
12 (b) the decision has not been substantially implemented or
13 acted upon,

14 the operation of the decision is suspended.

15 (3) No person may implement or act on a decision the operation of
16 which is suspended under subsection (2) except with the consent
17 in writing of the Council and in such manner and on such
18 conditions as the Council may specify.

19 **Subdivision 2 — Proposals which need not be referred**

20 **75. Decision on certain unrefereed proposals**

21 A decision-maker considering a proposal which would, or
22 would be likely to, affect —

- 23 (a) a place which is the subject of a heritage agreement to
24 which the Council is not a party; or
25 (b) a place which is the subject of a protection order, if the
26 terms of the order allow a person or body other than the
27 Council to authorise a proposal that the order would
28 otherwise forbid,

29 (even though the proposal is not directly related to that place)
30 must make a decision which is consistent with the heritage
31 agreement or the protection order, as the case may be.

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Subdivision 3 — General

76. Regulations

Regulations may provide for —

- (a) forms to be used to refer proposals for advice, and for the other purposes of this Part; and
- (b) information, evidence or assistance to be given to the Council in connection with a referred proposal; and
- (c) matters to which the Council must have regard in providing its advice on a referred proposal, and the form and content of that advice; and
- (d) time limits within which the Council must furnish advice; and
- (e) persons (in addition to the decision-maker) who must be notified of advice; and
- (f) the Council to reconsider, at the request of a decision-maker or an applicant, advice provided with a view to —
 - (i) amending it; or
 - (ii) setting it aside and substituting fresh advice;
- and
- (g) fees, charges and costs to be paid in connection with the making of a request to reconsider advice provided.

Division 3 — Works permits

77. Permit for works affecting registered place

- (1) A person who proposes to do anything —
 - (a) which would contravene section 123 but not section 124; and

- 1 (b) in respect of which no written law provides for
2 authorisation, permission, consent or approval pursuant
3 to an approval application,
4 may, on payment of the prescribed fee, apply to the Council in
5 accordance with the regulations for a works permit authorising
6 the doing of that thing.
- 7 (2) Within the prescribed time the Council must consider the
8 application in accordance with the regulations and —
9 (a) grant the works permit, either unconditionally or subject
10 to specified conditions which the Council considers to
11 be in furtherance of the objectives of this Act; or
12 (b) refuse the application,
13 and notify the applicant of its decision.
- 14 (3) Conditions imposed under subsection (2)(a) may include the
15 giving of a bond or other security to ensure compliance with the
16 conditions imposed.
- 17 (4) If the Council does not notify the applicant of its decision within
18 the prescribed time, it is taken to have refused the application.
- 19 (5) If the Council proposes to do anything mentioned in
20 subsection (1)(a) or (b) —
21 (a) the Council may apply to the Minister for a works
22 permit authorising the doing of that thing; and
23 (b) the Minister shall consider and determine the application
24 in accordance with subsections (2), (3) and (4) as if
25 references in those subsections to the Council were
26 references to the Minister.
- 27 **78. Tribunal's powers as to works permit**
- 28 (1) An applicant for a works permit under section 77 who is
29 aggrieved by a decision of the Council made under
30 subsection (2) to —
31 (a) refuse the application; or

- 1 (b) attach any condition to a works permit,
2 may within 28 days of being notified of the decision apply to
3 the Tribunal for a review of the decision.
- 4 (2) An applicant for a works permit under section 77 who is
5 aggrieved by a decision of the Council taken to have been made
6 under section 77(4) may within 28 days after the expiry of the
7 prescribed time for notification apply to the Tribunal for a
8 review of the decision.
- 9 (3) The provisions of the *Planning and Development Act 2005*
10 Part 14 apply to applications under this section, with any
11 modification that may be necessary, as they apply to
12 applications for review under that Act.

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Part 6 — Support for conservation

Division 1 — Valuation of land

79. Application of this Division

This Division applies to —

- (a) registered land; and
- (b) land that is subject to a heritage agreement.

80. Valuation of land

(1) When valuing land to which this Division applies under the *Valuation of Land Act 1978*, the Valuer-General —

- (a) must take into account any restrictions on the use of the land arising out of the entry of the land in the register or the heritage agreement relating to the land, as the case may be; and
- (b) must assume —
 - (i) that all improvements to or on the land at the date of valuation which contribute to the cultural heritage significance of the place must be conserved and are not to be demolished; and
 - (ii) that no improvements may be made to or on the land after the date of valuation.

(2) Nothing in subsection (1) prevents the Valuer-General from taking into account, in subsequent valuations of the same land, the effect of any improvements or demolitions which have been carried out.

81. Request for interim valuation

(1) The owner of land to which this Division applies may request the Valuer-General for an interim valuation of that land under the *Valuation of Land Act 1978* section 23.

- 1 (2) If an owner requests an interim valuation under subsection (1)
2 and since the last occasion on which the land was valued —
3 (a) the land has become registered land; or
4 (b) the land has become subject to a heritage agreement; or
5 (c) there has been a material amendment to the terms of a
6 heritage agreement to which the land is subject,
7 the Valuer-General must treat that fact as a circumstance which
8 renders it expedient that the land be valued.

Division 2 — Conservation assistance

9
10 **82. Provision of financial, technical and professional assistance**

- 11 (1) The Council may —
12 (a) make grants and loans and provide other types of
13 financial assistance; and
14 (b) provide technical and professional assistance,
15 for the identification, documentation and conservation of places
16 of cultural heritage significance, and for education, research and
17 publication that furthers the objectives of this Act.
18 (2) Regulations may provide for —
19 (a) types of financial assistance which the Council may
20 provide; and
21 (b) types of technical and professional assistance which the
22 Council may provide; and
23 (c) persons who are eligible to receive assistance; and
24 (d) projects for which the Council may provide assistance;
25 and
26 (e) places in relation to which the Council may provide
27 assistance; and
28 (f) the terms and conditions upon which assistance may be
29 granted (including the provision of security by recipients
30 of assistance for the performance of their obligations in

- 1 connection with that assistance, and the entry by
2 recipients of assistance into heritage agreements); and
3 (g) forms and procedures for applying for assistance, and
4 considering and determining applications; and
5 (h) any other matter connected with or incidental to the
6 provision of conservation assistance.

7 **Division 3 — Modification of written laws**

8 **83. Terms used**

- 9 (1) In this Division —
10 ***modification order*** means an order made under section 85(1).
11 (2) In this Division reference to a written law does not include
12 reference to the *Building Act 2011* or any subsidiary legislation
13 made under or arising out of the operation or implementation of
14 that Act.

15 **84. Council may recommend modification order**

- 16 (1) At the request of the owner of a registered place or otherwise,
17 the Council may, in accordance with regulations —
18 (a) advise the Minister that in its opinion a written law or a
19 provision of a written law effectively prevents the
20 conservation of the registered place by making it
21 unlawful or economically unviable; and
22 (b) recommend the Minister to make a modification order in
23 stated terms to enable conservation of the registered
24 place.
25 (2) In acting under subsection (1) the Council must —
26 (a) give due consideration to the public interest, health and
27 safety; and
28 (b) take account of any submissions received in accordance
29 with the regulations.

- 1 (3) Regulations —
- 2 (a) must provide for the Council to give notice to interested
- 3 persons and to the public of any advice which it is
- 4 considering, setting out proposed terms for the order to
- 5 be suggested and describing how the order would enable
- 6 conservation of the registered place; and
- 7 (b) must provide for the Council to consult the owner and
- 8 other interested persons and members of the public on
- 9 the advice which it is considering.

10 **85. Minister may modify written law**

- 11 (1) Subject to subsection (4), the Minister may, by notice published
- 12 in the *Gazette*, order that a specified written law is taken to be
- 13 modified so that, in relation to a specified registered place or to
- 14 any land which is associated with that registered place —
- 15 (a) it does not apply or have effect; or
- 16 (b) it applies or has effect subject to specified amendments,
- 17 in specified circumstances or subject to specified
- 18 conditions.
- 19 (2) A modification order has effect according to its terms and the
- 20 specified written law is taken to have been amended
- 21 accordingly.
- 22 (3) In subsections (1) and (2) —
- 23 ***specified*** means specified in the notice.
- 24 (4) The Minister is not to make a modification order unless —
- 25 (a) the Council has recommended the terms of the
- 26 modification order under section 84; and
- 27 (b) the Minister considers that in making the
- 28 recommendation, the Council has given due
- 29 consideration to the public interest, health and safety;
- 30 and
- 31 (c) if the Governor has committed the administration of the
- 32 written law concerned to another Minister of the Crown,

- 1 that other Minister has consented in writing to the
2 making of the modification order; and
- 3 (d) the Minister considers that the need to conserve the
4 registered place warrants the making of the modification
5 order, even though the order may affect the interests of
6 persons in a way that is not acceptable to them.
- 7 (5) If, after the Council has recommended that the Minister make a
8 modification order, the Minister determines not to make an
9 order, the Council must publish an advertisement in relation
10 to the Minister's determination and the reasons for it.
- 11 (6) Subject to section 86, a modification order takes effect —
12 (a) on the day of publication in the *Gazette*; or
13 (b) if another day is provided for in the modification order,
14 on that day.
- 15 (7) In accordance with the regulations, the Council must notify the
16 owner of land to which a modification order applies of the
17 making and terms of the modification order and of the day on
18 which it takes effect.
- 19 (8) The Minister may —
20 (a) amend a modification order by making another
21 modification order; or
22 (b) revoke a modification order.
- 23 **86. Modification order subject to disallowance**
- 24 *Interpretation Act 1984* section 42 applies to a modification
25 order as though it were a regulation.
- 26 **87. Powers of the Tribunal in relation to modification order**
- 27 (1) Within the period of 28 days after the date on which a
28 modification order is published in the *Gazette*, a person
29 aggrieved by the order may apply to the Tribunal to review the
30 order.

- 1 (2) On an application under subsection (1), if the Tribunal is
2 satisfied —
- 3 (a) that any requirement of this Act relating to the
4 modification order has not been complied with; and
- 5 (b) that the failure to comply has substantially prejudiced
6 the interests of the applicant,
- 7 it may make an order setting aside or amending the modification
8 order as it thinks fit.
- 9 (3) If a modification order is amended by the Tribunal —
- 10 (a) it has effect according to its amended terms; and
- 11 (b) section 86 applies to the amended modification order.

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Part 7 — Heritage agreements

88. Terms used

In this Part —

Council, in relation to a heritage agreement entered or to be entered into by a public authority other than the Council, includes references to that public authority;

subject land, in relation to a heritage agreement, means land which is the subject of the agreement;

successor in title, in relation to any land, includes a person who is a mortgagee or the proprietor of an encumbrance in possession of the land pursuant to a mortgage or encumbrance, notwithstanding that the mortgage or encumbrance was entered into before a memorial was entered on the title pursuant to section 95 or notice of the heritage agreement was otherwise given.

89. Heritage agreement

The Council or a public authority may make an agreement on behalf of the State with an owner of land of the kind described in section 90 under which the owner, in so far as the owner's interest in the land permits, makes commitments, undertakes obligations or agrees to provisions of the kind mentioned in section 91.

90. Land to which a heritage agreement may relate

(1) A heritage agreement may relate to land constituting the whole or any part of —

(a) a registered place; or

(b) a place in relation to which —

(i) the Council has made a recommendation under section 39(2); and

(ii) the Minister has not yet given a direction under section 40(1);

- 1 or
- 2 (c) a place which is the subject of a protection order; or
- 3 (d) a place which is included in —
- 4 (i) a heritage list established or maintained under a
- 5 local planning scheme; or
- 6 (ii) a heritage area designated under a local planning
- 7 scheme;
- 8 or
- 9 (e) any other place which the Council has approved as the
- 10 subject of a heritage agreement by reason of —
- 11 (i) special interest, not necessarily amounting to
- 12 significance, relevant to the cultural heritage
- 13 which that place possesses; or
- 14 (ii) the relationship of that place to a registered
- 15 place; or
- 16 (iii) the nature of, or the potential relationship of the
- 17 place to and its effect or potential effect upon, a
- 18 particular environment meriting conservation.
- 19 (2) A heritage agreement may relate to land contiguous to or
- 20 associated with a place mentioned in subsection (1), but only in
- 21 so far, and to such depth below the natural surface, as may be
- 22 reasonably necessary for the purposes of the agreement.

23 **91. Form and content of heritage agreement**

- 24 (1) A heritage agreement must be expressed to be made for the
- 25 purposes of this Part.
- 26 (2) A heritage agreement —
- 27 (a) must provide for the owner of the subject land, in so far
- 28 as the interest of the owner permits, to make
- 29 commitments or undertake obligations regarding the
- 30 conservation of the subject land; and

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- 1 (b) subject to the regulations, may include any other
2 provision which is necessary or convenient for the
3 purposes of carrying into effect the objectives of this
4 Act.
- 5 (3) Without limiting this section, a heritage agreement may provide
6 for —
- 7 (a) the carrying out of specified works, or works of a
8 specified kind or to a specified standard; and
- 9 (b) restrictions on the carrying out of specified works, or
10 works of a specified kind or standard; and
- 11 (c) requirements or restrictions regarding the design, height,
12 scale, siting, materials or colours connected with any
13 development of subject land; and
- 14 (d) requirements or restrictions regarding the use of subject
15 land; and
- 16 (e) requirements or restrictions regarding the conservation,
17 interpretation, maintenance or management of subject
18 land, or of specimens or artefacts in, on or connected
19 with subject land; and
- 20 (f) the inspection, by or on behalf of the Council, of the
21 land or of works carried out on the subject land; and
- 22 (g) the payment of a contribution towards, or the provision
23 of an indemnity in respect of, costs incurred by the
24 Council in relation to the subject land; and
- 25 (h) subject to the approval of the Minister, the provision by
26 the owner of the subject land of security for the
27 performance of any commitment or obligation contained
28 in the agreement; and
- 29 (i) any other matter for which, under the regulations, a
30 heritage agreement may provide.

- 1 **92. Prescribed provisions for heritage agreements**
- 2 (1) Regulations may prescribe provisions relating to —
- 3 (a) the terms used in heritage agreements and the
- 4 interpretation of those terms; and
- 5 (b) the scope, duration and termination of heritage
- 6 agreements; and
- 7 (c) the manner of providing notices under heritage
- 8 agreements; and
- 9 (d) remedies for breach or repudiation of heritage
- 10 agreements, or default under heritage agreements; and
- 11 (e) the governing law of heritage agreements; and
- 12 (f) procedures for resolving disputes arising under or in
- 13 connection with heritage agreements; and
- 14 (g) the measurement of damages, compensation or penalties
- 15 in connection with heritage agreements; and
- 16 (h) any other matter connected with the formation,
- 17 interpretation and enforcement of heritage agreements.
- 18 (2) The regulations must designate each provision prescribed under
- 19 subsection (1) as —
- 20 (a) an implied provision; or
- 21 (b) a model provision.
- 22 (3) A designation under subsection (2) may be expressed to have
- 23 effect in relation to all heritage agreements, or prescribed
- 24 heritage agreements, or a prescribed class of heritage
- 25 agreements.
- 26 (4) If a provision is designated under subsection (2)(a) as an
- 27 implied provision in relation to a heritage agreement —
- 28 (a) the implied provision has effect as a provision of the
- 29 heritage agreement; and
- 30 (b) if it is inconsistent with another provision of the heritage
- 31 agreement, the implied provision prevails and the other

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1 provision is, to the extent of the inconsistency, of no
2 effect.

3 (5) A provision designated under subsection (2)(b) as a model
4 provision in relation to a heritage agreement may be included as
5 a provision of the heritage agreement by appropriate reference
6 in the express terms of the heritage agreement.

7 **93. Operation of heritage agreement**

8 (1) Subject to subsections (2) and (3), a heritage agreement —

9 (a) comes into operation on a day specified, or on the
10 happening of an event specified, in the agreement; and

11 (b) may be varied or terminated —

12 (i) by a subsequent heritage agreement entered into
13 between the parties to the agreement or their
14 successors in title; or

15 (ii) otherwise, in a manner or in circumstances
16 provided for in the agreement.

17 (2) A heritage agreement does not come into operation until —

18 (a) the Council provides each executed copy of the
19 agreement to the Minister and recommends that the
20 Minister certifies the agreement under this section; and

21 (b) the Minister is satisfied that the agreement is desirable
22 for the purposes of, and complies with, this Act; and

23 (c) the Minister certifies that fact on each executed copy of
24 the agreement.

25 (3) A variation to a heritage agreement does not come into
26 operation until —

27 (a) the Council provides each executed copy of the
28 document evidencing the variation to the Minister and
29 recommends that the Minister certifies it under this
30 section; and

- 1 (b) the Minister is satisfied that the agreement as varied is
2 desirable for the purposes of, and complies with, this
3 Act; and
- 4 (c) the Minister certifies that fact on each executed copy of
5 the document evidencing the variation.
- 6 (4) In any legal proceedings, an apparently genuine document
7 purporting to be a copy of a heritage agreement or of a
8 document evidencing a variation to a heritage agreement
9 certified under this section is, in the absence of proof to the
10 contrary, proof of the agreement and its provisions.

11 **94. Record of heritage agreements**

- 12 (1) The Council must maintain a record of the text of every heritage
13 agreement entered into or varied under this Act.
- 14 (2) Subject to subsection (3), the Council must make available to
15 any person, on payment of any prescribed fee, a copy of any
16 heritage agreement currently in force and of any variation to
17 that agreement.
- 18 (3) Regulations may prescribe that specified details or items of
19 information must be redacted from a copy made available under
20 subsection (2).

21 **95. Statutory notification**

- 22 (1) The Council may give statutory notification of the coming into
23 operation of a heritage agreement.
- 24 (2) If statutory notification of the coming into operation of a
25 heritage agreement is given under subsection (1), the rights and
26 obligations of the State and of all parties to the agreement pass
27 to and are binding on and enforceable against or by their
28 respective successors in title, and all such persons are taken to
29 have notice of the agreement.

1 **96. Enforcement of heritage agreement by Council**

- 2 (1) A heritage agreement is a contract binding on the State and on
3 all parties and, if the Council has given statutory notification in
4 relation to the heritage agreement under section 95, on their
5 respective successors in title.
- 6 (2) Subject to subsection (3), the Council may enforce a heritage
7 agreement on behalf of the State against any owner of subject
8 land upon whom it is binding.
- 9 (3) The Council on behalf of the State is not to institute or intervene
10 in any proceedings arising out of a heritage agreement to which
11 the Council is not a party, unless —
- 12 (a) the public authority which entered into the agreement on
13 behalf of the State consents; or
- 14 (b) the Minister certifies that in the Minister's view consent
15 has been unreasonably withheld.
- 16 (4) If a public authority consents as provided in subsection (3)(a) or
17 the Minister certifies as provided in subsection (3)(b) —
- 18 (a) the Council on behalf of the State may be or become a
19 party to the proceedings as if it had always been a party
20 to the agreement; and
- 21 (b) the Council shall have all the rights, including rights of
22 appeal, of a party to the proceedings; and
- 23 (c) the costs of those proceedings on behalf of the State
24 shall be borne by the Council unless the court otherwise
25 orders.

26 **97. Powers of the Tribunal in relation to heritage agreement**

- 27 (1) If —
- 28 (a) an owner of land of the kind described in section 90 is
29 willing to enter into a heritage agreement with the
30 Council; but

- 1 (b) negotiations for an agreement have not resolved all
2 matters of concern to the owner,
- 3 the owner may apply to the Tribunal to consider stated matters
4 of concern and to determine what provisions the agreement
5 should contain in respect of those matters.
- 6 (2) The provisions of the *Planning and Development Act 2005*
7 Part 14 apply to applications under this section, with any
8 modification that may be necessary, as they apply to
9 applications for review under that Act.
- 10 (3) On the application of any party to a heritage agreement, the
11 Tribunal may —
- 12 (a) make an order directing any person to perform their
13 obligations under the agreement; or
- 14 (b) make an order for the payment of damages or
15 compensation for failure to perform obligations under
16 the agreement; or
- 17 (c) make any other order that is consistent with the
18 objectives of this Act to secure performance of the
19 agreement.
- 20 (4) Nothing in this section affects the jurisdiction of any court.

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Part 8 — Local heritage surveys

98. Term used: local heritage survey

In this Part —

local heritage survey means a survey prepared under section 99(1).

99. Local heritage survey

- (1) A local government must prepare a survey of places within its district which in its opinion are, or may become, of cultural heritage significance to the district.
- (2) In preparing, reviewing and updating a local heritage survey, a local government must have regard to —
 - (a) the purposes set out in section 100; and
 - (b) guidelines published under section 101.
- (3) After preparing a local heritage survey, and after each occasion on which it reviews and updates a local heritage survey, a local government must —
 - (a) provide the Council with a copy of the local heritage survey; and
 - (b) make the local heritage survey available to the public.

100. Purposes of local heritage survey

The purposes of a local heritage survey include —

- (a) identifying and recording places that are, or may become, of cultural heritage significance to a local government district; and
- (b) assisting the local government in making and implementing decisions that are in harmony with cultural heritage values; and
- (c) providing a cultural and historical record of the district; and

- 1 (d) providing an accessible public record of places of
2 cultural heritage significance to the district; and
3 (e) assisting a local government in preparing a heritage list
4 or list of heritage areas under a local planning scheme.

5 **101. Guidelines for local heritage surveys**

- 6 (1) The Council must publish guidelines on the preparation, review
7 and updating of local heritage surveys, including guidelines
8 on —
9 (a) criteria for the inclusion of places in the survey; and
10 (b) assessment processes; and
11 (c) processes for consultation with interested parties and
12 with the public; and
13 (d) processes for reviewing and updating the survey, and the
14 frequency of reviews; and
15 (e) processes and mechanisms for making surveys available
16 to the public; and
17 (f) any other matter the Council considers appropriate.
- 18 (2) Guidelines published under this section do not have legislative
19 effect.

1 **Part 9 — State Government heritage**

2 **102. Terms used**

3 In this Part —

4 **dispose**, in relation to a heritage asset, means —

- 5 (a) sell all or part of the heritage asset to a person other than
6 a State agency; or
- 7 (b) lease all or part of the heritage asset for a period of
8 10 years or longer to a person other than a State agency;
9 or
- 10 (c) demolish all or part of structures erected on the asset;

11 **heritage asset**, in relation to a State agency, means a place
12 which is owned, occupied or controlled by the State agency and
13 which is —

- 14 (a) a registered place; or
- 15 (b) a place which is prescribed to be a heritage asset for the
16 purposes of this Part;

17 **State agency** means —

- 18 (a) a department of the Public Service; or
- 19 (b) an agency or instrumentality of the State; or
- 20 (c) a statutory authority within the meaning given in
21 *Financial Management Act 2006* section 3.

22 **103. Guidelines concerning State Government heritage**

23 (1) The Council must publish guidelines on the preparation, review
24 and updating by State agencies of inventories of places which
25 they own, occupy or control, including guidelines on —

- 26 (a) criteria for the inclusion of places in the survey; and
- 27 (b) assessment processes; and
- 28 (c) processes for consultation with interested parties and
29 with the public; and
- 30 (d) the frequency of review; and

- 1 (e) any other matter the Council considers appropriate.
- 2 (2) The Council must publish guidelines for State agencies on the
3 management of their heritage assets and on the integration of
4 heritage management into asset management generally.
- 5 (3) Guidelines published under this section do not have legislative
6 effect.

7 **104. Disposal of heritage assets**

8 Regulations may provide that, before a State agency disposes of
9 a heritage asset —

- 10 (a) it must give the Council prescribed notice of, and
11 provide prescribed information regarding, the proposed
12 disposal; and
- 13 (b) it must consult the Council regarding the preparation of
14 a plan or strategy for the continuing conservation of the
15 heritage asset; and
- 16 (c) in the case of a heritage asset which is a registered place,
17 if it is to be sold or leased the agency must require the
18 purchaser or lessee to enter into a heritage agreement in
19 relation to the heritage asset.

1 **Part 10 — Acquisitions and compensation**

2 **105. Compulsory acquisition**

3 (1) If —

- 4 (a) a person has been convicted of an offence under
5 section 127(1) in relation to any registered land; or
- 6 (b) in the Minister’s opinion the owner of registered land
7 has failed to comply with an order made under Part 4
8 Division 2; or
- 9 (c) it appears to the Minister on the advice of the Council
10 that the continuation of any registered land in a
11 condition suitable to effect conservation of its cultural
12 heritage significance is in jeopardy,

13 the Minister may, after considering the advice of Council given
14 after consultation with the owner, declare that the land is
15 required for the protection and preservation of a place of
16 scientific or historical interest.

17 (2) An interest in registered land which is the subject of a
18 declaration made under subsection (1) may be taken under the
19 *Land Administration Act 1997* Part 9 as if for a public work, and
20 for the purposes of Parts 9 and 10 of that Act the Council is
21 taken to be the acquiring authority.

22 (3) This section does not affect the power of the Minister for Lands
23 to take registered land under the *Land Administration Act 1997*
24 Part 9.

25 **106. Compensation for compulsory acquisition**

26 (1) This section applies to a registered place —

- 27 (a) an interest in which is taken under the *Land*
28 *Administration Act 1997* Part 9; and
- 29 (b) in relation to which —
- 30 (i) the owner has been convicted of an offence
31 under section 127(1); or

- 1 (ii) the Minister has reasonable cause to believe that
2 a building or other feature on the registered place
3 has been deliberately allowed to fall into
4 disrepair for the purpose of justifying its
5 demolition and redevelopment or the
6 redevelopment of the site; or
- 7 (iii) the Minister has reasonable cause to believe that
8 the registered place was acquired by the claimant
9 within the preceding period of 3 years with the
10 intention of demolishing a building.
- 11 (2) In assessing compensation payable under the *Land*
12 *Administration Act 1997* Part 10 in relation to a registered place
13 to which this section applies —
- 14 (a) the value to be attributed to the registered place must be
15 assessed having regard to the actual condition of the
16 registered place and of any building or other feature on
17 the registered place; and
- 18 (b) it must be assumed that consent would not be granted
19 under any written law for the removal of a building or
20 other feature on the registered place, or for any
21 development of a building or other feature on the
22 registered place other than its restoration and
23 conservation; and
- 24 (c) no account may be taken of the potential use of the
25 registered place or of any adjacent land; and
- 26 (d) any amount which a particular purchaser might be
27 prepared to offer by reason of the special needs of that
28 purchaser must be disregarded.

29 **107. Tribunal's powers as to acquisition and compensation**
30 **decision**

- 31 (1) A person who is aggrieved by a decision of the Minister under
32 section 105 may apply to the Tribunal to determine whether the
33 Minister has reasonable cause to declare that the land concerned

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1 is required for the protection and preservation of a place of
2 scientific or historical interest.

3 (2) A person who is adversely affected by a belief referred to in
4 section 106(1)(b)(ii) or (iii) held by the Minister may apply to
5 the Tribunal to determine whether the Minister has reasonable
6 cause to hold that belief.

7 (3) The Tribunal may determine an application under this section,
8 and the Minister and the Minister administering the *Land*
9 *Administration Act 1997* Part 9 must give effect to the
10 determination.

11 (4) In an application under this section the nature or degree of the
12 cultural heritage significance of any place is not a matter to be
13 determined by the Tribunal.

14 **108. Acquisition by consent**

15 Subject to this Act, the Council or a public authority may
16 purchase or otherwise acquire by consent any property or
17 interest in property, and deal with that property or interest, if in
18 the opinion of the Minister that is necessary or desirable in
19 furtherance of the objectives of this Act.

20 **109. Request for acquisition**

21 (1) An owner of any land other than Crown land who claims to be
22 denied all economically viable use of the land by the operation
23 of this Act may by notice in writing request the Council to
24 acquire the land, or cause it to be acquired, under section 108.

25 (2) If, following a request under subsection (1), the Council
26 declines to acquire the land, or the owner is not satisfied with
27 the terms on which the Council offers to acquire the land, the
28 owner may apply to the Tribunal to determine —

29 (a) whether the owner is denied all economically viable use
30 of the land by the operation of this Act; and

- 1 (b) if so, whether it is appropriate for the Council to acquire
2 the land as though for conservation works to conserve
3 its cultural heritage significance,
4 and the Tribunal may determine those questions.
- 5 (3) If the Tribunal determines under subsection (2) that it is
6 appropriate for the Council to acquire land, it may require the
7 Council to acquire that land where practicable upon terms
8 agreed between the Council and the owner but otherwise by
9 taking it under the *Land Administration Act 1997* Part 9 as read
10 with section 105 as though the land were the subject of a
11 declaration made under section 105(1).

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Part 11 — Enforcement

Division 1 — Inspectors

110. Term used: inspector

In this Division —

inspector means a person appointed under section 111(1) and includes a police officer.

111. Appointment of inspectors

(1) The Minister may appoint a person to be an inspector for the purposes of this Act.

(2) The Minister —

(a) must give to a person appointed under subsection (1) a certificate in a prescribed form evidencing the appointment; and

(b) may specify in the certificate that the person is appointed only until a stated date; and

(c) may specify in the certificate that the person may exercise only specified functions of an inspector under this Act,

and the appointment is limited as specified in the certificate.

(3) An inspector appointed under subsection (1) must produce the certificate referred to in subsection (2)(a) whenever requested to do so in connection with the performance of the functions of an inspector under this Act.

(4) The appointment of an inspector under subsection (1) does not —

(a) mean that the *Public Sector Management Act 1994* Part 3 or any other Act applying to persons as officers of the public service of the State applies to the inspector; or

- 1 (b) affect the application to the inspector of any Act referred
2 to in paragraph (a) that applied to the inspector at the
3 time of the appointment.

4 **112. Police officers to have powers of inspectors**

- 5 (1) For the purposes of this Act, a police officer has the powers of
6 an inspector under this Act and is taken to be such an officer.
- 7 (2) Nothing in this Division derogates from the powers of a police
8 officer.

9 **113. Impersonation**

- 10 (1) A person who falsely represents that the person is an inspector
11 appointed under section 111 commits an offence.
12 Penalty for this subsection: a fine of \$5 000.
- 13 (2) A person who falsely represents that the person is a member,
14 employee or agent of the Council commits an offence.
15 Penalty for this subsection: a fine of \$500.

16 **Division 2 — Entry and investigation**

17 **114. Term used: investigate**

- 18 In this Division —
- 19 *investigate* means make any inspection, observation or inquiry,
20 ask any questions, request any information, take any
21 photographs or seize any objects which may provide evidence
22 of —
- 23 (a) an offence under this Act; or
- 24 (b) a breach of a heritage agreement,
- 25 for the purpose of ascertaining whether the requirements of or
26 arising under this Act are being or have been observed and
27 *investigation* has a corresponding meaning.

1 **115. Powers of entry and investigation**

- 2 (1) Subject to section 111(2), an inspector may, together with any
3 person the inspector thinks competent to assist in making an
4 inspection or examination —
5 (a) enter any land with the consent of the occupier; and
6 (b) make any investigations.
- 7 (2) In the exercise of powers under this section an inspector must
8 conform so far as is practicable to any reasonable requirements
9 of the person owning or using the land which are necessary to
10 prevent obstruction of business or operations on or in the land.

11 **116. Application for entry warrant**

- 12 (1) An inspector may apply to a justice or magistrate for an entry
13 warrant authorising the entry of premises for the purposes of
14 making investigations.
- 15 (2) An inspector may apply for an entry warrant for premises even
16 if the inspector has power to enter the premises without a
17 warrant.
- 18 (3) The *Criminal Investigation Act 2006* section 13 applies to and
19 in respect of an application made under this section and
20 section 13(8) of that Act applies in relation to an entry warrant.
- 21 (4) An application for an entry warrant must —
22 (a) describe with reasonable particularity the premises to be
23 entered; and
24 (b) state that the inspector has reasonable grounds for
25 believing that entry to the premises is necessary for the
26 purposes of making investigations; and
27 (c) state the investigations for which entry to the premises is
28 required; and
29 (d) include any other information that is prescribed.

1 **117. Issue of entry warrant**

- 2 (1) A justice or magistrate to whom an application is made under
3 section 116 may issue an entry warrant, if satisfied that there are
4 reasonable grounds for believing that entry of the premises is
5 necessary for the purposes of making investigations.
- 6 (2) An entry warrant must contain the following information —
- 7 (a) a reasonably particular description of the premises to be
8 entered;
- 9 (b) a reasonably particular description of the purposes for
10 which entry to the premises is required;
- 11 (c) the period (not exceeding 30 days) during which it may
12 be executed;
- 13 (d) the name of the justice or magistrate who issued it;
- 14 (e) the date and time when it was issued.

15 **118. Duration of entry warrant**

- 16 (1) An entry warrant remains in force —
- 17 (a) for the period (not exceeding 30 days) specified in the
18 warrant as the period during which it remains in force;
19 or
- 20 (b) if no period is so specified, for 30 days from the date of
21 its issue.
- 22 (2) However, an entry warrant ceases to be in force when it is
23 executed.

24 **119. Effect of entry warrant**

- 25 (1) An entry warrant has effect according to its content and this
26 section.
- 27 (2) An entry warrant comes into force when it is issued by a justice
28 or magistrate.

- 1 (3) An entry warrant authorises the inspector executing the warrant,
2 at the times and during the period stated in the warrant —
3 (a) to enter the premises described in the warrant; and
4 (b) to make investigations.

5 **120. Execution of entry warrant**

- 6 (1) An entry warrant may be executed by the inspector to whom it
7 is issued or by any other inspector.
8 (2) An inspector executing an entry warrant must, at the reasonable
9 request of a person apparently in charge of the premises,
10 produce the warrant.

11 **121. Powers to obtain information**

- 12 (1) A person who is an owner, occupier or person in charge or
13 apparently in charge of any land must furnish to an inspector
14 carrying out a function under this Act all reasonable facilities
15 and all information that the person is capable of furnishing and
16 that is required by the inspector with respect to the performance
17 of the inspector's functions under this Act.
18 (2) The Council may by written notice require the owner or
19 occupier of any land, within 7 days or any longer period
20 specified in the notice, to furnish to the Council for the purposes
21 of this Act any information relating to the land or the building
22 which the Council requires.
23 (3) An inspector may, by written notice, require any person who
24 appears to the inspector to be carrying out, or proposing to carry
25 out, works that might involve an offence under this Act to
26 furnish orally or, if so requested in the notice, in writing the
27 name and address of the person who on the date specified in the
28 notice was —
29 (a) the owner of; or
30 (b) the occupier of; or

- 1 (c) in control of any equipment, works or activity appearing
2 to relate to,
3 the place or part of a place concerned within the period
4 specified in that notice.
- 5 (4) An inspector may require a person who the inspector believes
6 has committed, or is about to commit, an offence under this Act
7 to state that person's full name and usual place of residence.

8 **122. Obstructing execution of the Act**

9 A person commits an offence if the person —

- 10 (a) wilfully delays or obstructs a person acting in the
11 execution of this Act; or
12 (b) does not comply with any reasonable requirement made
13 by a person acting in the execution of this Act; or
14 (c) when required to give any information under this Act,
15 knowingly gives or causes to be given information that
16 to the knowledge of that person is false or misleading in
17 a material particular.

18 Penalty: a fine of \$10 000.

19 **Division 3 — Offences**

20 **123. Damaging registered place**

- 21 (1) Subject to subsection (2), a person must not in, or in relation to,
22 a registered place —
23 (a) alter the fabric of the place or any part of, or thing in,
24 that place so that the cultural heritage significance of the
25 place is detrimentally affected; or
26 (b) demolish, damage or despoil that place or any part of, or
27 thing in, that place; or

- 1 (c) remove any thing from that place so that the cultural
2 heritage significance of the place is detrimentally
3 affected,
4 or authorise, cause or permit any other person to do any of those
5 things.
6 Penalty for this subsection:
7 (a) a fine of \$1 000 000;
8 (b) for a daily penalty, a fine of \$50 000.
- 9 (2) Subsection (1) does not apply to a person in respect of work that
10 is authorised by —
11 (a) a decision made in accordance with Part 5 Division 2; or
12 (b) a works permit granted under section 77.

13 **124. Contravention of protection order**

- 14 (1) A person must not contravene, authorise, cause or permit any
15 other person to contravene, a prohibition contained in a
16 protection order so that the cultural heritage significance of the
17 place to which the protection order applies is detrimentally
18 affected.
19 Penalty for this subsection:
20 (a) a fine of \$1 000 000 and imprisonment for one year;
21 (b) for a daily penalty, a fine of \$50 000.
- 22 (2) A person on whom a copy of a stop work order has been served
23 must not carry out, or authorise, cause or permit to be carried
24 out any works or activity of a kind prohibited by the order.
25 Penalty for this subsection:
26 (a) a fine of \$1 000 000 and imprisonment for one year;
27 (b) for a daily penalty, a fine of \$50 000.
- 28 (3) If a copy of a stop work order is affixed in a prominent position
29 on the place to which it relates, a person must not carry out, or
30 authorise, cause or permit to be carried out, in or in relation to

1 that place, any works or activity of a kind prohibited by that
2 order.

3 Penalty for this subsection:

- 4 (a) a fine of \$1 000 000 and imprisonment for one year;
5 (b) for a daily penalty, a fine of \$50 000.

6 (4) A person convicted under any of subsection (1), (2) or (3) is not
7 liable to be convicted under any other of those subsections or
8 under any other provision of this Act in respect of a
9 contravention of the same or a substantially similar nature
10 occurring at or about the same time in relation to the same
11 place.

12 **125. Charge under section 123 or 124: defences of necessity**

13 It is a defence to a charge under section 123 or 124 to show —

- 14 (a) that any works which are the subject of the charge —
15 (i) were required by law; or
16 (ii) were urgently necessary —
17 (I) to avoid an imminent danger to life or
18 health; or
19 (II) for the immediate preservation of a
20 building or the prevention of
21 immediately impending damage to
22 neighbouring property;

23 and

- 24 (b) in either case, that as soon as practicable after the
25 necessity for the works arose the Council was given
26 written notice of the proposal to carry out the works.

27 **126. Onus of proof in demolition offences**

28 In any prosecution of an owner of land for an offence under
29 section 123 or 124 arising from the substantial demolition of a
30 building or structure, if the circumstances suggest that the
31 owner has not suffered significant financial loss as a result of

1 the demolition the owner is presumed to have carried out, or
2 authorised, caused or permitted another person to carry out, the
3 demolition unless it is proven that the owner did not do so.

4 **127. Contravention of repair order**

5 (1) The owner of a place to which a repair order relates must
6 complete the specified works by the specified date.

7 Penalty for this subsection:

8 (a) a fine of \$1 000 000 and imprisonment for one year;

9 (b) for a daily penalty, a fine of \$50 000.

10 (2) If an act or omission is an offence against subsection (1) and
11 also an offence against another provision of this Act, a person
12 convicted under subsection (1) is not liable to be proceeded
13 against under that other provision in respect of a contravention
14 of the same or a substantially similar nature occurring at or
15 about the same time in relation to the same place.

16 **Division 4 — Orders following offences**

17 **128. Restoration order**

18 (1) If a person is convicted of an offence under this Act involving
19 the alteration to the fabric of, or demolition, damage or
20 despoliation of, any place or the removal of any thing from any
21 place, a court of competent jurisdiction may, instead of or in
22 addition to any other penalty imposed, order that person, within
23 the time specified in the order —

24 (a) to take specified measures to restore the place, or any
25 land, feature, building or structure specified in the order,
26 or to return any thing to the place, so that the place is
27 restored to the state in which it was before the offence
28 occurred or to a state specified in the order; or

29 (b) to pay to a specified person a specified amount, being an
30 amount which the court determines to be appropriate to
31 enable measures that are required to be carried out; or

- 1 (c) to make any other restitution determined by the court.
- 2 (2) Before making an order under subsection (1) the court must
3 obtain and have regard to the recommendation of the Council as
4 to —
- 5 (a) whether an order under subsection (1) should be made;
6 and
- 7 (b) if so, the measures to be specified in the order.
- 8 (3) A person must comply with an order under subsection (1).
9 Penalty for this subsection:
- 10 (a) a fine of \$1 000 000;
11 (b) for a daily penalty, a fine of \$50 000.
- 12 (4) If a person fails to comply with an order under subsection (1),
13 the Council —
- 14 (a) may enter upon the land to which the order relates with
15 such persons and things as may be necessary; and
- 16 (b) may carry out any measures specified in the order; and
- 17 (c) may recover, in a court of competent jurisdiction, the
18 reasonable expense of so doing from the person who
19 failed to comply with the order or any successor in title
20 as if it were a debt due.
- 21 **129. Prohibition order**
- 22 (1) In this section —
- 23 *prohibition order* means an order made under subsection (2).
- 24 (2) Subject to subsection (3), if a person is convicted of an offence
25 under Division 3 in relation to a place, the Governor may by
26 order published in the *Gazette* order that, during a period of not
27 more than 10 years specified in the order, the place or a
28 specified part of the place or a specified building in the place —
- 29 (a) may not be developed or used; or

- 1 (b) may be developed or used only in accordance with
2 conditions specified in the order.
- 3 (3) The Governor is not to make a prohibition order if the court
4 recording the conviction recommends that no prohibition order
5 be made.
- 6 (4) The Governor may —
7 (a) vary a prohibition order by making another prohibition
8 order; or
9 (b) revoke a prohibition order by notice published in the
10 *Gazette*.
- 11 (5) A person must not, contrary to the provisions of a prohibition
12 order —
13 (a) carry out works on, or any development of, any land or
14 building; or
15 (b) use any land or building,
16 or cause or permit any other person to do so.
17 Penalty for this subsection:
18 (a) a fine of \$1 000 000 and imprisonment for one year;
19 (b) for a daily penalty, a fine of \$50 000.
- 20 (6) If a prohibition order is in force in relation to any land or
21 building, no approval, permit or other instrument under any
22 written law —
23 (a) operates to authorise or permit a development or use of
24 the land or building which would be contrary to the
25 terms of the order; or
26 (b) provides a defence to a charge under subsection (5).
- 27 (7) If a prohibition order is made in relation to any place, the
28 Council —
29 (a) must, where practicable, serve a copy of the prohibition
30 order on the owner and each occupier of the place to
31 which it refers; and

- 1 (b) must give statutory notification of the making of the
2 prohibition order; and
- 3 (c) may publish an advertisement setting out a summary of
4 the terms of the prohibition order and a land description
5 of the place to which it refers.

6 **Division 5 — Miscellaneous provisions regarding offences**

7 **130. Time limit for commencing criminal proceedings**

8 Proceedings for an offence under this Act may be commenced
9 within 3 years after the date when the alleged offence was
10 committed.

11 **131. Institution and conduct of criminal proceedings**

12 Proceedings for an offence under this Act —

- 13 (a) may be instituted in the name of the Council; and
14 (b) may be conducted by any officer of the Council
15 authorised by the Council.

16 **132. Compensation order**

17 Where in proceedings taken in the Supreme Court or the District
18 Court against a person contravening or involved in the
19 contravention of this Act (the *accused*) the Court is satisfied
20 that some other person has suffered, or is likely to suffer, loss or
21 damage by reason of the contravention the Court, whether or not
22 an injunction or any other relief is granted, may make such
23 order as the Court thinks appropriate against the accused for the
24 purpose of compensating the other person wholly or in part for
25 the loss or the cost of making good any damage or reducing the
26 extent of the loss or damage.

27 **133. Evidentiary provisions**

28 In proceedings under this Division, a finding of fact by a court
29 made in proceedings against a person for an offence in which
30 that person has been found to have contravened, or to have been

1 involved in a contravention of, this Act is evidence of that fact
2 and the finding may be proved by production of a document
3 under the seal of the court from which the finding appears.

4 **134. Enforcement of requirement to pay money**

5 Where a person defaults on a requirement, arising from a
6 conviction or a court order in respect of a contravention of this
7 Act, to pay a fine or costs or other sum of money, the court
8 convicting the person or making the order may —

- 9 (a) exercise any power that the court has apart from this
10 section; or
11 (b) on the application of the Council, whether or not on
12 behalf of another person, order that the amount unpaid
13 be recoverable as if it were a judgment debt payable by
14 the defaulter to the State under a judgment entered in the
15 court.

16 **135. Continuing offence**

17 (1) Where a person is convicted of an offence under this Act for a
18 contravention of a continuing nature, the penalty applicable to
19 the offence is a penalty not exceeding —

- 20 (a) the fine or imprisonment specified in relation to the
21 offence; and
22 (b) a fine, calculated by multiplying by the number of days
23 on which the contravention occurs —
24 (i) the fine specified as a daily penalty; or
25 (ii) where no daily penalty is specified, \$50.

26 (2) A person who is convicted of an offence under this Act of
27 causing damage to any property must take such reasonable steps
28 as may be necessary to prevent any further damage resulting
29 from the offence.

30 Penalty for this subsection: a fine of \$50 000 for each day on
31 which the failure continues.

1 **136. Liability of successors in title**

2 If under this Act —

- 3 (a) any notice or order is served upon a person, or a person
4 is authorised to execute any works subject to conditions
5 imposed, who at the time that notice or order was served
6 or authorisation was given was the owner of the land to
7 which it relates; and
- 8 (b) that person ceases to be the owner of the land; and
- 9 (c) that person shows that any contravention of this Act was
10 attributable, in whole or in part, to the act or default of a
11 subsequent owner having knowledge of the notice, order
12 or authorisation,

13 then —

- 14 (d) the subsequent owner may be brought before the court
15 in the proceedings and found liable in respect of the
16 contravention; and
- 17 (e) the original owner, on proof that the original owner took
18 all reasonable precautions to secure compliance with the
19 notice, order or other requirement, must be acquitted of
20 the contravention.

21 **137. Liability of officers for offences by body corporate**

22 *The Criminal Code* section 44C (which provides for the
23 criminal liability of officers of a body corporate) applies to the
24 following offences —

- 25 (a) an offence under section 123;
- 26 (b) an offence under section 124(1), (2) or (3);
- 27 (c) an offence under section 128(3);
- 28 (d) an offence under section 129(5).

1 **138. Offences by agents, principals, employees and employers**

2 (1) Where proceedings are taken against a person under this Act it
3 is no defence for that person to prove —

4 (a) that the person was the agent or employee of any other
5 person; or

6 (b) that the person was acting in pursuance of an order or
7 direction given by any other person,

8 unless the court is satisfied that the person had acted without the
9 knowledge, and could not reasonably be expected to have
10 known, that this Act would be contravened.

11 (2) Where the employee or agent of a person is found liable in
12 respect of a contravention of this Act, each person who, at the
13 time of the commission of the contravention, was the employer
14 of that employee or the principal of that agent is also liable in
15 respect of the contravention, unless that employer or principal
16 proves that he or she could not by the exercise of reasonable
17 diligence have prevented the commission of the contravention
18 by the employee or agent.

19 **139. Imputation of conduct and state of mind**

20 (1) Conduct engaged in on behalf of a body corporate —

21 (a) by a director, employee or agent of the body corporate
22 within the scope of the person's actual or apparent
23 authority; or

24 (b) by any other person at the direction or with the consent
25 or agreement (whether express or implied) of a director,
26 employee or agent of the body corporate, if the giving of
27 the direction, consent or agreement is within the scope
28 of the actual or apparent authority of the director,
29 employee or agent,

30 is taken for the purposes of this Act to have been engaged in
31 also by the body corporate.

- 1 (2) Conduct engaged in on behalf of a person other than a body
2 corporate —
- 3 (a) by an employee or agent of the person, within the scope
4 of the actual or apparent authority of the employee or
5 agent; or
- 6 (b) by any other person, at the direction or with the consent
7 or agreement (whether express or implied) of an
8 employee or agent of the first-mentioned person, if the
9 giving of the direction, consent or agreement is within
10 the scope of the actual or apparent authority of the
11 employee or agent,

12 is taken for the purposes of this Act to have been engaged in
13 also by the first-mentioned person.

- 14 (3) Where, in proceedings under this Act, it is necessary to establish
15 the state of mind of a body corporate, it is sufficient to show
16 that a director, employee or agent of the body corporate, being a
17 director, employee or agent by whom the conduct was engaged
18 in within the scope of the person's actual or apparent authority,
19 had that state of mind.

- 20 (4) Where, in proceedings under this Act, it is necessary to establish
21 the state of mind of a person other than a body corporate, it is
22 sufficient to show that an employee or agent of the person,
23 being an employee or agent by whom the conduct was engaged
24 in within the scope of the employee's or agent's actual or
25 apparent authority, had that state of mind.

- 26 (5) A reference in this section to the state of mind of a person
27 includes a reference to the knowledge, intention, opinion, belief
28 or purpose of the person and the person's reasons for that
29 intention, opinion, belief or purpose.

1 **140. Defences**

2 (1) Subject to this section and to sections 136, 137, 138 and 139, it
3 shall be a defence for any person who would otherwise be liable
4 under this Act to prove that —

5 (a) the contravention occurred without the consent or
6 connivance of that person; and

7 (b) the person had taken all reasonable precautions to ensure
8 that this Act should not be contravened; and

9 (c) the person could not by the exercise of reasonable
10 diligence have prevented the contravention.

11 (2) If a defence to proceedings under this Act involves an allegation
12 that a contravention was due to reliance on information supplied
13 by another person or to the act or default of another person, the
14 accused may not, without leave of the court, rely on that defence
15 unless the accused has, not later than 7 days before the day on
16 which the hearing of the proceeding commences, served on the
17 person by whom the proceeding was instituted a notice in
18 writing giving such information that would identify or assist in
19 identifying that other person as was then in the accused's
20 possession.

21 **141. Offence that is also breach of heritage agreement**

22 Where a prosecution for an offence under this Act and an action
23 for a breach of a heritage agreement arise out of the same
24 conduct the Council may —

25 (a) pursue either the prosecution or the action; or

26 (b) pursue both the prosecution and the action in separate
27 proceedings; or

28 (c) pursue both the action and the prosecution in combined
29 proceedings.

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Part 12 — Miscellaneous

Division 1 — Compensation

144. Terms used

(1) In this Division —

compensable loss, in relation to a work prohibition, means a loss which —

- (a) is capable of being assessed by way of a liquidated amount; and
- (b) arises out of a contractual or statutory obligation incurred prior to the work prohibition; and
- (c) except in so far as section 146(2) provides, does not include any element of capital costs or capital depreciation; and
- (d) takes into account any opportunity for recovery of taxes or diminution of tax liabilities; and
- (e) is not capable of recovery or mitigation, or further recovery or mitigation;

work prohibition means —

- (a) the making of a stop work order; or
- (b) the suspension, by the operation of section 74, of a decision made.

145. Work prohibition: application for compensation

A person may, within the time and in the manner prescribed, apply to the Minister for compensation in respect of a compensable loss if —

- (a) a work prohibition relating to any place (whether or not a registered place) results in the suspension of a development approval, or a delay in implementing a development approval, relating to that place; and

1 applicant should enter into a heritage agreement in relation to
2 the place as a condition of receiving compensation.

3 (4) When recommending an amount of compensation under
4 subsection (1)(b), the Minister must have regard to —

5 (a) any expenditure incurred by the applicant in the
6 preparation of plans for the purposes of any work, or
7 upon other necessary matters preparatory to the work;
8 and

9 (b) the cost of, and the circumstances relating to, the
10 acquisition of the place by the applicant; and

11 (c) any sum payable by the applicant in respect of a breach
12 of contract caused by the necessity of discontinuing or
13 countermanding any works on account of the suspension
14 or delay; and

15 (d) any benefit or advantage obtained by the applicant
16 where permission or authorisation for the development
17 of some other land is made possible or is beneficially
18 affected by the operation of, or in consideration of the
19 attainment of the objectives of, this Act; and

20 (e) where a heritage agreement in relation to the place is in
21 place or is recommended, the terms or recommended
22 terms of the heritage agreement.

23 (5) When recommending an amount of compensation under
24 subsection (1)(b), the Minister must disregard any prospective
25 use of the place other than the restoration and conservation of a
26 place of cultural heritage significance.

27 **147. Work prohibition: no recommendation for compensation**

28 (1) If the Minister does not make a recommendation under
29 section 146(1)(b) within the time prescribed the applicant may
30 require that the Treasurer determine the matter immediately.

1 **150. Limited effect of processes under the Act**

2 (1) In this section —

3 *process* means —

- 4 (a) the entry of a place in the register; or
- 5 (b) the making of a protection order, a repair order, a
- 6 restoration order or a prohibition order; or
- 7 (c) the formation of a heritage agreement; or
- 8 (d) the making of any grant or loan or the provision of any
- 9 financial or other assistance under section 82.

10 (2) Except as expressly provided under this Act, no process has the

11 effect, with respect to any land affected, of —

- 12 (a) giving the State, the Minister or the Council any interest
- 13 in, claim to, responsibility for or obligation with respect
- 14 to the land; or
- 15 (b) affecting the rights or obligations of any owner of the
- 16 land, or of any other person with an interest in or a claim
- 17 to the land.

18 **151. Confidentiality**

19 The Council is not to disclose any written, oral, electronic or

20 other communications between the Council and an owner or

21 occupier of any land, except —

- 22 (a) with the written consent of the owner; or
- 23 (b) in the course of the performance of any duty or the
- 24 exercise of any power under this Act or another written
- 25 law; or
- 26 (c) as required or allowed under this Act or another written
- 27 law; or
- 28 (d) for the purposes of investigating a suspected offence
- 29 under this Act or the conduct of proceedings against any
- 30 person for an offence against this Act; or
- 31 (e) in other prescribed circumstances.

1 **152. Challenge to entry in register**

2 Without prejudice to any shorter limitation period provided
3 under any other written law, proceedings for a review of an
4 action taken by the Council or the Minister under Part 3 cannot
5 be commenced in any court or tribunal if 3 years have elapsed
6 since the date of the action concerned.

7 **153. Protection from personal liability**

8 (1) An action in tort does not lie against a person for anything that
9 the person has done, in good faith, in the performance or
10 purported performance of a function under this Act.

11 (2) The protection given by subsection (1) applies even though the
12 thing done as described in that subsection may have been
13 capable of being done whether or not this Act or any other
14 written law had been enacted.

15 (3) Despite subsection (1), neither the State nor the Council is
16 relieved of any liability that it might have for another person
17 having done anything as described in that subsection.

18 (4) In this section, a reference to the doing of anything includes a
19 reference to an omission to do anything.

20 **154. Recovery of costs by Council**

21 (1) Regulations may make provision for and in relation to the
22 imposition by the Council of fees and charges in connection
23 with the recovery of costs incurred by the Council in the
24 performance of specified functions under this Act.

25 (2) Regulations made for the purposes of this section are not to
26 provide for the imposition of any fee in connection with —

27 (a) the performance of the Council's functions under Part 3
28 Division 2 Subdivision 2; or

29 (b) the performance of the Council's functions under Part 5
30 Division 2, other than a fee of the kind mentioned in
31 section 76(g).

- 1 (3) Regulations may —
- 2 (a) prescribe set fees or charges in connection with the
- 3 performance of a specified function; or
- 4 (b) prescribe a method for calculating the fee or charge in
- 5 any case.

6 **155. Regulations**

7 The Governor may make regulations prescribing all matters that

8 are required or permitted by this Act to be prescribed, or are

9 necessary or convenient to be prescribed for giving effect to this

10 Act.

11 **156. Review of Act**

- 12 (1) The Minister must carry out a review of the operation and
- 13 effectiveness of this Act as soon as is practicable after the tenth
- 14 anniversary of its coming into operation.
- 15 (2) The Minister must prepare a report based on the review and, as
- 16 soon as is practicable after the report is prepared, cause it to be
- 17 laid before each House of Parliament.

1 **159. Council a continuation of former Council**

2 (1) The new Council is a continuation of, and the same legal entity
3 as, the former Council, and the assets, rights and liabilities of or
4 in relation to the former Council continue as assets, rights and
5 liabilities of the new Council.

6 (2) A reference to the former Council in a written law or other
7 document or instrument is, where the context so requires, to be
8 read as if it had been amended to be a reference to the new
9 Council.

10 **160. Members of former Council continue in office**

11 (1) A person who was, immediately before commencement day, a
12 member of the former Council continues in office, on and from
13 commencement day, under and subject to this Act as a member
14 of the new Council as if appointed by the Governor under this
15 Act.

16 (2) A person who, immediately before commencement day, held
17 office as chairperson of the former Council continues in office,
18 on and from commencement day, under and subject to this Act
19 as chairperson of the new Council under this Act.

20 (3) Without limiting subsections (1) and (2), a member of the new
21 Council holds office —

22 (a) on the terms and conditions that applied to the person's
23 appointment under the 1990 Act; and

24 (b) until the day the member's term of appointment under
25 the 1990 Act would have ended or such earlier day, if
26 any, as the member vacates office under this Act.

27 **161. Unfinished proceedings: Council**

28 Any proceedings commenced by, or against, the former Council
29 that have not been finally determined by commencement day
30 are, on and from commencement day —

31 (a) to be dealt with and determined as if the proceedings
32 had been commenced by or against the new Council;
33 and

1 (b) to continue under the direction and control of the new
2 Council.

3 **162. Completion of things commenced**

4 Anything commenced to be done by the former Council before
5 commencement day may be continued by the Council after
6 commencement day so far as the doing of that thing is a
7 function of the new Council.

8 **163. Continuing effect of things done**

9 Any act, matter or thing done or omitted to be done before
10 commencement day by, to or in respect of the former Council is
11 taken, on and from commencement day, to have been done or
12 omitted by, to or in respect of the new Council —

13 (a) to the extent that the act, matter or thing is relevant to
14 the new Council; and

15 (b) so far as the act, matter or thing —

16 (i) has any force or significance; and

17 (ii) is not governed by another provision of this
18 Division.

19 **164. First annual report of Council**

20 In its first annual report submitted by the accountable authority
21 of the Council under the *Financial Management Act 2006*
22 Part 5, the new Council is also to report on the proceedings of
23 the former Council for the period from 1 July in the preceding
24 year to commencement day.

25 **165. Heritage Fund a continuation former Heritage Fund**

26 The Heritage Fund is to be a continuation of the Heritage
27 Account established and operated under the 1990 Act
28 section 14.

1 **166. Register**

2 (1) The former register as it exists immediately before the
3 commencement day continues on and from commencement day,
4 under and subject to this Act, as the new register.

5 (2) Without prejudice to any shorter limitation period provided
6 under any other written law, no objection to anything done
7 under the 1990 Act Part 5 Division 2 in relation to the former
8 register may be raised or determined in proceedings instituted in
9 any court or tribunal after the expiry of the interim period.

10 **167. Interim registration**

11 (1) In this section —

12 *interim-registered place* means a place that is the subject of an
13 interim registration in the former register under the 1990 Act
14 section 50 which is in effect on the commencement day;

15 *previously-registered place* means a place that is the subject
16 of a permanent registration in the former register under the
17 1990 Act section 51 which is in effect on the registration day.

18 (2) A previously-registered place is taken to be a registered place
19 for the purposes of this Act.

20 (3) During the interim period —

21 (a) an interim-registered place is taken to be a registered
22 place for the purposes of this Act, other than Part 3
23 Division 2; and

24 (b) an entry may be made in the new register in respect of
25 the interim-registered place in accordance with Part 3
26 Division 2.

27 (4) If, by the second anniversary of the commencement day, no
28 entry has been made in the new register in respect of an
29 interim-registered place, the interim-registered place —

30 (a) is no longer taken to be a registered place; and

- 1 (b) for the purposes of section 36(2) is taken to have been
2 included in an entry that was removed from the register
3 on the second anniversary of the commencement day.

4 **168. Conservation orders**

- 5 (1) A conservation order made under the 1990 Act section 59(2)(a)
6 which is in effect on the commencement day —
7 (a) is taken to be a consent order for the purposes of this
8 Act; and
9 (b) ceases to have effect in accordance with section 59 of
10 this Act.
- 11 (2) A conservation order made under the 1990 Act section 59(2)(b)
12 which is in effect on the commencement day —
13 (a) is taken to be a stop work order for the purposes of this
14 Act; and
15 (b) ceases to have effect in accordance with section 59 of
16 this Act.
- 17 (3) A conservation order made under the 1990 Act section 59(4)
18 which is in effect on the commencement day —
19 (a) is taken to be a continuing protection order for the
20 purposes of this Act; and
21 (b) ceases to have effect in accordance with section 59 of
22 this Act.

23 **169. Local heritage survey**

24 An inventory of buildings of cultural heritage significance
25 compiled or reviewed under the 1990 Act section 45 prior to the
26 entry into operation of section 99 is taken for the purposes of
27 Part 8 to be a survey prepared under section 99(1).

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Division 3 — Consequential amendments

170. *Building Act 2011* amended

- (1) This section amends the *Building Act 2011*.
- (2) In section 20(1)(m) delete “*Heritage of Western Australia Act 1990*” and insert:

Heritage Act 2016

- (3) In section 21(1)(i) delete “*Heritage of Western Australia Act 1990*” and insert:

Heritage Act 2016

- (4) In section 23(5)(b) delete “*Heritage of Western Australia Act 1990*” and insert:

Heritage Act 2016

171. *Constitution Acts Amendment Act 1899* amended

- (1) This section amends the *Constitution Acts Amendment Act 1899*.
- (2) In Schedule V Part 3 delete the item for the Heritage Council of Western Australia and insert:

The Heritage Council of Western Australia established
under the *Heritage Act 2016*.

1 **172. *Liquor Control Act 1988* amended**

- 2 (1) This section amends the *Liquor Control Act 1988*.
- 3 (2) In section 77(5a)(a) delete “*Heritage of Western Australia*
- 4 *Act 1990; or*” and insert:

5

6 *Heritage Act 2016; or*

7

8 **173. *Planning and Development Act 2005* amended**

- 9 (1) This section amends the *Planning and Development Act 2005*.
- 10 (2) In section 4(1):
- 11 (a) in the definition of ***development*** paragraph (c) delete “a
- 12 Conservation Order made under section 59 of the
- 13 *Heritage of Western Australia Act 1990*” and insert:
- 14
- 15 a protection order made under the *Heritage Act 2016*
- 16 Part 4 Division 1
- 17
- 18 (b) in the definition of ***Heritage Council*** delete “*Heritage of*
- 19 *Western Australia Act 1990;*” and insert:
- 20
- 21 *Heritage Act 2016;*
- 22
- 23 (3) In section 36(b) delete “any Order made under section 59 of the
- 24 *Heritage of Western Australia Act 1990;*” and insert:
- 25
- 26 any protection order made under the *Heritage Act 2016* Part 4
- 27 Division 1,
- 28

Heritage Bill 2016

Part 13 Repeal, transitional and consequential provisions

Division 3 Consequential amendments

s. 173

1 (4) In section 79 delete “the Register or on any inventory
2 maintained under section 45 or 46 of the *Heritage of Western*
3 *Australia Act 1990*” and insert:

4

5 in the register maintained under the *Heritage Act 2016*
6 section 34 or in any local heritage survey prepared under
7 section 99 of that Act

8

9 (5) In section 103(2)(d) delete “*Heritage of Western Australia*
10 *Act 1990*” and insert:

11

12 *Heritage Act 2016*

13

14 (6) In section 112(4) delete “section 78 of the *Heritage of Western*
15 *Australia Act 1990*.” and insert:

16

17 the *Heritage Act 2016* Part 5 Division 2.

18

19 (7) In section 112(5) delete “*Heritage of Western Australia*
20 *Act 1990*” and insert:

21

22 *Heritage Act 2016*

23

24 (8) In section 137(1) delete “to which section 78 of the *Heritage of*
25 *Western Australia Act 1990* applies.” and insert:

26

27 included in a place of a kind mentioned in *Heritage Act 2016*
28 section 70(1).

29

- 1 (9) Delete section 137(2) and insert:
2
- 3 (2) The Commission is not to grant an application for its
4 approval under section 135 or 136 in respect of land to
5 which this section applies unless the requirements of
6 the *Heritage Act 2016* Part 5 Division 2 have been
7 observed.
8
- 9 (10) In section 137(3):
10 (a) delete “section 78(2)(a) of the *Heritage of Western*
11 *Australia Act 1990* applies,” and insert:
12
13 the *Heritage Act 2016* section 74(2) applies,
14
15 (b) in paragraph (a) delete “section 78 of the *Heritage of*
16 *Western Australia Act 1990*; or” and insert:
17
18 the *Heritage Act 2016* section 74(2); or
19
20 (c) in paragraph (b) delete “section 78(2)(b) and (c) of the
21 *Heritage of Western Australia Act 1990*.” and insert:
22
23 the *Heritage Act 2016* section 74(3).
24
- 25 (11) Delete section 137(4).
- 26 (12) In section 163 delete “entered in the Register maintained by the
27 Heritage Council under the *Heritage of Western Australia*
28 *Act 1990*,” and insert:
29
30 of a kind mentioned in *Heritage Act 2016* section 70(1),
31

Heritage Bill 2016

Part 13 Repeal, transitional and consequential provisions

Division 3 Consequential amendments

s. 173

- 1 (13) In section 241(1):
2 (a) delete “*Heritage of Western Australia Act 1990*” and
3 insert:
4
5 *Heritage Act 2016*
6
7 (b) in paragraph (d) delete “*Heritage of Western Australia*
8 *Act 1990.*” and insert:
9
10 *Heritage Act 2016.*
11
- 12 (14) In section 245(5)(b) delete “land or water to which an entry in
13 the Register maintained under section 46 of the *Heritage of*
14 *Western Australia Act 1990* relates,” and insert:
15
16 land included in a place of a kind mentioned in *Heritage*
17 *Act 2016* section 70(1),
18
- 19 (15) In section 246(3)(a) delete “*Heritage of Western Australia*
20 *Act 1990; or*” and insert:
21
22 *Heritage Act 2016; or*
23
- 24 (16) Delete section 249(2)(c) and insert:
25
26 (c) an order made under the *Heritage Act 2016*
27 Part 4 or Part 11 Division 4.
28
- 29 (17) Delete section 250(2).

1 **174. *Strata Titles Act 1985* amended**

- 2 (1) This section amends the *Strata Titles Act 1985*.
- 3 (2) In section 25(7) delete “section 78 of the *Heritage of Western*
4 *Australia Act 1990*.” and insert:
5
6 the *Heritage Act 2016* Part 5 Division 2.
7
- 8 (3) In section 25(8) delete “land to which section 78 of the *Heritage*
9 *of Western Australia Act 1990*.” and insert:
10
11 a place of a kind referred to in the *Heritage Act 2016*
12 section 70(1).
13

14 **175. *Swan Valley Planning Act 1995* amended**

- 15 (1) This section amends the *Swan Valley Planning Act 1995*.
- 16 (2) In section 3 in the definition of **development** in paragraph (b)
17 delete “a Conservation Order made under section 59 of the
18 *Heritage of Western Australia Act 1990*” and insert:
19
20 a protection order made under the *Heritage Act 2016* Part 4
21 Division 1
22



Defined terms

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

The list is not part of the law.]

Defined term	Provision(s)
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Defined terms

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