

## **Explanatory Memorandum**

### **Heritage and Planning Legislation Amendment Bill 2010**

#### **Introduction**

The purpose of this Bill is to increase the penalties for offences in respect of heritage places in Western Australia to provide a meaningful deterrent to illegal conduct.

#### **Part 1 – Preliminary**

This Part contains the title of the *Heritage and Planning Legislation Amendment Act 2010* (the Amendment Act) and the commencement provision.

Clause 1: Short title and citations.

Clause 2: This clause sets out the commencement provision.

Subclause (a) provides that Part 1 will come into operation on the day on which the Amendment Act receives Royal Assent.

Subclause (b) provides that the rest of the Amendment Act will come into operation the day after the Act receives Royal Assent.

#### **Part 2 – *Heritage of Western Australia Act 1990* amended**

This Part contains the specific amendments to the *Heritage of Western Australia Act 1990*.

Clause 3: This clause declares that this Part of the Amendment Act will amend the *Heritage of Western Australia Act 1990* (the Heritage Act).

Clause 4: This clause will amend Section 61 of the Heritage Act, which provides the penalties for contravention of a Conservation Order. There are three types of Conservation Order under the Heritage Act – a Stop Work Order, which can be issued by the Minister in an emergency to halt any work at a place, without notice to any party, and remains in effect for only 42 days; a Consent Order, which can be issued by the Minister with the consent of the property owner, and remains in effect for such period as the owner consents to; and a standard Conservation Order, which can be issued by the Minister on the advice of the Heritage Council following a public notice and 6-week comment period, and remains in effect for as long as the Minister directs, even indefinitely.

Section 61(1) currently provides a maximum fine of \$10,000 for contravention of a Stop Work Order, with a maximum daily fine for \$1,000 for a continuing offence, while subsection (2) currently provides the same fines for contravention of any other type of Conservation Order.

Sub-clause (1) of Clause 4 of the Amendment Act will increase the maximum fine for contravention of a Stop Work Order to \$1,000,000, and increase the maximum daily fine to \$50,000 for a continuing offence, while sub-clause (2) will increase these amounts to \$1,000,000 and \$50,000, respectively, for contravention of any other type of Conservation Order.

Clause 5: This clause will amend Section 62 of the Heritage Act, relating to Restoration Orders. Subsection (1) allows a court discretion to order an offender convicted of a contravention of any type of Conservation Order to restore a damaged or demolished place to its former condition, and subsection (3) makes the failure to comply with a Restoration Order an offence subject to a maximum fine of \$10,000 with a maximum daily fine of \$1,000 for a continuing offence.

Sub-clause (1) of Clause 5 of the Amendment Act will amend subsection (1) of section 62 so as to also allow a court discretion to impose a Restoration Order on an offender convicted of a Section 79(1) offence in respect of a registered place, whether or not a Conservation Order is in effect. Section 79(1) of the Heritage Act covers damage to or destruction of a State Registered place.

Sub-clause (2) of Clause 5 of the Amendment Act will amend subsection (3) of section 62 to increase the maximum fine for failure to comply with a Restoration Order to \$1,000,000 and increase the maximum daily fine to \$50,000 for a continuing offence.

Clause 6: This clause will amend Section 67 of the Heritage Act, which provides penalties for continuing offences not otherwise specified elsewhere in the Heritage Act.

Currently, subsection (2) of Section 67 creates a separate continuing offence where, following the conviction of a person of any offence under the Heritage Act causing damage to any property, that person fails to take such reasonable steps as may be necessary to prevent further damage resulting from that offence. Currently, this continuing offence carries a maximum daily fine of \$500.

Clause 6 of the Amendment Act will amend subsection (2) of section 67 to increase the maximum daily fine to \$50,000.

Clause 7: This clause will amend Section 79 of the Heritage Act, which establishes the basic offence and relevant penalties for damaging a State-registered place.

Sub-clause (a) of Clause 7 of the Amendment Act will amend subsection (1) of section 79 to increase the maximum fine from \$5,000 to \$1,000,000, while sub-clause (b) will increase the maximum daily fine from \$500 to \$50,000 for a continuing offence.

Clause 8: This clause will amend Section 80 of the Heritage Act, which provides for prohibiting further development of a place (imposing a “Development Moratorium”) following conviction for contravention of any type of Conservation Order in relation to that place.

Currently, subsection (1) of Section 80 allows the Governor, on the advice of the Minister for Heritage, to impose a development moratorium over a place following conviction of a person for contravening any type of Conservation Order in relation to the place, unless the convicting court recommends otherwise.

Sub-clause (1) of Clause 8 of the Amendment Act will amend subsection (1) of section 80 of the Heritage Act to also allow imposition of a Development

Moratorium following conviction for a Section 79(1) offence in respect of a registered place, whether or not a Conservation Order is in effect.

Currently, subsection (3) of Section 80 makes it a further offence to carry out development at a place that is subject to a Development Moratorium and provides a maximum fine of \$10,000 with a maximum daily fine of \$1,000 for a continuing offence.

Sub-clause (2) of Clause 8 of the Amendment Act will amend subsection (3) of section 80 to increase the maximum fine from \$10,000 to \$1,000,000 and increase the maximum daily fine from \$500 to \$50,000 for a continuing offence.

### **Part 3 – *Planning and Development Act 2005* amended**

This Part contains the specific amendments to the *Planning and Development Act 2005*.

Clause 9: Declares that this Part of the Amendment Act will amend the *Planning and Development Act 2005* (the Planning Act).

Clause 10: This clause will amend Section 223 of the Planning Act, which provides for fines for offences under the Planning Act.

Currently, the maximum fine for any offence under the Planning Act, including unauthorised development or demolition of any place, is \$50,000, with a maximum daily fine of \$5,000 for continuing offences.

Clause 10 of the Amendment Act will amend Section 223 to increase the maximum fine for any offence under the Planning Act from \$50,000 to \$200,000 and increase the maximum daily fine from \$5,000 to \$25,000 for a continuing offence.

These penalties will apply to any unauthorised work to any place, whether or not it is a heritage place.