

# WESTERN AUSTRALIA

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# Heritage Bill 2015

## DRAFT BILL FOR PUBLIC COMMENT

The Government proposes to introduce into Parliament a Bill for

**An Act to recognise the importance of and to promote understanding and appreciation of Western Australia's cultural heritage, to provide for the identification and documentation of places of heritage significance and for the conservation, use, development and adaptation of such places, to repeal the *Heritage of Western Australia Act 1990* and for related purposes.**

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Western Australia

LEGISLATIVE ASSEMBLY

**Heritage Bill 2015**

**A draft for public comment of  
A Bill for**

**An Act to recognise the importance of and to promote understanding and appreciation of Western Australia's cultural heritage, to provide for the identification and documentation of places of heritage significance and for the conservation, use, development and adaptation of such places, to repeal the *Heritage of Western Australia Act 1990* 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 2015*.

### 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**1990 Act** means the *Heritage of Western Australia Act 1990*, repealed by this Act;

**Chairperson** means the chairperson of the Council appointed under section 12(1);

**consent order** has the meaning given in section 49(1);

**conserve**, 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 49(5);

**Council** means the body continued in existence by section 10(1);

**cultural heritage significance** has the meaning given in section 4;

**Department** means the department of the Public Service principally assisting in the administration of this Act;

**heritage agreement** means an agreement made under section 82;

- 1           **inspector** means —
- 2           (a) a person holding office under the *Police Act 1892* Part I
- 3           as a member of the Police Force of Western Australia;
- 4           or
- 5           (b) a person appointed under section 103 to be an inspector
- 6           for the purposes of this Act;
- 7           **land description**, in relation to a place, means a description
- 8           sufficient to identify the location and boundaries of the land
- 9           comprising the place by reference to —
- 10          (a) a certificate of title created for the purposes of the
- 11          *Transfer of Land Act 1893*; or
- 12          (b) particulars of any lot, plan, diagram or survey set out in
- 13          such a certificate; or
- 14          (c) in relation to land that is not under the operation of the
- 15          *Transfer of Land Act 1893*, particulars set out in any
- 16          muniments of title;
- 17          **local planning scheme** has the meaning given in the *Planning*
- 18          *and Development Act 2005* section 4;
- 19          **occupier**, in relation to land, means a person by whom or on
- 20          whose behalf that land is lawfully occupied or, if there is no
- 21          person in lawful occupation, a person entitled to possession;
- 22          **owner** has the meaning given in section 5;
- 23          **place** has the meaning given in section 6;
- 24          **protection order** means an order in relation to a place, addressed
- 25          to the owner or occupier of that place, prohibiting activity of the
- 26          kind mentioned in section 51;
- 27          **public authority** means any of the following —
- 28          (a) a Minister of the Crown;
- 29          (b) an agency or an organisation as those terms are defined
- 30          in the *Public Sector Management Act 1994* section 3(1);
- 31          (c) a local government or regional local government;
- 32          (d) a body, whether incorporated or not, or the holder of an
- 33          office, that is established or continued for a public
- 34          purpose under a written law and that, under the authority
- 35          of a written law, performs a statutory function on behalf
- 36          of the State;
- 37          **register** means the State Register of Heritage Places maintained
- 38          under section 29(1);
- 39          **registered land** means land which comprises or is included in a
- 40          registered place;

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1 *registered place* means a place in relation to which there is an  
2 entry in the register;

3 *registration conditions* means the conditions for the inclusion  
4 of a place in the register set out in section 31;

5 *repair order* means an order made under section 58;

6 *stop work order* has the meaning given in section 49(3).

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

8 (1) In this Act —

9 *cultural heritage significance* means aesthetic, historic,  
10 scientific, social or spiritual value for Western Australians or  
11 groups within Western Australia.

12 (2) For the purposes of subsection (1) —

13 (a) in relation to a place, cultural heritage significance may  
14 be embodied in the place itself and in its fabric, setting,  
15 use, associations, meanings, records, related places and  
16 related objects; and

17 (b) a place may have a range of values for different  
18 individuals or groups.

19 **5. Term used: owner**

20 (1) In this Act —

21 *owner*, in relation to land, means —

22 (a) where the land is unalienated —

23 (i) the State; or

24 (ii) any person or body in whom the land is vested  
25 by or under statute; or

26 (iii) any other prescribed person or body;

27 and

28 (b) where the land is subject to the *Transfer of Land*  
29 *Act 1893* or the *Land Administration Act 1997*, a  
30 proprietor within the meaning of the *Transfer of Land*  
31 *Act 1893*; and

32 (c) where the land is subject to the *Registration of Deeds*  
33 *Act 1856*, the holder of an estate or interest registered by  
34 memorial under that Act; and

35 (d) where the land is part or all of the common property of a  
36 strata scheme or survey-strata scheme, the strata  
37 company for the scheme; and

- 1 (e) a person who is the holder of, or has made application  
2 for, a mining tenement under the *Mining Act 1978* or a  
3 permit or licence under the *Petroleum and Geothermal*  
4 *Energy Resources Act 1967*; and
- 5 (f) a mortgagee or encumbrancee in possession of the land,  
6 and includes the legal personal representative of a deceased  
7 owner;
- 8 **owner**, in relation to a place, means an owner of any land  
9 comprised in the place.
- 10 (2) In this section —
- 11 **strata company**, in relation to a strata scheme or survey-strata  
12 scheme, means the body corporate constituted for the scheme  
13 under the *Strata Titles Act 1985* section 32;
- 14 **strata scheme** has the meaning given in the *Strata Titles*  
15 *Act 1985* section 3;
- 16 **survey-strata scheme** has the meaning given in the *Strata Titles*  
17 *Act 1985* section 3.
- 18 **6. Term used: place**
- 19 (1) In this Act —
- 20 **place** means a defined or readily identifiable area of land.
- 21 (2) For the purposes of subsection (1) —
- 22 (a) the area of land may be contiguous or may comprise any  
23 number of non-contiguous parts;
- 24 (b) the area of land may be comprised in separate titles and  
25 in different ownership; and
- 26 (c) the area of land includes as much of the land beneath the  
27 surface as is required for the purposes of conservation;  
28 and
- 29 (d) it is immaterial that water covers the land at any  
30 particular time or at all times.
- 31 (3) Any of the following things at a place can be regarded as  
32 forming part of a place —
- 33 (a) archaeological remains;
- 34 (b) buildings, structures and other built forms and their  
35 surrounds;
- 36 (c) equipment, furniture, fittings or other objects (whether  
37 fixed or not) that are historically or physically associated  
38 or connected with the place;

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- 1 (d) gardens, man-made parks or sites;
- 2 (e) a tree or group of trees (whether planted or naturally
- 3 occurring) in, or adjacent to, a man-made setting.
- 4 **7. Notices, advertisements, consultation and statutory**
- 5 **notification**
- 6 (1) In this section —
- 7 *electronic communication* has the meaning given in the
- 8 *Electronic Transactions Act 2011* section 5(1).
- 9 (2) 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) subject to and in accordance with the regulations, by
- 13 giving notice to that person by means of an electronic
- 14 communication; or
- 15 (c) subject to and in accordance with the regulations, by
- 16 issuing a public advertisement.
- 17 (3) Regulations may prescribe how a requirement under this Act
- 18 (including under subsection (2)(c)) to issue a public
- 19 advertisement may be satisfied, and may provide for an
- 20 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 (4) Regulations may prescribe procedures for public consultation
- 27 required under this Act.
- 28 (5) A requirement under this Act to give statutory notification of an
- 29 event may be satisfied, subject to and in accordance with
- 30 regulations, by taking steps to have the event registered,
- 31 recorded or noted under, as appropriate to the case —
- 32 (a) the *Land Administration Act 1997*; or
- 33 (b) the *Mining Act 1978*; or
- 34 (c) the *Registration of Deeds Act 1856*; or
- 35 (d) the *Transfer of Land Act 1893*; or
- 36 (e) any other written law dealing with the registration of
- 37 interests in or affecting land.

1   **8.     State bound**

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

4   **9.     Objectives**

5   (1)   The objectives of this Act are, with due regard for the rights of  
6   property ownership —

7           (a)   to promote understanding and appreciation of Western  
8           Australia’s heritage; and

9           (b)   to recognise the importance of places of cultural heritage  
10          significance and their stories in understanding the course  
11          of Western Australia’s history; and

12          (c)   to provide for the identification and documentation of  
13          Western Australia’s places of cultural heritage  
14          significance; and

15          (d)   to encourage and facilitate the conservation, continuing  
16          use, development and adaptive reuse of places of  
17          cultural heritage significance in ways that represent high  
18          standards of heritage conservation and are in harmony  
19          with cultural heritage values.

20   (2)   This Act does not apply to a place —

21           (a)   which comprises only the natural environment; or

22           (b)   whose cultural heritage significance derives solely from  
23           its connection with Aboriginal tradition or culture,

24           or to land comprised in such a place.

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**Part 2 — The Council**

**Division 1 — Constitution of the Council**

**10. Continuation of the Council**

- (1) Notwithstanding the repeal of the 1990 Act, the Heritage Council of Western Australia established by that Act is continued in existence without change in its name, its corporate identity or its assets and liabilities.
- (2) The Council —
  - (a) is a body corporate with perpetual succession and a common seal; and
  - (b) may sue and be sued in any court; and
  - (c) subject to this Act, may do and suffer all that bodies corporate may lawfully do and suffer.
- (3) The common seal of the Council is to be —
  - (a) kept in such custody as the Council directs; and
  - (b) used only as authorised by the Council.
- (4) All courts, judges and persons acting judicially —
  - (a) are to take judicial notice of the common seal of the Council; and
  - (b) where a document is produced bearing a seal purporting to be the common seal of the Council, are to presume in the absence of proof to the contrary that the seal is the common seal of the Council and that it was duly affixed.

**11. Status**

- (1) The Council is an agent of the State and has the status, immunities and privileges of the State.
- (2) The Council is to be the State's expert body on matters concerning places of cultural heritage significance, other than places whose cultural heritage significance derives solely from their connection with Aboriginal tradition or culture.

**12. Membership and proceedings**

- (1) The Council is to consist of —
  - (a) a Chairperson; and



- 1 (b) up to 8 ordinary members,  
2 appointed by the Governor on the nomination of the Minister.
- 3 (2) The Minister is to nominate for appointment as Chairperson a  
4 person with demonstrated knowledge, experience, skills or  
5 qualifications relevant to the position of Chairperson.
- 6 (3) The Minister is to nominate for appointment as ordinary  
7 members persons with —
- 8 (a) demonstrated knowledge of or experience in heritage  
9 matters; and
- 10 (b) demonstrated knowledge, experience, skills or  
11 qualifications in one or more of the following fields —
- 12 (i) archaeology;  
13 (ii) architecture;  
14 (iii) construction;  
15 (iv) engineering;  
16 (v) governance;  
17 (vi) heritage conservation or interpretation;  
18 (vii) history;  
19 (viii) landscape architecture;  
20 (ix) local government;  
21 (x) property ownership, development or marketing;  
22 (xi) urban and regional planning;  
23 (xii) any other field prescribed for the purposes of this  
24 section.
- 25 (4) Regulations may provide for —
- 26 (a) the term of office, resignation and removal of members  
27 of the Council; and
- 28 (b) the appointment of alternate members to deputise for  
29 members who are temporarily unable or unavailable to  
30 act; and
- 31 (c) the coopting, for stated periods or to consider stated  
32 matters, of members having relevant specialised  
33 knowledge or experience; and
- 34 (d) the disclosure, recording and management of members’  
35 conflicts of interest; and
- 36 (e) the convening and conduct of meetings of the Council;  
37 and

- 1 (f) the establishment, membership and proceedings of  
2 committees of the Council; and  
3 (g) other proceedings of the Council.
- 4 (5) Members of the Council, and of any committee of the Council  
5 established under subsection (4)(f), are entitled to be paid out of  
6 the funds of the Council any remuneration and allowances that  
7 the Minister may from time to time determine on the  
8 recommendation of the Public Sector Commissioner.

9 **Division 2 — Functions and Powers of the Council**

10 **13. Functions of the Council**

11 The functions of the Council include the following —

- 12 (a) to assess and to document places of cultural heritage  
13 significance in Western Australia;
- 14 (b) to provide expert advice to the Minister on heritage  
15 matters and, in particular, on the identification,  
16 conservation and protection of places that are, or may  
17 be, of cultural heritage significance;
- 18 (c) to provide guidance to State agencies on contemporary  
19 best practice for the identification and management of  
20 heritage assets;
- 21 (d) to administer the register;
- 22 (e) in accordance with Part 6, to provide or facilitate the  
23 provision of financial and technical assistance and other  
24 conservation incentives;
- 25 (f) where development or other proposals may affect a  
26 registered place, to provide advice to decision-making  
27 authorities on ensuring that such proposals conserve the  
28 place's cultural heritage significance;
- 29 (g) to endeavour to prevent the destruction, damage,  
30 deterioration or injudicious treatment of places that are,  
31 or may be, of cultural heritage significance;
- 32 (h) to undertake or provide for the conservation of places  
33 owned by the State that are, or may be, of cultural  
34 heritage significance;
- 35 (i) to acquire, own, conserve or arrange for the  
36 conservation of, lease, manage and dispose of places  
37 that are or may be of significance to the cultural heritage  
38 of Western Australia;

- 1 (j) to advise and to assist local governments in identifying  
2 and conserving places that are, or may be, of cultural  
3 heritage significance;
- 4 (k) to promote public awareness and knowledge of issues  
5 relevant to Western Australia's cultural heritage;
- 6 (l) to provide and to encourage education and training in  
7 respect of Western Australia's cultural heritage;
- 8 (m) to arrange and to conduct research and investigations  
9 relating to Western Australia's cultural heritage;
- 10 (n) to promote and to assist the management and  
11 maintenance of registered places;
- 12 (o) to negotiate, enter into, give effect to and enforce  
13 heritage agreements;
- 14 (p) to advise and assist the Minister and other persons in  
15 relation to heritage agreements;
- 16 (q) to perform any other functions required of it by the  
17 Minister under, or in furtherance of the objectives of,  
18 this Act;
- 19 (r) to do anything else that it is required or authorised to do  
20 under this Act or any other written law.

21 **14. Powers of the Council**

- 22 (1) The Council has all the powers it needs to perform its functions  
23 under this Act or any other written law.
- 24 (2) Without limiting subsection (1), the Council may for the  
25 purpose of performing a function —
- 26 (a) acquire, hold, manage and dispose of real and personal  
27 property; and
- 28 (b) carry out, or cause to be carried out, the conservation  
29 and development of a place that is owned by the  
30 Council; and
- 31 (c) grant a lease or licence in respect of property that is  
32 owned by the Council; and
- 33 (d) participate in a business arrangement and acquire, hold  
34 and dispose of shares, units or other interests in, or  
35 relating to, a business arrangement; and
- 36 (e) enter into arrangements for sponsorship; and
- 37 (f) use its expertise and resources to provide consultancy,  
38 management, advisory or other services for profit or  
39 otherwise; and

1 (g) take civil or criminal proceedings to enforce any  
2 provision of this Act.

3 (3) The Council may, in accordance with regulations, impose and  
4 recover fees, charges and expenses in connection with the  
5 performance of its functions.

6 **15. Delegation by Council and by Chairperson**

7 (1) By resolution of which notice has been given in the *Gazette* in  
8 accordance with subsection (3) the Council may delegate any of  
9 its functions under any written law (other than this power of  
10 delegation) either generally or in respect of any particular matter  
11 to a person other than the Council.

12 (2) Subject to the approval of the Minister, by written instrument of  
13 which notice has been given in the *Gazette* in accordance with  
14 subsection (3) the Chairperson may delegate any of the  
15 Chairperson's functions under any written law (other than this  
16 power of delegation) either generally or as otherwise provided  
17 in the instrument to —

18 (a) a member; or

19 (b) an officer or other person referred to in section 20 who  
20 is identified in the instrument by name or title.

21 (3) The Council is to cause a notice to be published in the *Gazette*  
22 in relation to every delegation under this section, setting out the  
23 identity of the delegate and the scope of the delegation.

24 (4) The delegate is to perform or discharge functions delegated  
25 under this section in accordance with the terms of the  
26 delegation.

27 (5) A person performing a function that has been delegated to the  
28 person under this section is to be taken to do so in accordance  
29 with the terms of the delegation unless the contrary is shown.

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

31 **16. Administration of this Act**

32 The Council is to assist the Minister in the administration of this  
33 Act.

34 **17. Minister's directions**

35 (1) The Minister may give the Council written directions of a  
36 general character with respect to its functions and, subject to

1 subsection (2), the Council is to give effect to any such  
2 direction.

3 (2) The Council need not give effect to a direction of the Minister  
4 with respect to its functions under this Act of —

5 (a) evaluating the cultural heritage significance of places;  
6 and

7 (b) giving advice to the Minister and to decision-making  
8 authorities.

9 (3) The text of a direction received by the Council under  
10 subsection (1) is to be included in the annual report submitted  
11 by the accountable authority of the Council under the *Financial*  
12 *Management Act 2006* Part 5.

### 13 **18. Minister to have access to information**

14 (1) The Minister is entitled —

15 (a) to have information in the possession of the Council;  
16 and

17 (b) where the information is in or on a document, to have  
18 access to, and to make and retain copies of, that  
19 document.

20 (2) For the purposes of subsection (1) the Minister may —

21 (a) request the Council to furnish information to the  
22 Minister; and

23 (b) request the Council to give the Minister access to  
24 information; and

25 (c) for the purposes of paragraphs (a) and (b) make use of  
26 the staff of the Council to obtain the information and  
27 furnish it to the Minister.

28 (3) The Council is to comply with requests under subsection (2)(a)  
29 and (b) and make its staff and facilities available to the Minister  
30 for the purposes of subsection (2)(c).

### 31 **19. Delegation by Minister**

32 (1) By written instrument of which notice has been given in  
33 accordance with subsection (2), the Minister may delegate any  
34 function of the Minister under this Act, other than —

35 (a) this power of delegation; and

36 (b) functions under sections 17 and 18; and

37 (c) functions under Part 3; and

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- 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 to a person identified in the instrument by name or title.
- 6 (2) The Minister is to cause a notice to be published in the *Gazette*  
7 in relation to every delegation under this section, setting out the  
8 identity of the delegate and the scope of the delegation.
- 9 (3) The delegate is to perform or discharge functions delegated  
10 under this section in accordance with the terms of the  
11 delegation.
- 12 (4) A person performing a function that has been delegated to the  
13 person under this section is to be taken to do so in accordance  
14 with the terms of the delegation unless the contrary is shown.
- 15 (5) Nothing in this section limits the ability of the Minister to  
16 perform a function through an officer or agent.

17 **Division 4 — Staff**

18 **20. Staff**

- 19 (1) Public service officers may be appointed under the *Public*  
20 *Sector Management Act 1994* Part 3 to enable the Council to  
21 perform its functions.
- 22 (2) The Council may, subject to any relevant written law or any  
23 binding award, order or industrial agreement under the  
24 *Industrial Relations Act 1979*, employ or engage and manage  
25 staff otherwise than under the *Public Sector Management*  
26 *Act 1994* Part 3.
- 27 (3) This section does not detract from the power that the *Public*  
28 *Sector Management Act 1994* section 100 gives the employing  
29 authority of the Council to engage a person under a contract for  
30 services or appoint a person on a casual employment basis.
- 31 (4) The Council may, by arrangement on such terms as are agreed  
32 with the relevant parties, make use of the services of a person  
33 employed by another person.

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

14   **Division 5 — Finance**

- 15     **22.     *Financial Management Act 2006 and Auditor General***
- 16           ***Act 2006 apply***
- 17            The provisions of the *Financial Management Act 2006* and the
- 18            *Auditor General Act 2006* regulating the financial
- 19            administration, audit and reporting of statutory authorities apply
- 20            to and in respect of the Council and its operations.

- 21     **23.     Funds of Council**
- 22            The funds available to the Council for the purposes of this Act
- 23            are —
- 24                 (a)   moneys from time to time appropriated by Parliament;
- 25                   and
- 26                 (b)   moneys received by the Council —
- 27                    (i)   by way of fees, charges or expenses; or
- 28                    (ii)  from the sale or rental of property owned by the
- 29                    Council; or
- 30                    (iii) from the management of property administered
- 31                    by the Council;
- 32                    and
- 33                 (c)   moneys borrowed by the Council; and
- 34                 (d)   other moneys lawfully received by, made available to, or
- 35                   payable to, the Council.

1     **24.     Heritage Fund**

2            (1)    The Council is to establish an account called the Heritage Fund.

3            (2)    The Heritage Fund is to be an agency special purpose account  
4            for the purposes of the *Financial Management Act 2006*  
5            section 16.

6            (3)    The Heritage Fund is to be a continuation of the Heritage  
7            Account established and operated under the 1990 Act  
8            section 14.

9            (4)    The funds referred to in section 23 are to be credited to the  
10            Heritage Fund.

11           (5)    The Heritage Fund is to be charged with —

12                (a)    the remuneration and allowances payable under  
13                section 12(5); and

14                (b)    interest on, other fees and charges in respect of, and  
15                repayment of moneys borrowed by, the Council; and

16                (c)    all other expenditure lawfully incurred by the Council in  
17                the performance of its functions.

18     **25.     Borrowing**

19            (1)    The Council may with the prior written approval of the  
20            Treasurer and on terms and conditions which the Treasurer  
21            approves, borrow moneys for the purpose of performing its  
22            functions.

23            (2)    Any moneys borrowed by the Council under subsection (1) may  
24            be raised —

25                (a)    as one loan or as several loans; and

26                (b)    in any manner which the Treasurer approves.

27     **26.     Guarantee by Treasurer**

28            (1)    The Treasurer may, in the name and on behalf of the State,  
29            guarantee the payment of any moneys payable by the Council in  
30            respect of moneys borrowed by it under section 25.

31            (2)    A guarantee is to be in a form, and contain terms and  
32            conditions, determined by the Treasurer.

33            (3)    Before a guarantee is given, the Council is to —

34                (a)    give the Treasurer any security which the Treasurer  
35                requires; and





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

2                                    **Division 1 — The register**

3    **29.        The register**

4        (1)    The Council is to maintain the State Register of Heritage Places  
5            as a comprehensive register of places of cultural heritage  
6            significance that make an important contribution to understanding  
7            the heritage of Western Australia.

8        (2)    The Council is to make the register available for public  
9            inspection in the prescribed manner.

10       (3)    The Council is to make information regarding amendments to,  
11            and removals of, entries in the register available for public  
12            inspection in the prescribed manner.

13    **30.        Form and content of register**

14       (1)    The Council is to keep the register in the prescribed form.

15       (2)    An entry in the register in relation to a place must contain —

16            (a)    a land description of the place; and

17            (b)    the current statement of cultural heritage significance  
18            adopted in relation to the place; and

19            (c)    any other prescribed particulars.

20                                    **Division 2 — Entry in the register**

21                                    **Subdivision 1 — Registration conditions**

22    **31.        Conditions for registration**

23       (1)    Subject to subsection (2), a place may be entered in the register  
24            if the Council determines in accordance with section 32 that it  
25            has cultural heritage significance.

26       (2)    A place may not be entered in the register if it is comprised of  
27            or includes land that within the preceding 5 years —

28            (a)    was removed from a registered place by an amendment  
29            made under section 40; or

30            (b)    was included in an entry that has been removed from the  
31            register under section 45,

32            except with the leave of the Supreme Court and in accordance  
33            with any order the Court may make.

1     **32.     Factors relevant to cultural heritage significance**

- 2     (1)    In determining whether a place has cultural heritage  
3            significance the Council may have regard to the following —  
4            (a)    its importance in demonstrating the evolution or pattern  
5                    of Western Australian history;  
6            (b)    its importance in demonstrating rare, uncommon or  
7                    endangered aspects of Western Australia’s heritage;  
8            (c)    the place’s potential to yield information that will  
9                    contribute to an understanding of Western Australia’s  
10                  history;  
11           (d)    its importance in demonstrating the characteristics of a  
12                  broader class of places;  
13           (e)    any strong or special meaning it may have for any group  
14                  or community because of social, cultural or spiritual  
15                  associations;  
16           (f)    its importance in exhibiting particular aesthetic  
17                  characteristics valued by any group or community;  
18           (g)    any special association it may have with the life or work  
19                  of a person, group or organisation of importance in  
20                  Western Australia’s history;  
21           (h)    its importance in demonstrating a high degree of  
22                  creative or technical achievement;  
23           (i)    any other characteristic it may have that in the opinion  
24                  of the Council is relevant to the assessment of cultural  
25                  heritage significance.  
26     (2)    A place may have cultural heritage significance despite lacking  
27            significant fabric.

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

29     **33.     Nomination for entry in the register**

- 30     (1)    A person may nominate a place for entry in the register in  
31            accordance with the regulations.  
32     (2)    Within the prescribed time after receipt of a nomination, the  
33            Council is to make a preliminary determination as to whether  
34            the nominated place warrants consideration for entry in the  
35            register under section 34.

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- 1 (3) In accordance with the regulations the Council is to give written  
2 notice of every determination made under subsection (2) and the  
3 reasons for it to —  
4 (a) the person that made the nomination; and  
5 (b) any other prescribed person or body.

6 **34. Assessment and registration recommendation**

- 7 (1) The Council may, in accordance with the regulations —  
8 (a) assess the cultural heritage significance of a place; and  
9 (b) undertake public consultation in relation to the entry of  
10 the place in the register; and  
11 (c) consider whether the place satisfies the registration  
12 conditions.
- 13 (2) Where the Council has completed its consideration under  
14 subsection (1) it may recommend to the Minister that the place  
15 be entered in the register.
- 16 (3) If the Council recommends to the Minister that a place be  
17 entered in the register, it is to —  
18 (a) advise the Minister on the cultural heritage significance  
19 of the place and on any submissions received in the  
20 course of public consultation; and  
21 (b) prepare and provide to the Minister a draft register entry  
22 (including a draft statement of cultural heritage  
23 significance) in relation to the place.
- 24 (4) Subject to subsection (5), regulations may provide for the  
25 Council to issue a public advertisement in relation to a  
26 recommendation made under subsection (2).
- 27 (5) The Council is not to include in a public advertisement referred  
28 to in subsection (4) information regarding any person consulted,  
29 or any submission received, in the course of public consultation  
30 without the consent of the person consulted or the person  
31 making the submission.

32 **35. Direction by Minister**

- 33 (1) If the Council recommends to the Minister under section 34 that  
34 a place be entered in the register, the Minister is —  
35 (a) to consider whether the cultural heritage significance of  
36 the place is such that the place is of value to the  
37 community and ought to be entered in the register; and

- 1           (b) within such time as may be prescribed —
- 2                 (i) to direct the Council to enter the place in the
- 3                 register; or
- 4                 (ii) to direct the Council not to enter the place in the
- 5                 register and state in writing the reasons for the
- 6                 direction.
- 7       (2) Regulations may provide for the Council —
- 8                 (a) to give notice of a direction under subsection (1) and
- 9                 any statement of reasons to any person; and
- 10                (b) to issue a public advertisement in relation to the
- 11                direction and any statement of reasons.

12       **36. Entry in register**

- 13       (1) As soon as practicable after receiving a direction under
- 14       section 35(1)(b)(i) in relation to a place the Council is to make
- 15       an entry in the register in relation to that place in accordance
- 16       with section 30(2).
- 17       (2) Regulations may provide for the Council —
- 18                 (a) to give notice of the entry in the register to any person;
- 19                 and
- 20                 (b) to issue a public advertisement in relation to the entry in
- 21                 the register.
- 22       (3) Regulations are to provide for the Council to give statutory
- 23       notification of the entry in the register.

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

25       **37. Request for amendment of land description in register entry**

- 26       (1) An owner of a registered place may in accordance with the
- 27       regulations request the Council to amend the land description in
- 28       an entry in the register relating to the place.
- 29       (2) Within the prescribed time after receipt of a request under
- 30       subsection (1), the Council is to make a determination as to
- 31       whether the requested amendment warrants consideration in
- 32       detail.
- 33       (3) In accordance with the regulations the Council is to give written
- 34       notice of its determination under subsection (2) and the reasons
- 35       for it to —
- 36                 (a) the person that made the request; and

- 1 (b) any other prescribed person or body.
- 2 **38. Detailed consideration of amendment to land description**
- 3 (1) If the Council determines under section 37 or otherwise that an  
4 amendment to the land description in an entry in the register  
5 warrants detailed consideration it may, in accordance with the  
6 regulations —
- 7 (a) review the cultural heritage significance of the relevant  
8 registered place; and
- 9 (b) undertake public consultation in relation to the proposed  
10 amendment; and
- 11 (c) consider whether the amendment is desirable, having  
12 regard to —
- 13 (i) the cultural heritage significance of the relevant  
14 registered place; and
- 15 (ii) the way in which the relevant registered place  
16 satisfies the registration conditions; and
- 17 (iii) any submissions received in the course of public  
18 consultation.
- 19 (2) Where the Council has considered an amendment to the land  
20 description in an entry in the register in accordance with  
21 subsection (1) it may recommend to the Minister that the  
22 amendment be made.
- 23 (3) If the Council recommends to the Minister that an amendment  
24 to the land description in an entry in the register be made, it is  
25 to —
- 26 (a) advise the Minister on the cultural heritage significance  
27 of the place, on any submissions received in the course  
28 of public consultation and on the Council's reasons for  
29 recommending the amendment be made; and
- 30 (b) recommend any conditions that the owner should be  
31 required to satisfy before the amendment is made; and
- 32 (c) prepare and provide to the Minister the terms of the  
33 amendment that it recommends be made.
- 34 (4) Subject to subsection (5), regulations may provide for the  
35 Council to issue a public advertisement in relation to a  
36 recommendation made under subsection (2).
- 37 (5) The Council is not to include in a public advertisement referred  
38 to in subsection (4) information regarding any person consulted,  
39 or 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 **39. Land description amendment direction by Minister**

4 (1) If the Council recommends to the Minister under section 38(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, is to —

- 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 may provide for the Council —

- 18 (a) to give notice of a direction under subsection (1) and  
19 any statement of reasons to any person; and  
20 (b) to issue a public advertisement in relation to the  
21 direction and any statement of reasons.

22 **40. Amending land description in register entry**

23 (1) As soon as practicable after receiving a direction under  
24 section 39(1)(a) to amend the land description in an entry in the  
25 register, and subject to the satisfaction of any conditions  
26 imposed under section 39(2), the Council is to amend the land  
27 description as directed.

28 (2) Regulations may provide for the Council —

- 29 (a) to give notice of the amendment to any person; and  
30 (b) to issue a public advertisement in relation to the  
31 amendment.

32 (3) Regulations are to provide for the Council to give statutory  
33 notification of the amendment.

1 **41. Other amendments**

- 2 (1) The Council is to make amendments to the statement of cultural  
3 heritage significance in an entry to the register in accordance  
4 with regulations made for the purposes of section 47(1).
- 5 (2) Regulations prescribing other particulars to be included in an  
6 entry in the register are to prescribe procedures for the  
7 amendment of those particulars.

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

9 **42. Request for removal**

- 10 (1) The owner of a registered place or, if more than one, all the  
11 owners acting jointly, may, in accordance with the regulations  
12 request the Council, to remove the entry in the register relating  
13 to the place.
- 14 (2) Within the prescribed time after receipt of a request under  
15 subsection (1), the Council is to make a determination as to  
16 whether the requested removal warrants consideration in detail.
- 17 (3) In accordance with the regulations the Council is to give written  
18 notice of its determination under subsection (2) and the reasons  
19 for it to the owner.
- 20 (4) If the Council determines that the requested removal does not  
21 warrant consideration in detail, the owner may in accordance  
22 with the regulations request the Council to refer the matter to  
23 the Minister, who is within the prescribed time to —
- 24 (a) confirm the Council's determination; or  
25 (b) direct the Council to give detailed consideration to the  
26 requested removal under section 43.

27 **43. Detailed consideration of removal**

- 28 (1) If the Minister directs the Council to do so under  
29 section 42(4)(b) the Council must, and in any other case the  
30 Council may, in accordance with the regulations —
- 31 (a) review the cultural heritage significance of a registered  
32 place; and
- 33 (b) undertake public consultation in relation to the removal  
34 of the entry in the register relating to the place; and



- 1 (c) consider whether the removal is desirable, having regard  
2 to —
- 3 (i) the cultural heritage significance of the place;  
4 and
- 5 (ii) the way in which the place satisfies the  
6 registration conditions; and
- 7 (iii) any submissions received in the course of public  
8 consultation.
- 9 (2) Where the Council has considered the removal of an entry in the  
10 register in accordance with subsection (1) it is to recommend to  
11 the Minister —
- 12 (a) that the entry be removed; or  
13 (b) that the entry not be removed.
- 14 (3) When the Council makes a recommendation under  
15 subsection (2) it is to advise the Minister on —
- 16 (a) the cultural heritage significance of the place; and  
17 (b) any submissions received in the course of public  
18 consultation; and
- 19 (c) the Council’s reasons for its recommendation; and  
20 (d) if the recommendation is for removal of the entry, any  
21 conditions that the owner should be required to satisfy  
22 before the entry is removed.
- 23 (4) Subject to subsection (5), regulations may provide for the  
24 Council to issue a public advertisement in relation to a  
25 recommendation made under subsection (2).
- 26 (5) The Council is not to include in a public advertisement referred  
27 to in subsection (4) information regarding any person consulted,  
28 or any submission received, in the course of public consultation  
29 without the consent of the person consulted or the person  
30 making the submission.

31 **44. Removal direction by Minister**

- 32 (1) Within such time as may be prescribed after the Council has  
33 made a recommendation under section 43(2) the Minister,  
34 having regard to the advice and recommendation of the Council,  
35 is to —
- 36 (a) direct the Council to remove the entry; or

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- 1 (b) direct the Council not to remove the entry,  
2 and in either case the Minister is to state the reasons for the  
3 direction.
- 4 (2) A direction by the Minister under subsection (1)(a) to remove  
5 an entry may be conditional upon the owner of the place  
6 concerned —
- 7 (a) discharging any costs associated with the removal; and  
8 (b) satisfying any other conditions specified by the Minister.
- 9 (3) A direction under subsection (1)(a) does not take effect unless it  
10 has been approved by a resolution of both Houses of Parliament.
- 11 (4) Regulations may provide for the Council —
- 12 (a) to give notice of a direction under subsection (1) and  
13 any statement of reasons to any person; and  
14 (b) to issue a public advertisement in relation to the  
15 direction and any statement of reasons.

16 **45. Removing entry from register**

- 17 (1) If the Minister directs the Council under section 44(1)(a) to  
18 remove an entry from the register, as soon as practicable  
19 after —
- 20 (a) the satisfaction of any conditions imposed under  
21 section 44(2); and  
22 (b) the approval of both Houses of Parliament under  
23 section 44(3),
- 24 the Council is to remove the entry from the register as directed.
- 25 (2) Regulations may provide for the Council —
- 26 (a) to give notice of the removal to any person; and  
27 (b) to issue a public advertisement in relation to the  
28 removal.
- 29 (3) Regulations are to provide for the Council to give statutory  
30 notification of the removal.

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

32 **46. Adoption of statement of cultural heritage significance**

- 33 (1) In relation to each registered place the Council is to adopt a  
34 statement of cultural heritage significance.

1       (2) Regulations are to prescribe the form and content of a statement  
2       of cultural heritage significance.

3       **47.       Updating and amending statements of cultural heritage**  
4       **significance**

5       (1) Regulations are to provide for the Council from time to time to  
6       review and update the statement of cultural heritage significance  
7       for a registered place.

8       (2) Regulations for the purposes of subsection (1) may provide for  
9       the Council to update a statement of cultural heritage  
10       significance without prior notice to or consultation with the  
11       owners of the registered place concerned by —

12           (a) correcting or updating names, titles, designations and  
13           the like; or

14           (b) correcting typographical, grammatical and other minor  
15           errors of presentation; or

16           (c) correcting information which on the face of it is clearly  
17           factually erroneous; or

18           (d) making any other change to the statement which, in the  
19           opinion of the Council, would not be materially relevant  
20           to the conservation or management of the place.

21       (3) Regulations for the purposes of subsection (1) may provide for  
22       the Council to amend a statement of cultural heritage  
23       significance in any way not mentioned in subsection (2)  
24       provided that —

25           (a) owners of the registered place concerned are to be  
26           notified of proposed amendments and are to have an  
27           opportunity to make submissions in relation to them;  
28           and

29           (b) no amendment is to be made unless either —

30                   (i) no owner objects to it; or

31                   (ii) the Minister directs that it be made.

32       **48.       Public access to statements of cultural heritage significance**

33       (1) The Council is to make statements of cultural heritage  
34       significance available for public inspection in the prescribed  
35       manner.

36       (2) The Council is to make information regarding updates and  
37       amendments of statements of cultural heritage significance  
38       available for public inspection in the prescribed manner.

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- 1            (3) Regulations may provide for the Council —
- 2                    (a) to give notice of the adoption, updating or amendment
- 3                            of a statement of cultural heritage significance to any
- 4                            person; and
- 5                    (b) to issue a public advertisement in relation to the
- 6                            adoption, updating or amendment of a statement of
- 7                            cultural heritage significance.

**Part 4 — Protection Orders and Repair Orders**

**Division 1 — Protection orders**

**49. Protection order**

(1) If the Minister considers that —

- (a) it is necessary or desirable to provide special protection in respect of a place; and
- (b) by reason of the likelihood of imminent damage to the place a specific prohibition is urgently necessary,

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

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

(3) If —

- (a) the Minister considers that by reason of any matter —
  - (i) it is necessary or desirable to provide special protection in respect of a place; and
  - (ii) the likelihood of imminent damage to the place means that a specific prohibition is urgently necessary;

and

(b) the requirements of subsection (4) are satisfied,

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

(4) The Minister is not to make a stop work order in relation to a place if —

- (a) a stop work order relating to the place in respect of the same or a similar matter has been revoked or has expired within the preceding 12 months; or
- (b) section 31(2) applies to the place for the time being,

except with leave of the State Administrative Tribunal and in accordance with such order as the State Administrative Tribunal thinks fit.

- 1 (5) In any other case where the Minister considers that it is  
2 necessary or desirable to provide special protection in respect of  
3 a place, the Minister may make a protection order if the  
4 requirements of section 50 have been satisfied (a *continuing*  
5 *protection order*).

6 **50. Consultation and notice**

- 7 (1) The Minister is not to make a continuing protection order unless  
8 the Council has —
- 9 (a) given notice in writing to every owner of land which is  
10 likely to be directly affected, explaining the nature of the  
11 special protection proposed and the reason for it; and
- 12 (b) undertaken public consultation in relation to the  
13 proposed continuing protection order; and
- 14 (c) considered, and advised the Minister on, submissions  
15 received in the course of public consultation; and
- 16 (d) recommended to the Minister to make a continuing  
17 protection order; and
- 18 (e) issued any public advertisement that may be prescribed.
- 19 (2) Regulations may provide that if, after the Council has  
20 recommended to the Minister to make a continuing protection  
21 order, the Minister determines not to make an order, the Council  
22 is to issue a public advertisement in relation to the Minister's  
23 determination and the reasons for it.
- 24 (3) The Council is not to include in a public advertisement referred  
25 to in section 34(4) information regarding any person consulted,  
26 or any submission received, in the course of public consultation  
27 without the consent of the person consulted or the person  
28 making the submission.

29 **51. Content of protection order**

- 30 (1) A protection order is to contain a land description of the place to  
31 which the order relates.
- 32 (2) A protection order may contain prohibitions relating to —
- 33 (a) the entry of persons on to the place to which the order  
34 relates, other than entry by an owner or authorised  
35 occupier; or
- 36 (b) the bringing of vehicles, machinery, equipment,  
37 materials or substances on to the place; or

- 1 (c) any activity of a kind which, in the opinion of the  
2 Minister, is likely to affect detrimentally the cultural  
3 heritage significance of the place, or the capacity to  
4 effect conservation of its cultural heritage significance;  
5 or  
6 (d) the demolition, damage or alteration of the place or any  
7 portion of the place, or any building or structure; or  
8 (e) anything which, in the opinion of the Minister, is likely  
9 to cause disturbance to the land or any plant or species  
10 of animal at the place; or  
11 (f) any development affecting the place or other matter in  
12 respect of which the Minister is satisfied a prohibition is  
13 needed to further the objectives of this Act,

14 and any such prohibition may be expressed to be absolute or  
15 conditional or subject to the exercise of discretion by a person  
16 or body specified in the order, and effect shall be given to the  
17 prohibition in accordance with the tenor of the order.

- 18 (3) Regulations may prescribe activities that may be carried out  
19 despite the terms of a protection order, or of a particular  
20 protection order or particular class of protection orders.

21 **52. Notification of protection order**

22 Where a protection order is made the Council —

- 23 (a) is to serve a copy of the order, where practicable, on the  
24 owner and each occupier of the place concerned; and  
25 (b) is to give statutory notification of the order; and  
26 (c) except in the case of a stop work order, is to issue a  
27 public advertisement containing a summary of the terms  
28 of the order, setting out a sufficient description to  
29 identify the place to which it refers; and  
30 (d) may erect signs on or near the place concerned for the  
31 purpose of informing the public of the making of the  
32 order and of the matters which the order prohibits.

33 **53. Coming into effect of protection order**

- 34 (1) Subject to subsection (2), a protection order takes effect on  
35 publication of a notice in the *Gazette* setting out its terms.  
36 (2) A stop work order which —  
37 (a) is affixed in a prominent position on the place to which  
38 it relates; or

1 (b) is served on a person carrying out, or causing to be  
2 carried out, any works or other activity at the place to  
3 which the order refers, whether or not served at that  
4 place,

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

7 **54. Duration of protection order**

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

9 (a) in the case of a consent order, on the expiry date  
10 specified in the order; or

11 (b) in the case of a stop work order —

12 (i) on the expiry of 60 days from the making of the  
13 order; or

14 (ii) if the order is continued in force by the State  
15 Administrative Tribunal under section 55(5) on  
16 the expiry date fixed by the State Administrative  
17 Tribunal;

18 or

19 (c) in the case of a continuing protection order, on any  
20 expiry date which may be specified in the order; or

21 (d) in any case, when the Minister, after consultation with  
22 the Council, revokes the order by notice in the *Gazette*;  
23 or

24 (e) in any case, if the order relates to a registered place and  
25 that place ceases to be a registered place.

26 (2) Where a protection order ceases to have effect —

27 (a) the Council is to give statutory notification of the  
28 cessation; and

29 (b) the Council shall take reasonable steps to ensure that  
30 notice is given to interested persons that the order has  
31 ceased to have effect.

32 **55. State Administrative Tribunal's powers as to protection**  
33 **order**

34 (1) A person aggrieved by the making of a stop work order or a  
35 continuing protection order may apply to the State  
36 Administrative Tribunal for a review of the order.

37 (2) The Minister may refer a stop work order to the State  
38 Administrative Tribunal seeking a determination that the order



- 1 continue to have effect for a period greater than 60 days from  
2 the making of the order.
- 3 (3) The provisions of the *Planning and Development Act 2005*  
4 Part 14 apply to applications and referrals under this section,  
5 with any modification that may be necessary, as they apply to  
6 applications for review under that Act.
- 7 (4) On an application under subsection (1) the Tribunal may —  
8 (a) revoke the protection order; or  
9 (b) confirm the protection order; or  
10 (c) modify the protection order.
- 11 (5) On a referral under subsection (2) the Tribunal may order that  
12 such of the terms of the prohibitions contained in the stop work  
13 order as the Tribunal may determine continue in force —  
14 (a) permanently; or  
15 (b) for a specified period.
- 16 (6) Despite any application or reference to the Tribunal in respect  
17 of a stop work order, the order continues to have effect unless  
18 and until the Tribunal determines otherwise under  
19 subsection (4) or (5).

## 20 **Division 2 — Repair orders**

### 21 **56. Terms used**

22 In this Division —

23 *repair notice* means a notice given under section 57;

24 *reserve* has the meaning given in the *Land Administration*  
25 *Act 1997* section 3(1);

26 *unallocated Crown land* has the meaning given in the *Land*  
27 *Administration Act 1997* section 3(1).

### 28 **57. Repair notice**

29 (1) If —

- 30 (a) a registered place suffers from neglect of a prescribed  
31 kind or extent; and  
32 (b) the Council considers that, in consequence of the  
33 neglect, works are required to prevent irreversible  
34 deterioration to the place,

35 the Council may give written notice to the owner or occupier  
36 stating that, unless specified works are completed by a specified

1 date, the Council will advise the Minister to make a repair order  
2 in relation to the place.

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

19 **58. Repair order**

- 20 (1) Subject to subsections (2) and (3), the Minister may make a  
21 repair order in relation to a registered place requiring the owner  
22 or occupier of the place to undertake specified works for the  
23 purpose of —
- 24 (a) protecting the place from damage or deterioration due to  
25 fire, weather or other causes; or
  - 26 (b) securing the place from intrusion, vandalism and the  
27 like; or
  - 28 (c) maintaining or repairing the place to remedy or prevent  
29 serious or irreparable damage or deterioration from any  
30 cause.
- 31 (2) The Minister is not to make an order under subsection (1)  
32 unless —
- 33 (a) the Council has advised the Minister that —
    - 34 (i) it has served a repair notice on the owner or  
35 occupier of the place concerned and has taken  
36 the prescribed steps for consultation and  
37 negotiation; and

- 1 (ii) neither the works specified in the repair notice  
2 nor other works satisfactory to the Council have  
3 been carried out; and  
4 (iii) the Council considers that specified works are  
5 necessary for any of the purposes mentioned in  
6 subsection (1);  
7 and  
8 (b) the Minister considers, having regard to the advice of  
9 the Council, that —  
10 (i) an order under subsection (1) is reasonably  
11 necessary for any of the purposes mentioned in  
12 subsection (1); and  
13 (ii) the order is unlikely to cause undue hardship to  
14 the recipient.
- 15 (3) The Minister is not to make an order under subsection (1) in  
16 relation to —  
17 (a) unallocated Crown land or a reserve, except with the  
18 consent of the Minister for Lands; and  
19 (b) a place that is owned by a public authority that is  
20 established under, or performs functions under, an Act,  
21 except with the concurrence of the Minister to whom the  
22 administration of the Act concerned is committed.
- 23 (4) An order made under subsection (1) is to contain —  
24 (a) a land description of the place to which it relates; and  
25 (b) particulars of the works to be undertaken; and  
26 (c) a statement of the date by which the works are to be  
27 completed.
- 28 (5) Subject to subsection (4), regulations made for the purposes of  
29 this section may prescribe the form and content of an order  
30 under subsection (1).

31 **59. Notification of repair order**

- 32 When a repair order is made the Council —  
33 (a) is to serve a copy of the order by registered post on the  
34 person to whom it is directed; and  
35 (b) where practicable, is to erect signs on or near the place  
36 concerned displaying a copy of the order; and  
37 (c) is to give statutory notification of the order.

1 **60. Standard of works**

2 A person undertaking works under a repair order or pursuant to  
3 a repair notice is to comply with —

- 4 (a) any applicable requirements under the *Building*  
5 *Act 2011*, the *Local Government Act 1995*, the *Planning*  
6 *and Development Act 2005* or any other legislation  
7 specified in the regulations; and  
8 (b) any prescribed requirements or standards; and  
9 (c) any standards or requirements specified in the repair  
10 order or repair notice.

11 **61. Termination of repair order**

12 (1) A repair order terminates if —

- 13 (a) the Minister withdraws it by written notice to the person  
14 to whom it is directed; or  
15 (b) the Council confirms in writing for the purposes of this  
16 section that the works required by the order have been  
17 satisfactorily completed; or  
18 (c) the State Administrative Tribunal revokes it under  
19 section 62(3)(a).

20 (2) When a repair order is terminated the Council is to withdraw the  
21 notification lodged under section 59(c) in respect of the order.

22 **62. State Administrative Tribunal's powers as to repair order**

23 (1) A person to whom a repair order is directed may apply to the  
24 State Administrative Tribunal within 28 days of the day on  
25 which a copy of the order is served under section 59(a) for a  
26 review of the order.

27 (2) The provisions of the *Planning and Development Act 2005*  
28 Part 14 apply to applications under this section, with any  
29 modification that may be necessary, as they apply to  
30 applications for review under that Act.

31 (3) On an application under subsection (1) the Tribunal may —

- 32 (a) revoke the repair order; or  
33 (b) confirm the repair order; or  
34 (c) modify the repair order.

1    **63.    Exclusion of liability**

2            Neither the State nor the Minister nor the Council is liable to  
3            any person for any injury, loss or damage suffered as a result of  
4            the failure of any person to comply with a repair order.

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

2 **Division 1 — Preliminary**

3 **64. Terms used**

4 In this Part —

5 ***approval application*** means an application for —

- 6 (a) approval under the *Planning and Development Act 2005*  
7 for the development of any land; or  
8 (b) approval, authorisation, consent or permission under any  
9 other written law to do anything which would or might  
10 significantly affect the physical character of any land;

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

16 ***development*** has the meaning given in the *Planning and*  
17 *Development Act 2005* section 4(1);

18 ***proposal*** means —

- 19 (a) an approval application; or  
20 (b) a proposal, project, plan, programme, policy, public  
21 work, operation or undertaking for or relating to the  
22 development of any land owned, occupied or managed  
23 by a public authority; or  
24 (c) any other proposal by a public authority to exercise any  
25 of its powers in a way which would or might  
26 significantly affect the physical character of any land.

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

28 **65. Referral of proposal for advice**

29 (1) A decision maker considering a proposal which would, or  
30 would be likely to, affect —

- 31 (a) a registered place; or  
32 (b) a place which is the subject of a heritage agreement; or

- 1           (c) a place which is the subject of a protection order, if the  
2           terms of the order allow the Council to authorise a  
3           proposal that the order would otherwise forbid,  
4           (even though the proposal is not directly related to that place) is  
5           to refer the proposal to the Council for its advice in accordance  
6           with the regulations as soon as practicable.
- 7           (2) Subject to subsection (3), regulations may prescribe —  
8           (a) a class or classes of proposals; or  
9           (b) a decision maker or a class or classes of decision maker;  
10           or  
11           (c) a place or a class or classes of places,  
12           in relation to which subsection (1) does not apply.
- 13           (3) Notwithstanding any regulations made for the purposes of  
14           subsection (2), subsection (1) applies in relation to a proposal  
15           which would, or would be likely, to affect a place mentioned in  
16           subsection (1)(c).
- 17           **66. Advice on referred proposal**
- 18           (1) In accordance with the regulations, the Council is to provide  
19           advice on a referred proposal to the decision maker and, if the  
20           proposal is an approval application, to the applicant.
- 21           (2) In its advice provided under subsection (1) the Council may  
22           address all aspects of conserving the place concerned, so as to  
23           retain its cultural heritage significance, including —  
24           (a) maintenance, preservation, restoration, reconstruction,  
25           adaptation and interpretation of the place; and  
26           (b) retention of the associations and meanings of the place;  
27           and  
28           (c) retention or reintroduction of a use of the place.
- 29           (3) In its advice provided under subsection (1) the Council may  
30           take account of unrectified errors, omissions, refusals or failures  
31           in complying with —  
32           (a) any advice or approval that the Council has previously  
33           given; or  
34           (b) any obligation under this Act,  
35           relating to the place which is the subject of the referred  
36           proposal.

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

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

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- 1 (4) If—
- 2 (a) the Council has provided advice to a decision maker on
- 3 a referred proposal; and
- 4 (b) the decision maker has not made a decision with respect
- 5 to the proposal; and
- 6 (c) in the view of the Council there has been a material
- 7 change of circumstances or a substantial lapse of time
- 8 since it provided the advice,
- 9 the Council may modify the advice provided or withdraw the
- 10 advice provided and provide new advice.

11 **67. Decision on referred proposal**

- 12 (1) In respect of a referred proposal, a decision maker is not to
- 13 make a decision which would, or would be likely to, adversely
- 14 affect to a significant extent a place mentioned in section 65(1)
- 15 (even though the decision is not directly related to that place)
- 16 unless —
- 17 (a) the decision maker has used its best endeavours to
- 18 ensure that each person involved in the implementation
- 19 of the proposal will take all measures to minimise any
- 20 adverse effect which they can reasonably take; and
- 21 (b) the decision maker has complied with section 65; and
- 22 (c) the decision maker has given the Council a reasonable
- 23 opportunity to consider the proposal and to advise the
- 24 decision maker; and
- 25 (d) subject to subsection (2), the decision made is consistent
- 26 with advice received from the Council.
- 27 (2) Subsection (1)(d) does not apply if the decision maker finds that
- 28 there is no feasible and prudent alternative to the decision made.
- 29 (3) If and only if the Council so advises under section 66, a decision
- 30 maker may specify that its decision in respect of a proposal
- 31 relating to any land mentioned in section 83 is conditional upon
- 32 the owner or occupier of that land entering into a heritage
- 33 agreement in relation to that land.
- 34 (4) Within the prescribed period after making a decision in respect
- 35 of a referred proposal, the decision maker is to notify the
- 36 Council in writing of its decision.



- 1 **68. 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 decision  
4 maker is considering a proposal of a prescribed kind or class  
5 which would, or would be likely to, affect that place, section 65  
6 applies in relation to that development proposal.
- 7 (2) If, at the time that a place becomes a registered place —  
8 (a) a decision maker has made a decision in respect of a  
9 proposal of a prescribed kind or class which would, or  
10 would be likely to, affect that place; but  
11 (b) the decision has not been substantially implemented or  
12 acted upon,  
13 the decision is taken to be suspended.
- 14 (3) No person may implement or act on a decision which has been  
15 suspended under subsection (2), except with the consent in  
16 writing of the Council and in such manner and on such  
17 conditions as the Council may specify.
- 18 **69. Regulations**
- 19 Regulations for the purposes of this Division may prescribe —
- 20 (a) forms to be used to refer proposals for advice, and for  
21 the other purposes of this Part; and  
22 (b) information, evidence or assistance to be given to the  
23 Council in connection with a referred proposal; and  
24 (c) matters to which the Council is to have regard in  
25 providing its advice on a referred proposal, and the form  
26 and content of that advice; and  
27 (d) time limits within which the Council is to furnish its  
28 advice; and  
29 (e) persons (in addition to the decision maker) who are to be  
30 notified of advice provided; and  
31 (f) procedures whereby decision makers and applicants may  
32 request the Council to reconsider advice provided with a  
33 view to —  
34 (i) amending it; or  
35 (ii) setting it aside and substituting fresh advice;  
36 and  
37 (g) fees, charges and expenses to be paid in connection with  
38 the making of a request to reconsider advice provided.

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**Division 3 — Works permits**

**70. Permit for works affecting registered place**

- (1) A person who proposes to do anything —
- (a) which would contravene section 106 but not section 107; and
  - (b) in respect of which no written law provides for authorisation, permission, consent or approval pursuant to an approval application,

may, on payment of the prescribed fee, apply to the Council in accordance with the regulations for a permit authorising the doing of that thing.

- (2) Within the prescribed time the Council is to consider the application in accordance with the regulations and —
- (a) grant the permit, either unconditionally or subject to specified conditions which the Council considers to be in furtherance of the objectives of this Act; or
  - (b) refuse the application,

and notify the applicant of its decision.

- (3) Conditions imposed under subsection (2)(a) may include the giving of a bond or other security for the due observance of the conditions imposed.

- (4) Where the Council does not notify the applicant of its decision within the prescribed time, it is taken to have refused the application.

**71. State Administrative Tribunal's powers as to works permit**

- (1) A person aggrieved by a decision the Council has made under section 70(2) to —
- (a) refuse an application for a works permit; or
  - (b) attach any condition to a works permit,

may within 28 days of being notified of the decision apply to the State Administrative Tribunal for a review of the decision.

- (2) A person aggrieved by a decision the Council is taken to have made under section 70(4) may within 28 days after the expiry of the prescribed time for notification apply to the State Administrative Tribunal for a review of the decision.

- 1       (3) The provisions of the *Planning and Development Act 2005*  
2       Part 14 apply to applications and referrals under this section,  
3       with any modification that may be necessary, as they apply to  
4       applications for review under that Act.
- 5       (4) On an application under subsection (1) or (2) the Tribunal  
6       may —
- 7           (a) confirm the decision of the Council; or  
8           (b) modify the decision of the Council.

1 **Part 6 — Support for conservation**

2 **Division 1 — Valuation of land**

3 **72. Application of this Division**

4 This Division applies to —

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

7 **73. Valuation of land**

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

- 10 (a) is to take into account any restrictions on the use of the  
11 land arising out of the entry of the land in the register or  
12 the heritage agreement relating to the land, as the case  
13 may be; and  
14 (b) is to assume —  
15 (i) that all improvements to or on the land at the  
16 date of valuation are to be conserved and are not  
17 to be demolished; and  
18 (ii) that no improvements are to be made to or on the  
19 land after the date of valuation.

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

24 **74. Request for interim valuation**

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

28 (2) Where an owner requests an interim valuation under  
29 subsection (1) and since the last occasion on which the land was  
30 valued —

- 31 (a) the land has become registered land; or  
32 (b) the land has become subject to a heritage agreement; or  
33 (c) there has been a material amendment to the terms of a  
34 heritage agreement to which the land is subject,

1 the Valuer-General is to treat that fact as a circumstance which  
2 renders it expedient that the land be valued.

3 **Division 2 — Conservation assistance**

4 **75. Provision of financial, technical and professional assistance**

5 (1) The Council may —

6 (a) make grants and loans and provide other types of  
7 financial assistance; and

8 (b) provide technical and professional assistance,

9 for the identification, documentation and conservation of places  
10 of cultural heritage significance, and for education, research and  
11 publication that furthers the objectives of this Act.

12 (2) Regulations for the purposes of this section may provide for —

13 (a) types of financial assistance which the Council may  
14 provide; and

15 (b) types of technical and professional assistance which the  
16 Council may provide; and

17 (c) persons who are eligible to receive assistance; and

18 (d) projects for which the Council may provide assistance;  
19 and

20 (e) places in relation to which the Council may provide  
21 assistance; and

22 (f) the terms and conditions upon which assistance may be  
23 granted (including the provision of security by recipients  
24 of assistance for the performance of their obligations in  
25 connection with that assistance, and the entry by  
26 recipients of assistance into heritage agreements); and

27 (g) forms and procedures for applying for assistance, and  
28 considering and determining applications; and

29 (h) any other matter connected with or incidental to the  
30 provision of conservation assistance.

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

32 **76. Term used: modification order**

33 (1) In this Division —

34 ***modification order*** means an order made under section 78(1).

- 1 (2) In this Division reference to a written law does not include  
2 reference to the *Building Act 2011* or any subsidiary legislation  
3 made under or arising out of the operation or implementation of  
4 that Act.

5 **77. Council may recommend modification order**

- 6 (1) The Council may, in accordance with regulations —
- 7 (a) advise the Minister that in its opinion a written law or a  
8 provision of a written law effectively prevents the  
9 conservation of a registered place by making it unlawful  
10 or economically unviable; and
- 11 (b) recommend the Minister to make a modification order in  
12 stated terms to enable conservation of the registered  
13 place.
- 14 (2) Regulations for the purposes of this section —
- 15 (a) are to provide for the form and content of advice and  
16 recommendations under subsection (1); and
- 17 (b) are to provide for the Council to give notice to interested  
18 persons and to the public of any advice which it is  
19 considering, setting out proposed terms for the order to  
20 be suggested and describing how the order would enable  
21 conservation of the registered place; and
- 22 (c) are to provide for interested persons and members of the  
23 public to make submissions to the Council on the advice  
24 which it is considering; and
- 25 (d) are to provide that the Council is not to make the advice  
26 which it is considering unless it has —
- 27 (i) given due consideration to the public interest,  
28 health and safety; and
- 29 (ii) taken account of all submissions referred to in  
30 paragraph (c) which it has received.

31 **78. Minister may modify written law**

- 32 (1) Subject to subsection (4), the Minister may, by notice published  
33 in the *Gazette*, order that a specified written law is taken to be  
34 modified so that, in relation to a specified registered place or to  
35 any land which is associated with that registered place —
- 36 (a) it does not apply or have effect; or
- 37 (b) it applies or has effect subject to specified amendments,  
38 in specified circumstances or subject to specified  
39 conditions.

- 1        (2) A modification order has effect according to its terms and the  
2        specified written law is taken to have been amended  
3        accordingly.
- 4        (3) In subsections (1) and (2) —  
5        ***specified*** means specified in the notice.
- 6        (4) The Minister is not to make a modification order unless —  
7            (a) the Council has recommended the terms of the  
8            modification order under section 77; and  
9            (b) the Minister considers that in making the  
10           recommendation, the Council has given due  
11           consideration to the public interest, health and safety;  
12           and  
13           (c) where the Governor has committed the administration of  
14           the written law concerned to another Minister of the  
15           Crown, that other Minister has consented in writing to  
16           the making of the modification order; and  
17           (d) the Minister considers that the need to conserve the  
18           registered place warrants the making of the modification  
19           order, even though the order may affect the interests of  
20           persons in a way that is not acceptable to them.
- 21        (5) Regulations may provide that if, after the Council has  
22        recommended to the Minister to make a modification order, the  
23        Minister determines not to make an order, the Council is to  
24        issue a public advertisement in relation to the Minister’s  
25        determination and the reasons for it.
- 26        (6) Subject to section 79, a modification order takes effect —  
27            (a) on the day of publication in the *Gazette*; or  
28            (b) where another day is provided for in the modification  
29            order, on that day.
- 30        (7) A modification order may be amended or revoked by another  
31        modification order.

32        **79.      Modification order subject to disallowance**

33        *Interpretation Act 1984* section 42 applies to a modification  
34        order as though it were a regulation.

1 **80. Powers of the State Administrative Tribunal in relation to**  
2 **modification order**

3 (1) Within the period of 28 days after the date on which a  
4 modification order is published in the *Gazette*, a person  
5 aggrieved by the order may apply to the State Administrative  
6 Tribunal to review the order.

7 (2) On an application under subsection (1), if the State  
8 Administrative Tribunal is satisfied —

9 (a) that any requirement of this Act relating to the  
10 modification order has not been complied with; and

11 (b) that the failure to comply has substantially prejudiced  
12 the interests of the applicant,

13 it may make an order setting aside or amending the modification  
14 order as it thinks fit.

15 (3) Where a modification order is amended by the State  
16 Administrative Tribunal —

17 (a) it has effect according to its amended terms; and

18 (b) section 79 applies to the amended modification order.



**Part 7 — Heritage agreements**

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**81. Terms used**

In this Part —

**Council**, in relation to a heritage agreement 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 reference to 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 87 or notice of the heritage agreement was otherwise given.

**82. Heritage agreement**

The Council or a public authority on behalf of the State may enter into an agreement with an owner of land of the kind described in section 83 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 84.

**83. 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 34(2); and

(ii) the Minister has not yet given a direction under section 35(1)(b);

or

(c) a place which is the subject of a protection order; or

(d) a place which is included in —

(i) a heritage list established or maintained under a local planning scheme; or

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

18 **84. Form and content of heritage agreement**

- 19 (1) A heritage agreement is to be expressed to be made for the  
20 purposes of this Part.
- 21 (2) A heritage agreement —
- 22 (a) is to provide for the owner of the subject land, in so far  
23 as the interest of the owner permits, to make  
24 commitments or undertake obligations regarding the  
25 conservation of the subject land; and
- 26 (b) may include any other provision which is necessary or  
27 convenient for the purposes of carrying into effect the  
28 objectives of this Act.
- 29 (3) Without limiting this section, a heritage agreement may provide  
30 for —
- 31 (a) the carrying out of specified works, or works of a  
32 specified kind or to a specified standard; and
- 33 (b) restrictions on the carrying out of specified works, or  
34 works of a specified kind or standard; and
- 35 (c) requirements or restrictions regarding the design, height,  
36 scale, siting, materials or colours connected with any  
37 development of subject land; and
- 38 (d) requirements or restrictions regarding the use of subject  
39 land; and

- 1 (e) requirements or restrictions regarding the conservation,  
2 interpretation, maintenance or management of subject  
3 land, or of specimens or artefacts in, on or connected  
4 with land subject land; and
- 5 (f) the inspection, by or on behalf of the Council, of the  
6 land or of works carried out on the subject land; and
- 7 (g) the payment of a contribution towards, or the provision  
8 of an indemnity in respect of, costs incurred by the  
9 Council in relation to the subject land; and
- 10 (h) subject to the approval of the Minister, the provision by  
11 the owner of the subject land of —
- 12 (i) a charge over land; or  
13 (ii) any other form of security,  
14 to secure the performance of any commitment or  
15 obligation contained in the agreement; and
- 16 (i) any other matter for which, under the regulations, a  
17 heritage agreement may provide.
- 18 (4) Regulations may imply provisions into heritage agreements, or  
19 may prescribe model provisions for heritage agreements,  
20 relating to —
- 21 (a) the terms used in heritage agreements and the  
22 interpretation of those terms; and
- 23 (b) the scope, duration and termination of heritage  
24 agreements; and
- 25 (c) the discharge of disbursements and other costs incurred  
26 in connection with negotiating, concluding or  
27 implementing a heritage agreement; and
- 28 (d) the payment of fees to the Council for its services in  
29 assisting with the preparation or operation of a heritage  
30 agreement to which it is not a party; and
- 31 (e) the manner of providing notices under heritage  
32 agreements; and
- 33 (f) remedies for breach or repudiation of heritage  
34 agreements, or default under heritage agreements; and
- 35 (g) the governing law of heritage agreements; and
- 36 (h) procedures for resolving disputes arising under or in  
37 connection with heritage agreements; and
- 38 (i) the measurement of damages, compensation or penalties  
39 in connection with heritage agreements; and

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- 1 (j) any other matter connected with the formation,  
2 interpretation and enforcement of heritage agreements.

3 **85. Operation of heritage agreement**

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

- 5 (a) comes into operation on a day specified, or on the  
6 happening of an event specified, in the agreement; and  
7 (b) may be varied or terminated —  
8 (i) by a subsequent heritage agreement entered into  
9 between the parties to the agreement or their  
10 successors in title; or  
11 (ii) otherwise, in a manner or in circumstances  
12 provided for in the agreement.

13 (2) A heritage agreement does not come into operation unless —

- 14 (a) the Council provides each executed copy of the  
15 agreement to the Minister and recommends that the  
16 Minister certifies the agreement under this section; and  
17 (b) the Minister is satisfied that the agreement is necessary  
18 for the purposes of, and complies with, this Act; and  
19 (c) the Minister certifies that fact on each executed copy of  
20 the agreement.

21 (3) A variation to a heritage agreement does not come into  
22 operation unless —

- 23 (a) the Council provides each executed copy of the  
24 document evidencing the variation to the Minister and  
25 recommends that the Minister certifies it under this  
26 section; and  
27 (b) the Minister is satisfied that the agreement as varied is  
28 necessary for the purposes of, and complies with, this  
29 Act; and  
30 (c) the Minister certifies that fact on each executed copy of  
31 the document evidencing the variation.

32 (4) In any legal proceedings, an apparently genuine document  
33 purporting to be a copy of a heritage agreement or of a  
34 document evidencing a variation to a heritage agreement  
35 certified under this section is, in the absence of proof to the  
36 contrary, proof of the agreement and its provisions.

1 **86. Record of heritage agreements**

2 (1) The Council is to maintain a record of the text of every heritage  
3 agreement entered into or varied under this Act.

4 (2) The Council is to make available to any person, on payment of  
5 any prescribed fee, a copy of any heritage agreement currently  
6 in force and of any variation to that agreement, redacting the  
7 names of, and any other information which would or might  
8 identify the owner who is party to the agreement.

9 **87. Statutory notification**

10 (1) The Council is to give statutory notification of the coming into  
11 force of a heritage agreement.

12 (2) When statutory notification of the coming into force of a  
13 heritage agreement is given under subsection (1), the rights and  
14 obligations of the State and of all parties to the agreement pass  
15 to and are binding on and enforceable against or by their  
16 respective successors in title, and all such persons are taken to  
17 have notice of the agreement.

18 **88. Enforcement of heritage agreement by Council**

19 (1) A heritage agreement is a contract binding on the State and on  
20 all parties and, subject to subsection (2), enforceable by the  
21 Council on behalf of the State against any owner of subject land  
22 who is a party, or the successor in title to a party, to the  
23 agreement.

24 (2) The Council on behalf of the State is not to institute or intervene  
25 in any proceedings arising out of a heritage agreement to which  
26 the Council is not a party, unless —

27 (a) the public authority which entered into the agreement on  
28 behalf of the State consents; or

29 (b) the Minister certifies that in the Minister's view consent  
30 has been unreasonably withheld,

31 in which case the Council on behalf of the State may be or  
32 become a party to the proceedings as if it had always been a  
33 party to the agreement, and the Council shall have all the rights,  
34 including rights of appeal, of a party to the proceedings, and the  
35 costs of those proceedings on behalf of the State shall be borne  
36 by the Council unless the court otherwise orders.

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- 1 **89. Powers of the State Administrative Tribunal in relation to**  
2 **heritage agreement**
- 3 (1) Where —
- 4 (a) an owner of land of the kind described in section 83 is  
5 willing to enter into a heritage agreement with the  
6 Council; but
- 7 (b) negotiations for an agreement have not resolved all  
8 matters of concern to the owner,
- 9 the owner may apply to the State Administrative Tribunal to  
10 consider stated matters of concern and to determine what  
11 provisions the agreement should contain in respect of those  
12 matters.
- 13 (2) The provisions of the *Planning and Development Act 2005*  
14 Part 14 apply to applications under this section, with any  
15 modification that may be necessary, as they apply to  
16 applications for review under that Act.
- 17 (3) In considering an application under subsection (1) the Tribunal  
18 may seek professional opinions on land valuation and related  
19 matters from persons not called as a witness by any party to the  
20 proceedings.
- 21 (4) On the application of any party to a heritage agreement, the  
22 State Administrative Tribunal may —
- 23 (a) make an order directing any person to perform their  
24 obligations under the agreement; or
- 25 (b) make an order for the payment of damages or  
26 compensation for failure to perform obligations under  
27 the agreement; or
- 28 (c) make any other order that is consistent with the  
29 objectives of this Act to secure performance of the  
30 agreement.
- 31 (5) Terms used in this section relating to members of the Tribunal  
32 have the meanings given to them in *State Administrative*  
33 *Tribunal Act 2004* section 3(1).

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## **Part 8 — Local Heritage Surveys**

**90. Term used: local heritage survey**

In this Part —

*local heritage survey* means a survey prepared under section 91(1).

**91. Local heritage survey**

- (1) A local government is to prepare a survey of places within its district which in its opinion are, or may become, of cultural heritage significance to the district.
- (2) An inventory compiled or reviewed under section 45 of the 1990 Act prior to the entry into operation of this Part is taken for the purposes of this Part to be a survey prepared under subsection (1).
- (3) In preparing, reviewing and updating a local heritage survey, a local government is to have regard to —
  - (a) the purposes set out in section 92; and
  - (b) guidelines published under section 93.
- (4) After preparing a local heritage survey, and after each occasion on which it reviews and updates a local heritage survey, a local government is —
  - (a) to provide the Council with a copy of the local heritage survey; and
  - (b) to make the local heritage survey available to the public.

**92. 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 respect cultural heritage values; and
- (c) providing a cultural and historical record of the district; and
- (d) providing an accessible public record of places of cultural heritage significance to the district; and

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- 1 (e) assisting a local government in preparing a heritage list  
2 or list of heritage areas under a local planning scheme.

3 **93. Guidelines for local heritage surveys**

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



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**Part 9 — State Government heritage**

**94. Terms used**

In this Part —

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

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

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

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

**State agency** means —

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

**95. Guidelines concerning State Government heritage**

- (1) The Council is to publish guidelines on the preparation, review and updating by State agencies of inventories of places which they own, occupy or control, including guidelines on —
  - (a) criteria for the inclusion of places in the survey; and
  - (b) assessment processes; and
  - (c) processes for consultation with interested parties and with the public; and
  - (d) the frequency of review; and
  - (e) any other matter the Council considers appropriate.
- (2) The Council is to publish guidelines for State agencies on the management of their heritage assets and on the integration of heritage management into asset management generally.
- (3) Guidelines published under this section do not have legislative effect.

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- 1 **96. Disposal of heritage assets**
- 2 Regulations may provide that, before a State agency disposes of
- 3 a heritage asset —
- 4 (a) it is to give the Council prescribed notice of, and
- 5 provide prescribed information regarding, the proposed
- 6 disposal; and
- 7 (b) it is to consult the Council regarding the preparation of a
- 8 plan or strategy for the continuing conservation of the
- 9 heritage asset; and
- 10 (c) if the heritage asset is to be sold or leased, the agency is
- 11 to require the purchaser or lessee to enter into a heritage
- 12 agreement in relation to the asset.

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**Part 10 — Acquisitions and compensation**

**97. Compulsory acquisition**

(1) Where —

- (a) a person has been convicted of an offence under section 110 in relation to any registered land; or
- (b) it appears to the Minister on the advice of the Council that the continuation of any registered land in a condition suitable to effect conservation of its cultural heritage significance is in jeopardy,

the Minister may direct the Council to issue a public advertisement under subsection (2).

(2) A public advertisement issued under this subsection in relation to any registered land is to —

- (a) identify the registered land; and
- (b) in general terms, describe conservation works proposed to be undertaken on the land, and the reasons for undertaking those works; and
- (c) declare that the works are public works for the protection and preservation of a place of scientific or historical interest.

(3) An interest in registered land which is the subject of a public advertisement issued under subsection (1) may be taken under the *Land Administration Act 1997* Part 9 as if for a public work, and for the purposes of Parts 9 and 10 of that Act the Council is taken to be the acquiring authority.

(4) This section does not preclude the Minister or the Council from taking registered land under the *Land Administration Act 1997* Part 9 for the purposes of this Act —

- (a) other than following the issue of a public advertisement under subsection (1); or
- (b) following the issue of a public advertisement under subsection (1), but for reasons other than those described in the advertisement.

**98. Compensation for compulsory acquisition**

(1) This section applies to registered land —

- (a) an interest in which is taken under the *Land Administration Act 1997* Part 9; and

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

27 **99. State Administrative Tribunal's powers as to acquisition**  
28 **and compensation decision**

- 29 (1) A person who is aggrieved by a decision of the Minister under  
30 section 97 may apply to the State Administrative Tribunal to  
31 determine —
- 32 (a) whether the registered land concerned is necessarily  
33 required to be acquired by reason that its continuation in  
34 a condition suitable to effect conservation of its cultural  
35 heritage significance would otherwise be in jeopardy;  
36 and
- 37 (b) whether the conservation works described in the public  
38 advertisement are necessary for the reasons described  
39 and are in the public interest.

- 1 (2) A person who is aggrieved by a decision of the Minister under  
2 section 98 may apply to the State Administrative Tribunal to  
3 determine whether the Minister has reasonable cause to hold a  
4 belief referred to in that section.
- 5 (3) The State Administrative Tribunal may determine an application  
6 under this section, and the Minister and the Minister  
7 administering the *Land Administration Act 1997* Part 9 are to  
8 give effect to the determination.
- 9 (4) In an application under this section the nature or degree of the  
10 cultural heritage significance of any place is not a matter to be  
11 determined by the State Administrative Tribunal.

12 **100. Acquisition by consent**

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

18 **101. Request for acquisition**

- 19 (1) An owner of any land who claims to be denied all economically  
20 viable use of the land by the operation of this Act may by notice  
21 in writing request the Council to acquire the land, or cause it to  
22 be acquired, on behalf of the Crown under section 100.
- 23 (2) If, following a request under subsection (1), the Council  
24 declines to acquire the land, or the owner is not satisfied with  
25 the terms on which the Council offers to acquire the land, the  
26 owner may apply to the State Administrative Tribunal to  
27 determine —
- 28 (a) whether the owner is denied all economically viable use  
29 of the land by the operation of this Act; and
- 30 (b) if so, whether it is appropriate for the Council to acquire  
31 the land as though for conservation works to conserve  
32 its cultural heritage significance,
- 33 and the State Administrative Tribunal may determine those  
34 questions.
- 35 (3) Where the State Administrative Tribunal determines under  
36 subsection (2) that it is appropriate for the Council to acquire  
37 land, it may require the Council to acquire that land where  
38 practicable upon terms agreed between the Council and the  
39 owner but otherwise by taking it under the *Land Administration*

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- 1 *Act 1997* Part 9 as read with section 97 as though the land were  
2 the subject of a public advertisement issued under section 97.

**Part 11 — Enforcement**

**Division 1 — Preliminary**

**102. Contraventions**

A reference in this Part —

- (a) to a person involved in a contravention includes a person who —
  - (i) has aided, abetted, counselled or procured the contravention; or
  - (ii) has induced, whether by threats or promises or otherwise, the contravention; or
  - (iii) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
  - (iv) has conspired with others to effect the contravention;
- and
- (b) to a contravention of this Act, includes a contravention of a provision of —
  - (i) an order made under Part 4; or
  - (ii) a permit granted under Part 5 Division 3; or
  - (iii) an order made under section 111; or
  - (iv) an Order in Council made under section 112.

**Division 2 — Inspectors and inspection**

**103. Appointment of inspectors**

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

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- 1 (c) may specify in the certificate that the person is to  
2 exercise only specified functions of an inspector under  
3 this Act,  
4 and the appointment is limited as specified in the certificate.
- 5 (3) An inspector appointed under subsection (1) is to produce the  
6 certificate referred to in subsection (2)(a) whenever requested to  
7 do so in connection with the performance of the functions of an  
8 inspector under this Act.
- 9 (4) The appointment of an inspector under subsection (1) does  
10 not —
- 11 (a) mean that the *Public Sector Management Act 1994*  
12 Part 3 or any other Act applying to persons as officers of  
13 the public service of the State applies to the inspector; or
- 14 (b) affect the application to the inspector of any Act referred  
15 to in paragraph (a) that applied to the inspector at the  
16 time of the appointment.

17 **104. Powers of entry**

- 18 (1) Subject to section 103(2), an inspector may, together with any  
19 person the inspector thinks competent to assist in making an  
20 inspection or examination —
- 21 (a) enter any land with the consent of the occupier; and  
22 (b) make any investigation and inquiry, ask any questions,  
23 request any information, take any photographs and seize  
24 any objects which may provide evidence of —
- 25 (i) an offence under or contravention of this Act; or  
26 (ii) a breach of a heritage agreement,
- 27 as the inspector considers necessary or desirable to ascertain  
28 whether the requirements of or arising under this Act are being  
29 or have been observed.
- 30 (2) In the exercise of powers under this section an inspector is to  
31 conform so far as is practicable to any reasonable requirements  
32 of the person owning or using the land which are necessary to  
33 prevent obstruction of business or operations on or in the land.
- 34 (3) Where it is shown to the satisfaction of a justice that —
- 35 (a) admission to any land or building has been refused  
36 following a request by a person mentioned in  
37 subsection (1); or



1 (b) that any land or building is unoccupied,  
2 the justice may, by warrant, authorise that person or any other  
3 person named in the warrant to enter the land or the building for  
4 the purpose mentioned in subsection (1), and a warrant granted  
5 under this subsection continues in force until that purpose has  
6 been satisfied.

7 **105. Powers to obtain information**

8 (1) A person who is an owner, occupier, or person in charge or  
9 apparently in charge of any land or building is to furnish to any  
10 other person carrying out a function under this Act all  
11 reasonable facilities and all information that the person is  
12 capable of furnishing and that is required by that other person  
13 with respect to the performance of that other person's functions  
14 under this Act.

15 (2) The Council may by written notice require the owner or  
16 occupier of any land or building, within 7 days or any longer  
17 period specified in the notice, to furnish to the Council for the  
18 purposes of this Act any information relating to the land or the  
19 building which the Council requires.

20 (3) An inspector may, by written notice, require any person who  
21 appears to the inspector to be carrying out, or proposing to carry  
22 out, works that might involve an offence under this Act to  
23 furnish orally or, if so requested in the notice, in writing the  
24 name and address of the person who on the date specified in the  
25 notice was —

26 (a) the owner of; or

27 (b) the occupier of; or

28 (c) in control of any equipment, works or activity appearing  
29 to relate to,

30 the place or part of a place concerned within the period  
31 specified in that notice.

32 (4) An inspector may require a person who the inspector believes  
33 has committed, or is about to commit, an offence under  
34 this Act —

35 (a) to state that person's full name and usual place of  
36 residence; and

37 (b) to leave any land to which this Act applies immediately.

**Heritage Bill 2015**

**Part 11** Enforcement

**Division 3** Offences

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- 1 (5) A person who —  
2 (a) wilfully delays or obstructs; or  
3 (b) does not comply with any reasonable requirement made  
4 by,  
5 a person acting in the execution of this Act commits an offence.  
6 Penalty: a fine of \$10 000.
- 7 (6) A person who, when required to give any information under this  
8 Act, knowingly gives or causes to be given information that to  
9 the knowledge of that person is false or misleading in a material  
10 particular commits an offence.  
11 Penalty: a fine of \$10 000.
- 12 (7) A person who falsely represents himself or herself to be a  
13 member, employee or agent of the Council commits an offence.  
14 Penalty: a fine of \$500.
- 15 (8) A person who falsely represents himself or herself to be an  
16 inspector appointed under section 103 commits an offence.  
17 Penalty: a fine of \$5 000.

18 **Division 3 — Offences**

19 **106. Damaging registered place**

- 20 (1) Subject to subsection (2) and to section 120, a person must not  
21 in, or in relation to, a registered place —  
22 (a) alter the fabric of the place or any part of, or thing in,  
23 that place so that the cultural heritage significance of the  
24 place is detrimentally affected; or  
25 (b) demolish, damage or despoil that place or any part of, or  
26 thing in, that place; or  
27 (c) remove any thing from that place so that the cultural  
28 heritage significance of the place is detrimentally  
29 affected,  
30 or authorise, cause or permit any other person to do any of those  
31 things.  
32 Penalty: a fine of \$1 000 000.  
33 Daily penalty: a fine of \$50 000.

- 1 (2) Nothing done under and in accordance with —  
2 (a) an approval, authorisation or permission for the  
3 development of land granted by a public authority in  
4 accordance with section 67; or  
5 (b) a works permit granted under section 70,  
6 is a contravention of subsection (1).

7 **107. Contravention of protection order**

- 8 (1) Subject to section 120, a person must not in, or in relation to, a  
9 place to which a protection order applies —  
10 (a) alter the fabric of the place or any part of, or thing in,  
11 that place; or  
12 (b) demolish, damage or despoil that place or any part of, or  
13 thing in, that place; or  
14 (c) remove any thing from that place; or  
15 (d) contravene any prohibition contained in the order,

16 so that the cultural heritage significance of that place is  
17 detrimentally affected, or authorise, cause or permit any other  
18 person to do any of those things.

19 Penalty: a fine of \$1 000 000 and imprisonment for 1 year.

20 Daily penalty: a fine of \$50 000.

- 21 (2) A person on whom a copy of a stop work order has been served  
22 must not carry out, or authorise, cause or permit to be carried  
23 out any works or activity of a kind prohibited by the order.

24 Penalty: a fine of \$1 000 000 and imprisonment for 1 year.

25 Daily penalty: a fine of \$50 000.

- 26 (3) Where a copy of a stop work order is affixed in a prominent  
27 position on the place to which it relates, a person must not carry  
28 out, or authorise, cause or permit to be carried out, in or in  
29 relation to that place, any works or activity of a kind prohibited  
30 by that order.

31 Penalty: a fine of \$1 000 000 and imprisonment for 1 year.

32 Daily penalty: a fine of \$50 000.

- 33 (4) Where an act or omission is an offence against subsection (1),  
34 (2) or (3) and also an offence against another of those  
35 subsections or any other provision of this Act, a person  
36 convicted under that subsection is not liable to be proceeded  
37 against under this Act by virtue of that other provision in respect

1 of a contravention of the same or a substantially similar nature  
2 occurring at or about the same time in relation to the same  
3 place.

4 **108. Charge under section 107: defences of necessity**

5 (1) It is a defence to a charge under section 107 to show —

6 (a) that any works which are the subject of the charge were  
7 urgently necessary —

8 (i) to avoid an imminent danger to life or health; or

9 (ii) for the immediate preservation of a building or  
10 the prevention of immediately impending  
11 damage to neighbouring property;

12 and

13 (b) that as soon as practicable after the necessity for the  
14 works arose the Council was given written notice of the  
15 proposal to carry out the works; and

16 (c) that prior to the carrying out of the works the Council  
17 did not make any written objection to the works.

18 (2) It is a defence to a charge under section 107 to show —

19 (a) that any works which are the subject of the charge were  
20 required by law; and

21 (b) that the nature of the requirement or the nature of the  
22 works was such that prior reference to the Council under  
23 Part 5 would not have been practicable.

24 **109. Charge under section 106 or 107: presumption of**  
25 **responsibility**

26 In any prosecution of an owner of land for an offence under  
27 section 106 or 107 arising from the substantial demolition of a  
28 building or structure, the owner is presumed to have carried out,  
29 or authorised, caused or permitted another person to carry out,  
30 the demolition if —

31 (a) the circumstances suggest that the owner has not  
32 suffered significant financial loss as a result of the  
33 demolition; and

34 (b) the contrary is not proved.

35 **110. Contravention of repair order**

36 (1) Subject to section 120, the owner of a place to which a repair  
37 order relates must complete the specified works by the specified  
38 date.

1 Penalty: a fine of \$1 000 000 and imprisonment for 1 year.

2 Daily penalty: a fine of \$50 000.

3 (2) Where an act or omission is an offence against subsection (1)  
4 and also an offence against another provision of this Act, a  
5 person convicted under subsection (1) is not liable to be  
6 proceeded against under that other provision in respect of a  
7 contravention of the same or a substantially similar nature  
8 occurring at or about the same time in relation to the same  
9 place.

10 **Division 4 — Orders following offences**

11 **111. Restoration order**

12 (1) Where a person is convicted of an offence under this Act  
13 involving the alteration to the fabric of, or demolition, damage  
14 or despoliation of, any place or the removal of any thing from  
15 any place, a court of competent jurisdiction may, instead of or in  
16 addition to any other penalty imposed, order that person, within  
17 the time specified in the order —

18 (a) to take specified measures to restore the place, or any  
19 land, feature, building or structure specified in the order,  
20 or to return any thing to the place, so that the place is  
21 restored to the state in which it was before the offence  
22 occurred or to a state specified in the order; or

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

26 (c) to make any other restitution determined by the court.

27 (2) Before making an order under subsection (1) the court is to  
28 obtain and have regard to the recommendation of the Council as  
29 to —

30 (a) whether an order under subsection (1) should be made;  
31 and

32 (b) if so, the measures to be specified in the order.

33 (3) Subject to section 120, a person must comply with an order  
34 under subsection (1) within the time specified in the order.

35 Penalty: a fine of \$1 000 000.

36 Daily penalty: a fine of \$50 000.

- 1 (4) Where a person fails to comply with an order under  
2 subsection (1) within the time specified, the Council —
- 3 (a) may enter upon the land to which the order relates with  
4 such persons and things as may be necessary; and
- 5 (b) may carry out any measures specified in the order; and
- 6 (c) may recover, in a court of competent jurisdiction, the  
7 reasonable expense of so doing from the person who  
8 failed to comply with the order or any successor in title  
9 as if it were a debt due.

10 **112. Prohibition order**

- 11 (1) Where a person is convicted of an offence under Division 3 in  
12 relation to any place then, unless the court recording the  
13 conviction recommends otherwise, the Governor on the advice  
14 of the Minister may by Order in Council published in the  
15 *Gazette* order that —
- 16 (a) that place or a specified part of it; or  
17 (b) a building in that place,
- 18 is not to be developed or used, or is to be developed or used  
19 only in accordance with conditions specified in the order, during  
20 a period of not more than 10 years specified in the Order.
- 21 (2) An Order in Council under subsection (1) may be revoked or  
22 varied by a subsequent such Order.
- 23 (3) Subject to section 120, a person shall not —
- 24 (a) carry out works on, or any development of, any land or  
25 building; or  
26 (b) use any land or building,
- 27 contrary to the provisions of an Order in Council under  
28 subsection (1), or cause or permit any other person to do so.  
29 Penalty: a fine of \$1 000 000 and imprisonment for 1 year.  
30 Daily penalty: a fine of \$50 000.
- 31 (4) Where an Order in Council under subsection (1) is in force in  
32 relation to any land or building, no approval, permit or other  
33 instrument under any written law —
- 34 (a) operates to authorise or permit a development or use of  
35 the land or building which would be contrary to the  
36 terms of the Order; or  
37 (b) provides a defence to a charge under subsection (3).

- 1 (5) Where an Order in Council under subsection (1) is made in  
2 relation to any place, the Council —
- 3 (a) is, where practicable, to serve a copy of the Order on the  
4 owner and each occupier of the place to which it refers;  
5 and
- 6 (b) is to give statutory notification of the effect of the Order;  
7 and
- 8 (c) may lodge a caveat or cause such other steps to be taken  
9 as may be necessary or proper to give effect to the terms  
10 of the Order; and
- 11 (d) may issue a public advertisement setting out a summary  
12 of the terms of the Order and a land description of the  
13 place to which it refers.

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

15 **113. Proceedings in respect of contravention**

- 16 (1) Proceedings in respect of a contravention may —
- 17 (a) in the case of a prosecution for an offence, be  
18 commenced within 3 years after the date when the  
19 alleged offence was committed; and
- 20 (b) if instituted in the name of the Council, be conducted by  
21 any officer of the Council authorised by the Council.
- 22 (2) A person who suffers loss or damage by reason of a  
23 contravention of this Act may recover the amount of the loss or  
24 damage by action against any person convicted of or involved in  
25 the contravention commenced within 3 years after the date on  
26 which the cause of action accrued.
- 27 (3) Where in proceedings taken in the Supreme Court or the District  
28 Court against a person contravening or involved in the  
29 contravention of this Act the Court is satisfied that some other  
30 person has suffered, or is likely to suffer, loss or damage by  
31 reason of the contravention the Court, whether or not an  
32 injunction or any other relief is granted, may make such order as  
33 the Court thinks appropriate against that person for the purpose  
34 of compensating the other person wholly or in part for the loss  
35 or the cost of making good any damage or reducing the extent  
36 of the loss or damage.
- 37 (4) In proceedings under this Division, a finding of fact by a court  
38 made in proceedings against that person for an offence in which  
39 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 (5) Where a person is, by any conviction or order of a court,  
5 required to pay a fine or costs or other sum of money in respect  
6 of a contravention of this Act, the court by which the conviction  
7 or order was effected or made may —

8 (a) exercise any power that the court has apart from this  
9 section; or

10 (b) on the application of the Council, whether or not on  
11 behalf of another person, order that the amount unpaid  
12 be recoverable as if it were a judgment debt payable by  
13 the defaulter to the Crown under a judgment entered in  
14 the court.

15 **114. Continuing offence**

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

19 (a) the fine or imprisonment specified in relation to the  
20 offence; and

21 (b) a fine, calculated by multiplying by the number of days  
22 on which the contravention occurs —

23 (i) the fine specified as a daily penalty; or

24 (ii) where no daily penalty is specified, \$50.

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

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

31 **115. Liability of successors in title**

32 Where under this Act —

33 (a) any notice or order is served upon a person, or a person  
34 is authorised to execute any works subject to conditions  
35 imposed, who at the time that notice or order was served  
36 or authorisation was given was the owner of the land to  
37 which it relates; and

38 (b) that person ceases to be the owner of the land; and



1 (c) that person shows that any contravention of this Act was  
2 attributable, in whole or in part, to the act or default of a  
3 subsequent owner having knowledge of the notice, order  
4 or authorisation,

5 then —

6 (d) the subsequent owner may be brought before the court  
7 in the proceedings and found liable in respect of the  
8 contravention; and

9 (e) the original owner, on proof that the original owner took  
10 all reasonable precautions to secure compliance with the  
11 notice, order or other requirement, is to be acquitted of  
12 the contravention.

13 **116. Liability of officers for offences by body corporate**

14 *The Criminal Code* section 44C (which provides for the  
15 criminal liability of officers of a body corporate) applies to an  
16 offence under a provision listed in the Table.

17

**Table**

s. 106(1)	s. 107(1) and (2)
s. 111(3)	s. 112(3)

18 **117. Offences by agents, principals, employees and employers**

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

21 (a) that the person was the agent or employee of any other  
22 person; or

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

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

28 (2) Where the employee or agent of a person is found liable in  
29 respect of a contravention of this Act, each person who, at the  
30 time of the commission of the contravention, was the employer  
31 of that employee or the principal of that agent is also liable in  
32 respect of the contravention, unless that employer or principal  
33 proves that he or she could not by the exercise of reasonable  
34 diligence have prevented the commission of the contravention  
35 by the employee or agent.

- 1 **118. Imputation of conduct and state of mind**
- 2 (1) Conduct engaged in on behalf of a body corporate —
- 3 (a) by a director, employee or agent of the body corporate
- 4 within the scope of the person’s actual or apparent
- 5 authority; or
- 6 (b) by any other person at the direction or with the consent
- 7 or agreement (whether express or implied) of a director,
- 8 employee or agent of the body corporate, if the giving of
- 9 the direction, consent or agreement is within the scope
- 10 of the actual or apparent authority of the director,
- 11 employee or agent,
- 12 is taken for the purposes of this Act to have been engaged in
- 13 also by the body corporate.
- 14 (2) Conduct engaged in on behalf of a person other than a body
- 15 corporate —
- 16 (a) by an employee or agent of the person, within the scope
- 17 of the actual or apparent authority of the employee or
- 18 agent; or
- 19 (b) by any other person, at the direction or with the consent
- 20 or agreement (whether express or implied) of an
- 21 employee or agent of the first-mentioned person, if the
- 22 giving of the direction, consent or agreement is within
- 23 the scope of the actual or apparent authority of the
- 24 employee or agent,
- 25 is taken for the purposes of this Act to have been engaged in
- 26 also by the first-mentioned person.
- 27 (3) Where, in proceedings under this Act, it is necessary to establish
- 28 the state of mind of a body corporate, it is sufficient to show
- 29 that a director, employee or agent of the body corporate, being a
- 30 director, employee or agent by whom the conduct was engaged
- 31 in within the scope of the person’s actual or apparent authority,
- 32 had that state of mind.
- 33 (4) Where, in proceedings under this Act, it is necessary to establish
- 34 the state of mind of a person other than a body corporate, it is
- 35 sufficient to show that an employee or agent of the person,
- 36 being an employee or agent by whom the conduct was engaged
- 37 in within the scope of the employee’s or agent’s actual or
- 38 apparent authority, had that state of mind.
- 39 (5) A reference in this section to the state of mind of a person
- 40 includes a reference to the knowledge, intention, opinion, belief

1 or purpose of the person and the person's reasons for that  
2 intention, opinion, belief or purpose.

3 **119. Defences**

4 (1) Subject to this section and to sections 115, 116, 117 and 118, it  
5 shall be a defence for any person who would otherwise be liable  
6 under this Act to prove that —

7 (a) the contravention occurred without the consent or  
8 connivance of that person; and

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

11 (c) that the person could not by the exercise of reasonable  
12 diligence have prevented the contravention.

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

23 **120. Exercise of native title rights not an offence**

24 (1) In this section —

25 *native title holder* has the meaning given in the *Native Title*  
26 *Act 1993* (Commonwealth) section 224;

27 *native title rights and interests* has the meaning given in the  
28 *Native Title Act 1993* (Commonwealth) section 223.

29 (2) It is not an offence for a native title holder to exercise native  
30 title rights and interests at a registered place or a place that is  
31 subject to a preservation order so long as the exercise of those  
32 rights does not detrimentally affect the cultural heritage  
33 significance of the place.

34 **121. Offence that is also breach of heritage agreement**

35 Where a prosecution for an offence under this Act and an action  
36 for a breach of a heritage agreement arise out of the same  
37 conduct the Council may —

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

- 1 (b) pursue both the prosecution and the action in separate  
2 proceedings; or  
3 (c) pursue both the action and the prosecution in combined  
4 proceedings.

5 **Division 6 — Miscellaneous provisions regarding civil**  
6 **proceedings**

7 **122. Securing compliance with Act**

- 8 (1) Where the Supreme Court, the District Court or the State  
9 Administrative Tribunal is satisfied that a person —  
10 (a) has engaged, or is proposing to engage, in conduct that  
11 constitutes or would constitute; or  
12 (b) is involved in,  
13 a contravention of this Act or any other written law by reason of  
14 the operation of this Act (whether or not there is an imminent  
15 danger of substantial damage to any person), the Court or  
16 Tribunal may on the application of the Minister or the Council  
17 make such order or orders as the Court or Tribunal thinks fit for  
18 the purpose of securing compliance with this Act or that written  
19 law and giving effect to the objectives of this Act, including an  
20 injunction or other order directing a person to do or refrain from  
21 doing a specified act, and any ancillary order deemed to be  
22 desirable in consequence.
- 23 (2) A Court or Tribunal may grant an interim injunction ex parte  
24 pending final determination of an application under this section.
- 25 (3) In an application under this section the Court or Tribunal is not  
26 to require the applicant to give any undertaking as to damages  
27 or costs.

28 **123. No private cause of action**

- 29 This Act does not create —  
30 (a) any private cause of action for a remedy for an offence  
31 under this this Act; or  
32 (b) in relation to a heritage agreement, any cause of action  
33 available to a person who is not a party to the agreement  
34 for any breach of the agreement; or  
35 (c) other than under section 122, any cause of action for an  
36 injunction or other order to restrain any contravention of  
37 this Act.

**Part 12 — Miscellaneous**

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**124. Other laws not affected**

Nothing in this Act affects the operation of —

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

or any other written law dealing with the protection or conservation of places or things having cultural heritage significance of a particular kind.

**125. Restriction on claim for compensation**

Except as provided in this Part and in Part 10, neither the entry of a place in the register nor the operation of this Act in any other respect give rise to any action or claim for compensation.

**126. Compensation for work prohibition**

(1) In this section —

***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 subsection (4) 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;

***relevant approval*** means a permit, approval or authorisation granted under —

- (a) the *Building Act 2011*; or
- (b) the *Planning and Development Act 2005*; or
- (c) the *Strata Titles Act 1985*; or

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- 1 (d) any other Act relating to planning or the development of  
2 land which is prescribed for the purposes of this  
3 definition;
- 4 **work prohibition** means —
- 5 (a) the making of a stop work order; or  
6 (b) the suspension, by the operation of section 68, of a  
7 decision made.
- 8 (2) Where —
- 9 (a) a work prohibition relating to any place (whether or not  
10 a registered place) results in the revocation, modification  
11 or suspension of a relevant approval, or a delay in  
12 implementing a relevant approval, relating to that place;  
13 and
- 14 (b) a person interested in that place —
- 15 (i) has reasonably incurred expenditure in carrying  
16 out work rendered abortive; and
- 17 (ii) has sustained a compensable loss directly  
18 attributable to the revocation, modification,  
19 suspension or delay,
- 20 the person may, within the time and in the manner prescribed,  
21 apply to the Minister for compensation in respect of that loss.
- 22 (3) When a person applies for compensation under subsection (2),  
23 the Minister is to —
- 24 (a) enquire into the application; and  
25 (b) within the time prescribed make a recommendation to  
26 the Treasurer as to whether the Treasurer should pay  
27 compensation to the applicant and, if so, on what terms  
28 and, having regard to subsections (5) and (6), of what  
29 amount.
- 30 (4) When enquiring under subsection (3)(a) whether expenditure  
31 incurred by the applicant was reasonably incurred the Minister  
32 is to have regard to whether —
- 33 (a) the place concerned was included in a publicly available  
34 list of places that for historic or other reasons should be  
35 protected; or

- 1           (b) the applicant had received, or ought to have taken,  
2           notice of the cultural heritage significance attributable to  
3           the place,
- 4           and in either case to the consequential possibility of legal  
5           protection or conservation, so that a reasonable person intending  
6           to incur expenditure would have been likely to proceed with  
7           caution and in consultation with relevant authorities and  
8           interested bodies.
- 9           (5) When recommending under subsection (3)(b) that the Treasurer  
10          should pay compensation, the Minister may recommend that the  
11          applicant should enter into a heritage agreement in relation to  
12          the place as a condition of receiving compensation.
- 13          (6) When recommending an amount of compensation under  
14          subsection (3)(b) the Minister is to have regard to —
- 15               (a) any expenditure incurred by the applicant in the  
16               preparation of plans for the purposes of any work, or  
17               upon other necessary matters preparatory to the work;  
18               and
- 19               (b) the cost of, and the circumstances relating to, the  
20               acquisition of the place by the applicant; and
- 21               (c) any sum payable by the applicant in respect of a breach  
22               of contract caused by the necessity of discontinuing or  
23               countermanding any works on account of the revocation,  
24               modification, suspension or delay; and
- 25               (d) any benefit or advantage obtained by the applicant  
26               where permission or authorisation for the development  
27               of some other land is made possible or is beneficially  
28               affected by the operation of, or in consideration of the  
29               attainment of the objectives of, this Act; and
- 30               (e) where a heritage agreement in relation to the place is in  
31               place or is recommended, in recommending an amount  
32               of compensation the Minister is to have regard to the  
33               terms or recommended terms of the heritage agreement.
- 34          (7) When recommending an amount of compensation under  
35          subsection (3)(b) the Minister is to disregard any prospective  
36          use of the place other than the restoration and conservation of a  
37          place of cultural heritage significance.
- 38          (8) If the Minister does not make a recommendation under  
39          subsection (3)(b) within the time prescribed the applicant may  
40          require that the Treasurer determine the matter forthwith and, if

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1 the Treasurer does not refuse the application, the Treasurer is  
2 liable to pay to the applicant —

3 (a) an amount agreed between the Treasurer and the  
4 applicant; or

5 (b) failing agreement on the amount, an amount determined  
6 by —

7 (i) a valuer appointed by agreement between the  
8 Treasurer and the applicant; or

9 (ii) failing agreement on the appointment, under and  
10 in accordance with the *Commercial Arbitration*  
11 *Act 2012*, or under and in accordance with some  
12 other method of determination agreed between  
13 the Treasurer and the applicant,

14 taking into account the factors referred to in  
15 subsections (4), (5) and (6) and otherwise required under  
16 this Act.

17 **127. Compensation for delay in administration of the Act**

- 18 (1) In this section —
- 19 *eligible person* means a person holding an interest in, or  
20 lawfully occupying, land who would be entitled to make a claim  
21 under the *Land Administration Act 1997* section 203 if that land  
22 were lawfully entered upon with a view to acquisition under  
23 Part 9 Division 4 of that Act.
- 24 (2) Where in proceedings in the Supreme Court the Court  
25 determines that —
- 26 (a) an eligible person has as a result of unreasonable delay  
27 in the administration of this Act occasioned by a public  
28 authority been subjected to loss; and
- 29 (b) no compensation is otherwise afforded by this Act,
- 30 the Court may order the public authority to pay compensation to  
31 that person, as if the *Land Administration Act 1997* section 203  
32 applied to and in relation to the land affected by reason of the  
33 land having been notionally entered upon under Part 9  
34 Division 4 of that Act as at a date determined by the Court, but  
35 any compensation payable is to be limited to the actual loss  
36 occasioned and may be limited in any other manner the Court  
37 thinks fit.
- 38 (3) For the purposes of subsection (2), a reference in the *Land*  
39 *Administration Act 1997* Part 9 Division 4 is to be construed as



1 a reference to the Minister of the Crown to whom the  
2 administration of this Act is committed.

3 **128. Confidentiality**

4 The Council is not to disclose any written, oral, electronic or  
5 other communications between the Council and an owner of any  
6 land, except —

- 7 (a) with the written consent of the owner; or
- 8 (b) in the course of the performance of any duty or the  
9 exercise of any power under this Act; or
- 10 (c) as required or allowed under this Act; or
- 11 (d) for the purposes of investigating a suspected offence  
12 under this Act or the conduct of proceedings against any  
13 person for an offence against this Act; or
- 14 (e) under the *Freedom of Information Act 1992*.

15 **129. Recovery of costs by Council**

16 (1) Regulations may make provision for and in relation to the  
17 imposition by the Council of fees and charges in connection  
18 with the recovery of costs incurred by the Council in the  
19 performance of specified functions under this Act.

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

- 22 (a) the performance of the Council's functions under Part 3  
23 Division 2 Subdivision 2; or
- 24 (b) the performance of the Council's functions under Part 5  
25 Division 2.

26 (3) Regulations may —

- 27 (a) prescribe set fees or charges in connection with the  
28 performance of a specified function; or
- 29 (b) prescribe a method for calculating the fee or charge in  
30 any case.

31 **130. Limited effect of entry in the register, etc.**

32 Except as expressly provided under this Act, neither —

- 33 (a) the entry of a place in the register; nor
- 34 (b) the making of a protection order, a repair order, a  
35 restoration order or a prohibition order; nor
- 36 (c) the formation of a heritage agreement; nor

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1                      (d) the making of any grant or loan or the provision of any  
2    financial or other assistance under section 75,  
3                      has the effect, with respect to any land thereby affected, of  
4    giving the State, the Minister or the Council any interest in,  
5    claim to, responsibility for or obligation with respect to the land,  
6    or of affecting the rights or obligations of any owner of the land,  
7    or of any other person with an interest in or a claim to the land.

8                      **131. Challenge to entry in register**

9    Without prejudice to any shorter limitation period provided  
10    under any other written law, proceedings for a review of an  
11    action taken by the Council or the Minister under Part 3 cannot  
12    be commenced in any Court or Tribunal if 3 years have elapsed  
13    since the date of the action concerned.

14                      **132. Protection from personal liability**

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

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

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

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

27                      **133. Review of Act**

28                      (1) The Minister is to carry out a review of the operation and  
29    effectiveness of this Act as soon as is practicable after the tenth  
30    anniversary of its coming into operation.

31                      (2) The Minister is to prepare a report based on the review and, as  
32    soon as is practicable after the report is prepared, cause it to be  
33    laid before each House of Parliament.

34

