

Heritage Bill 1999

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Western Australia

LEGISLATIVE ASSEMBLY

Heritage Bill 1999

A Bill for

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

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Heritage Act 1999*.

2. Commencement

5 (1) This Act comes into operation on the day on which the *Planning Appeals Act 1999* comes into operation or such later day as is fixed by proclamation.

(2) The proclamation referred to in subsection (1) is to be published in the *Gazette* before the day on which the *Planning Appeals Act 1999* comes into operation.

3. Definitions

In this Act, unless the contrary intention appears —

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

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

- (a) the retention of the cultural heritage significance of the place or area; and
- 20 (b) any maintenance, preservation, restoration, reconstruction or adaptation of the place or area for that purpose;

“**conservation order**” means an order made under section 91;

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

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

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

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

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

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

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

“heritage agreement” means an agreement entered into under section 70;

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

20 **“land”** includes —

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

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

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

s. 3

“owner” has a meaning affected by section 4;

“place” has a meaning affected by section 5;

“planning authority” means —

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

“planning law” means any of —

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

“protection order” means an order made under section 86;

20 **“public authority”** means —

- (a) a Minister;
- (b) an agency as defined in the *Public Sector Management Act 1994*; or
- 25 (c) a body, whether corporate or unincorporate, or the holder of an office, post or position, being a body, office, post or position that is established or continued for a public purpose under a written law, including a local government or regional local government;

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

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

5

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

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

10

“State heritage area” means an area entered in the Register under section 31(1);

“town planning” means either city, town, suburban, or rural planning and development, or all four;

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

15

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

20

- (a) development of the place or area;
- (b) any physical intervention or action which may result in a change to the nature or appearance of the fabric of the place or of the area;
- (c) the removal, destruction or lopping of a tree from or at the place or area otherwise than in accordance with the provisions of the *Conservation and Land Management Act 1984*;
- (d) the removal of any equipment, furniture, fitting or other item forming part of a place from the place or a place in the area.

25

30

s. 4

4. Meaning of “owner”

(1) In this Act —

“owner” —

- 5 (a) in relation to unalienated land that, under a written law other than the *Land Administration Act 1997* —
- (i) is vested in a person or body;
 - (ii) is dedicated to a purpose of a person or body;
or
 - (iii) is placed under the control of a person or
10 body,
- means that person or body;
- (b) in relation to unalienated land other than that referred to in paragraph (a) means the State of Western Australia and, if relevant —
- 15 (i) a management body, as defined in the *Land Administration Act 1997*, for the land; or
- (ii) a public authority that is in possession of, or controls, the land;
- (c) in relation to land that is subject to the *Transfer of Land Act 1893* means, subject to subsection (2), a proprietor within the meaning of that Act except a mortgagee who is not a mortgagee in possession; or
- 20 (d) in relation to land that is subject to the *Registration of Deeds Act 1856*, means the holder of an interest registered by memorial under that Act except a
- 25 mortgagee who is not a mortgagee in possession.

(2) If —

- (a) the proprietor of land that is subject to the *Transfer of Land Act 1893* is the State of Western Australia; and

- (b) a public authority is in possession of, or controls, the land,

the public authority is the owner of the land for the purposes of this Act.

5 **5. Meaning of “place”**

- (1) In this Act —

“place” means a defined or readily identifiable portion of land.

- (2) For the purposes of the definition of “place” in subsection (1) —

- 10 (a) the portion of land may be comprised in separate titles and in different ownership; and

- (b) it is immaterial that water covers the land at any particular time.

- (3) Any of the following things at a place can be treated as forming part of the place —

- 15 (a) an archaeological site;

- (b) a building and such of the building’s immediate surrounds as may be required for its conservation;

- 20 (c) a structure that is historically or physically associated or connected with the place if the primary importance of the structure derives in part from its association with the place;

- 25 (d) equipment, furniture, fittings or other items (whether fixed or not) that are historically or physically associated or connected with any building, or activity conducted, at the place;

- (e) a garden, man-made park or other landscaping;

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

s. 6

6. Application of Act

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

Part 2 — The Heritage Council

7. Heritage Council established

- (1) A body called the Heritage Council of Western Australia is established.
- 5 (2) The Council is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Council in its corporate name.
- (4) The Council is an agent of the Crown and enjoys the status, immunities and privileges of the Crown.

10 8. Members

- (1) The Council is to comprise 11 persons appointed by the Minister who have such experience, skills and qualifications as the Minister considers appropriate to enable them to make a contribution to the work of the Council.
- 15 (2) The Council members are to comprise —
- (a) the chairperson;
 - (b) a person chosen from 3 persons nominated by the National Trust;
 - 20 (c) a person chosen from 3 persons nominated by the Western Australian Municipal Association constituted under section 9.58 of the *Local Government Act 1995*;
 - (d) a person representing the interests of owners, chosen from persons nominated after public advertisement of the position;
 - 25 (e) a person representing organizations with interests relevant to the conservation of places of cultural heritage significance, chosen from persons nominated after public advertisement of the position; and

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- (f) 6 other persons chosen from persons nominated after public advertisement of the positions.
- (3) The chief executive officer is not to be appointed as a Council member.
- 5 (4) If, within 30 days of a request to do so, a body referred to in subsection (2)(b) or (c) fails to nominate a person in accordance with that request, the Minister may make such appointment for the purpose of that provision as the Minister thinks fit.
- 10 (5) On the request of a body referred to in subsection (2)(b) or (c), the Minister may extend the period of time referred to in subsection (4) for nominations by the body.

9. Constitution, proceedings etc.

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

15 **10. Remuneration of members**

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

Part 3 — Functions, powers and accountability

11. Heritage Council functions and powers

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

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- 5
- (i) to promote public awareness and knowledge of issues relevant to the conservation of Western Australia's cultural heritage;
- (j) to encourage or provide education or training in respect of Western Australia's cultural heritage;
- 10 (k) to arrange or conduct research and investigations relating to Western Australia's cultural heritage;
- (l) to promote and assist in the proper management and maintenance of registered places and State heritage areas;
- 15 (m) to deliver any place or thing in the Council's possession or control in relation to cultural heritage into the possession or control of any person for the purpose of making the place or thing accessible to the public or available for study;
- (n) to implement policies to give effect to its functions;
- (o) to do anything else that it is required or authorized to do under this Act or any other written law.
- 20 (2) The Council has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this Act.

12. Delegation by Minister

- 25 (1) The Minister may, by instrument, delegate to any person the performance of any of the Minister's functions except —
- (a) this power of delegation; and
- (b) the Minister's powers under sections 13 and 14.
- (2) A function performed by a delegate is to be taken as being performed by the Minister.

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

13. Minister may give directions

- 5 (1) The Minister may give directions in writing to the Council with respect to the performance of its functions under this Act either generally or, subject to subsection (2), in relation to a particular matter and the Council must give effect to any such direction.
- 10 (2) A direction may not be given under subsection (1) in respect of —
- (a) the content or effect of advice to be given by the Council; or
 - (b) the result of an evaluation of the cultural heritage significance of a particular place or area.
- 15 (3) The text of any direction given under subsection (1) must be included in the annual report submitted by the accountable authority of the Council under section 66 of the *Financial Administration and Audit Act 1985*.

14. Minister to have access to information

- 20 (1) The Minister is entitled —
- (a) to have information in the possession of the Council; and
 - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- 25 (2) For the purposes of subsection (1) the Minister may —
- (a) request the Council to furnish information to the Minister;

s. 15

- (b) request the Council to give the Minister access to information;
- (c) for the purposes of paragraph (b) make use of the staff of the Council to obtain the information and furnish it to the Minister.
- (3) The Council must comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of subsection (2)(c).
- (4) In this section —
- “document”** includes any tape, disc or other device or medium on which information is recorded or stored;
- “information”** means information specified, or of a description specified, by the Minister that relates to the functions of the Council.
- 15. Delegation by Heritage Council**
- (1) The Council may, by instrument, delegate to any person the performance of any of the Council’s functions under this Act except this power of delegation.
- (2) A function performed by a delegate is to be taken as being performed by the Council.
- (3) A delegate performing a function under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (4) Nothing in this section is to be read as limiting the ability of the Council to act through its staff and agents in the normal course of business.

16. Public referrals to Heritage Council

- 5 (1) Any person may refer in writing to the Council any matter concerning the conservation of a registered place, a State heritage area or any other place or area which is, or might be, of cultural heritage significance.
- (2) On a referral under subsection (1), the Council —
- 10 (a) may request from the person referring the matter such further information as is necessary for the Council to decide how to deal with the matter;
- (b) may deal with the matter as it thinks fit, including reporting or making recommendations to a public authority or other persons; and
- (c) is to inform the person referring the matter about how the matter is dealt with.

Part 4 — Staff

17. Chief executive officer

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

10 **18. Other staff**

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

19. Use of other government staff, etc.

- (1) The Council may by arrangement with the relevant employer
- 25 make use, either full-time or part-time, of the services of any officer or employee —
- (a) in the Public Service;

- (b) in a State agency or instrumentality; or
- (c) otherwise in the service of the Crown in right of the State.

(2) The Council may by arrangement with —

- 5
- (a) a department of the Public Service; or
 - (b) a State agency or instrumentality,

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

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

Part 5 — Finance

20. Funds of Heritage Council

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

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

21. Heritage Fund

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

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

22. Borrowing from Treasurer

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

23. Other borrowing

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

24. Guarantee by Treasurer

- 25 (1) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee the payment of any moneys payable by the Council in respect of moneys borrowed by the Council under section 23.

s. 25

(2) A guarantee is to be in such form and contain such terms and conditions as the Treasurer determines.

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

- 5
- (a) give to the Treasurer such security as the Treasurer requires; and
 - (b) execute all instruments that are necessary for the purpose.

25. Effect of guarantee

10 (1) The due payment of moneys payable by the Treasurer under a guarantee under section 24 is guaranteed by the State.

(2) Any such payment is to be made by the Treasurer and charged to the Consolidated Fund, and this subsection appropriates that Fund accordingly.

15 (3) The Treasurer is to cause to be credited to the Consolidated Fund any amounts received or recovered from the Council or otherwise in respect of any payment made by the Treasurer under a guarantee given under section 24.

26. Charges for guarantees

20 (1) The Treasurer may fix charges to be paid by the Council to the Treasurer for the benefit of the Consolidated Fund in respect of a guarantee given under section 24.

(2) Payment of any charges fixed under subsection (1) is to be made at such time or times as the Treasurer determines.

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

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

Part 6 — Heritage Register

Division 1 — The Register

28. The Register

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

29. Content and form of Register

(1) An entry in the Register in relation to a place or area must contain —

- 10 (a) an adequate description to enable the place or area to be identified;
- (b) the date of interim entry, permanent entry and any change to an entry;
- (c) the name of the local government district in which the place or area is located;
- 15 (d) a statement explaining the cultural heritage significance of the place or area; and
- (e) such other matters as are prescribed by regulation.

(2) If an entry is removed from the Register, the Register must contain —

- 20 (a) the date of the removal of the entry; and
- (b) a statement as to why the entry was removed.

(3) The Register is to be in a form approved by the Council.

(4) The Register is to be a comprehensive register of places and areas of cultural heritage significance for the State, not merely an index of examples; and a place or area is not to be left out of the Register because similar examples are already entered.

25

30. Public inspection

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

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

Division 2 — Entry in the Register

31. Grounds for entry in the Register

- 10
- (1) A place or area may be entered in the Register if, in the opinion of the Council —
 - (a) the place or area is of cultural heritage significance for the State; and
 - (b) the place or area meets one or more of the assessment criteria determined by the Council under section 32.
 - 15 (2) An area may be entered in the Register even though each place comprising the area may not itself satisfy the requirements of subsection (1).

32. Assessment criteria

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

- (c) the potential of a place or area to yield information that will contribute to an understanding of Western Australia's history;
- 5 (d) the importance of a place or area in demonstrating the characteristics of a broader class of places or areas;
- (e) the importance of a place or area in demonstrating a high degree of creative or technical achievement;
- 10 (f) the strong or special meaning that a place or area has for any group or community because of social, cultural or spiritual associations;
- (g) the importance of a place or area in exhibiting particular aesthetic characteristics valued by any group or community;
- 15 (h) the special association that a place or area has with the life or work of a person, group or organization of importance in Western Australia's history;
- (i) the condition of a place or area and in particular —
 - 20 (i) the likelihood of the long-term viability or sustainability of the values identified in respect of a place or area; and
 - (ii) the place or area's potential for restoration and the time which restoration is likely to take;
- 25 (j) any other matter that in the opinion of the Council is relevant to the assessment of cultural heritage significance.

33. Interim entry

- 30 (1) The Council, on its own initiative or on application to it by any person, may enter a place or area in the Register on an interim basis if in its opinion the place or area satisfies the grounds for entry in the Register.

- 5 (2) Before entering a place or area in the Register on an interim basis, the Council may invite written or oral submissions from any person with a special knowledge of, or interest in, the place or area, and may have regard to the submissions in making its decision.

34. Procedure following interim entry

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

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

35. Submissions to be reported to Minister

25 If submissions have been made in support of, or objecting to, making an interim entry in the Register permanent the Council is to ensure that a report on the submissions accompanies the Council's recommendation to the Minister.

36. No objection to permanent entry

- (1) This section applies if —
- (a) no submission has been made in relation to making an interim entry in the Register permanent; or
 - 5 (b) the only submissions that have been made are in support of making an interim entry in the Register permanent.
- (2) After having regard to the Council's recommendation and report about an interim entry in the Register, the Minister may direct —
- 10 (a) that the entry be made permanent; or
 - (b) that the entry be removed from the Register.
- (3) The Minister is not to direct that an entry be made permanent unless the Minister is of the opinion that it is appropriate for the place or area that is the subject of the entry to have the
- 15 protection afforded by this Act.
- (4) The Council is to give effect to the Minister's direction and do the things that it is required to do under Division 4.

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

- 20 (1) This section applies if a submission has been made objecting to making an interim entry in the Register permanent.
- (2) The Council may invite —
- (a) further written or oral communication with the person who made the objection; or
 - 25 (b) written or oral communication with any other person who has a special knowledge of, or interest in, the place or area.

(3) The Council may reconsider the interim entry in the Register having regard to any further submissions and decide whether or not to recommend to the Minister to make the entry permanent.

5 (4) If the Council decides that making the interim entry in the Register permanent is not warranted, it is to remove the entry as soon as practicable.

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

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

(1) This section applies if —

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

20 (2) The Minister must, as soon as practicable after receiving the Council's recommendation and report about the interim entry in the Register, refer the matter to be dealt with under section 32 of the *Planning Appeals Act 1999*.

25 (3) After having regard to the recommendation and report of the Council and the recommendation given under the *Planning Appeals Act 1999* about the interim entry in the Register, the Minister may direct —

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

- (4) The Minister is not to direct that an entry be made permanent unless the Minister is of the opinion that it is appropriate for the place or area that is the subject of the entry to have the protection afforded by this Act.
- 5 (5) The Council is to give effect to the Minister's direction and do the things that it is required to do under Division 4.

39. When an entry in the Register has effect

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

10 **40. Time limit for making entry in the Register permanent**

If, within 12 months of a place or area being entered in the Register on an interim basis —

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

the Council must remove the entry forthwith.

Division 3 — Changing or removing an entry in the Register

20 **41. Updating or correcting an entry in the Register**

The Council may change an entry in the Register —

- (a) to update any details in the entry; or
(b) to correct any error in the entry.

42. Changing the area of a registered place or State heritage area

- 5 (1) The Council may change a permanent entry in relation to a registered place or a State heritage area to increase or decrease the area of the place or area but only if —
- (a) written consent is obtained from —
- 10 (i) each owner of the place or each owner of each place comprising the area; and
- (ii) the Minister;
- or
- (b) the procedures set out in sections 34, 35, 36, 37, 38 and 47 are complied with as if the references in those sections to making an interim entry in the Register permanent include a reference to changing a permanent
- 15 entry to increase or decrease the area of a registered place or State heritage area.
- (2) Sections 34(c), 36(2)(b), 37(4) and 38(3)(b) do not apply for the purposes of subsection (1).

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

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

44. Removing a permanent entry from the Register

- 5 (1) The Council may remove a permanent entry from the Register but only if the procedures set out in sections 34, 35, 36, 37, 38 and 47 are complied with as if the references in those sections to making an interim entry in the Register permanent include a reference to removing a permanent entry from the Register.
- (2) Section 34(c) does not apply for the purposes of subsection (1).

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

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

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

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

Division 4 — Notification and information

47. Public notice and notification of interested persons

- 20 (1) This section applies to the following events —
- (a) an interim entry in the Register;
 - (b) an entry in the Register being made permanent;
 - (c) a change to an entry in the Register to increase or decrease the area of the registered place or State heritage area to which the entry applies;
 - 25 (d) the removal of an entry from the Register.

- (2) If an event to which this section applies occurs the Council —
- (a) is to give public notice of the event within 14 days of the event occurring; and
 - (b) within 14 days of the publication in the *Gazette*, is to give the documents set out in subsection (3) —
 - (i) to each owner of the place, or each owner of each place within the State heritage area, to which the entry applies;
 - (ii) to each lessee of the place, or each lessee of each place within the State heritage area, to which the entry applies, whose lease —
 - (I) is registered under the *Transfer of Land Act 1893*; or
 - (II) is one for which the approval of the Western Australian Planning Commission is required under section 20 of the *Town Planning and Development Act 1928*;
 - (iii) to the local government of the district in which the place or area to which the entry applies is located;
 - (iv) to the Western Australian Planning Commission;
 - (v) to any other relevant planning authority; and
 - (vi) if relevant, to the Director General of Mines as defined in the *Mining Act 1978*.
- (3) The documents to be given under subsection (2)(b) are —
- (a) written notice of the Council's action;
 - (b) a copy of the entry or change to the entry, if relevant; and
 - (c) a copy of the text of the public notice.

- 5 (4) If, in the Council's opinion, it is not practicable to comply with subsection (2)(b)(i) in respect of each owner of the registered place or each owner of each of the places within the State heritage area to which the entry applies, the Council must instead cause the text of the public notice to be posted up in a prominent location on or near the place or area.

48. Notifications on title

- 10 (1) If a notification is deposited under section 34(c) —
- (a) the Registrar of Titles is to endorse each certificate of title in relation to the affected land to that effect; or
 - (b) the Registrar of Deeds is to endorse each memorial or record in relation to the affected land to that effect,
- as the case requires.
- 15 (2) Subsection (3) applies if —
- (a) an entry is removed from the Register; or
 - (b) there has been a change to an entry in the Register to increase or decrease the area of a registered place or a State heritage area.
- 20 (3) The Council must, as soon as practicable after the removal or change, request the Registrar of Titles or the Registrar of Deeds, as the case requires —
- (a) to remove the endorsements made under subsection (1) in relation to the land; or
 - (b) to change the endorsements made under subsection (1)
- 25 in relation to the land to accord with the change,
- as the case requires.
- (4) A request is to be in a form approved by the relevant Registrar.

49. Informing public authorities

- 5 (1) The Council, so far as is practicable, is to assist local governments, the Western Australian Planning Commission and any other relevant planning authorities to be aware of, and have ready access to, the entries in the Register.
- (2) Nothing in subsection (1) affects any requirement under section 47(2)(b) for the Council to provide documents to a local government, the Commission or other relevant planning authority.
- 10 (3) The Council is to ensure that the Valuer-General is notified of the entry of a place in, or the removal of a place from, the Register or the increase or decrease in the area of a registered place.

50. Certificates

- 15 The Council, on receipt of an application to do so, is to provide a certificate to the effect that under section 46, a place cannot be considered for re-entry in the Register until the date set out in the certificate.

Part 7 — Public authorities

Division 1 — Heritage inventories

51. Local government heritage inventories

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

52. Heritage inventories of other public authorities

- 20 (1) This section applies to a public authority other than a local government that is in possession of, or controls, a place or area that —
- (a) is a registered place or a State heritage area;
 - (b) is entered in a local government heritage inventory;
 - (c) is the subject of a National Trust recommendation or a list or record compiled by the National Trust; or
 - 25 (d) to the authority’s knowledge, has been identified by assessment or survey as being of cultural heritage significance.

- (2) A public authority to which this section applies is to establish and maintain an inventory of the places and areas referred to in subsection (1)(a) to (d) that are in its possession or under its control.
- 5 (3) The purposes of the heritage inventory of a public authority to which this section applies are —
- (a) to provide information about heritage in the possession or control of the public authority;
 - (b) to assist in the management of assets; and
 - 10 (c) to assist in achieving the heritage conservation objectives of town planning in the State.

53. Consultation for local government heritage inventories

A local government must ensure that its heritage inventory is established only after consultation with —

- 15 (a) each owner of a place that is the subject of a proposed entry in the inventory;
- (b) each owner of each place within an area that is the subject of a proposed entry in the inventory; and
- (c) with the general public.

20 **54. Heritage Council involvement with heritage inventories**

- (1) A public authority must ensure that its heritage inventory is established —
- (a) having regard to any assessment criteria published by the Heritage Council; and
 - 25 (b) to the satisfaction of the Heritage Council.
- (2) A public authority is to provide the Heritage Council with a copy of its completed heritage inventory as soon as practicable after the completion.

55. Time in which heritage inventories to be completed

- (1) A local government must ensure that its heritage inventory is completed within 12 months after the day on which this Act commences.
- 5 (2) A public authority other than a local government must ensure that its heritage inventory is completed within 4 years after the day on which this Act commences.

56. Review and revision of heritage inventories

- 10 (1) Subject to subsection (2), a public authority may review and revise its heritage inventory as often as it considers it appropriate to do so.
- (2) A public authority must ensure that its heritage inventory is reviewed and revised at least every 4 years.
- 15 (3) A local government must ensure that a new entry in its inventory is made only after consultation with —
- (a) each owner of a place that is the subject of the new entry;
- (b) each owner of each place within an area that is the subject of the new entry; and
- 20 (c) the general public.
- (4) A public authority must ensure that each review and revision of its heritage inventory is done to the satisfaction of the Heritage Council.
- 25 (5) A public authority is to provide the Heritage Council with a copy of its revised heritage inventory as soon as practicable after the revision is completed.

57. Heritage Council may establish or revise heritage inventories in certain cases

(1) If a public authority —

5 (a) has not completed the establishment of its heritage inventory within the period referred to in section 55(1) or (2), as is relevant to the case, or to the satisfaction of the Heritage Council; or

10 (b) has not reviewed and revised its heritage inventory within the period referred to in section 56(2) or to the satisfaction of the Heritage Council,

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

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

Division 2 — Other matters concerning public authorities

58. Public authorities to cooperate with Heritage Council

(1) A public authority is to —

20 (a) give the Council such assistance in the performance of the Council's functions as is reasonably practicable; and

(b) comply with all reasonable requests by the Council for information.

(2) Nothing in subsection (1) exempts the Council from a requirement to pay fees or charges applicable to its requests.

25 (3) Where the Council is of the opinion that a public authority has not complied with subsection (1) or section 68 the Minister of the Crown having responsibility for that public authority may, on the request of the Council and after consultation with the

Commissioner for Public Sector Standards, direct that authority to provide the assistance to the Council, and any such direction may require that the services of any person employed or engaged by that authority are to be made available for that purpose.

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

59. Works to be approved

- 5 (1) A person must not carry out, or cause to be carried out, works to a registered place or a place within a State heritage area unless —
- (a) the Council has approved the works on an application under section 61 and the works are done in accordance with the approval; or
- 10 (b) the Council has granted an exemption under section 60.
Penalty: \$50 000 and imprisonment for 2 years.
Daily penalty: \$5 000.
- 15 (2) It is a defence to a charge of an offence under subsection (1) that the works (other than demolition or partial demolition) are to a place of worship and —
- (a) an owner of the place has given the Council 42 days' notice of the proposed works; and
- 20 (b) the notice includes a declaration by an officer of the place of worship, who is authorized for that purpose, that the works are required for public worship or for purposes directly connected with public worship.

60. Exemptions

- 25 (1) The Council may exempt specified works or specified classes of works from the requirement under section 59 for approval and may revoke an exemption for any reason it considers appropriate.
- (2) An exemption or revocation under subsection (1) must be published in the *Gazette* before it can take effect.

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

61. Application for approval

- 5 (1) A person who wishes to obtain the Council’s approval to carry out works to a registered place or a place within a State heritage area must apply to the Council.
- (2) An application must be in a form and manner approved by the Council and include the information required by the Council.

62. Works of significant public interest

- 10 (1) The Council must give public notice of proposed works that are the subject of an application under section 61 if the Council is of the opinion that the proposed works are a matter of significant public interest.
- (2) A public notice under subsection (1) must—
- 15 (a) specify the place at which particulars of the proposed works can be inspected; and
- (b) invite written submissions to be made to the Council within 21 days of the publication of the notice in the *Gazette*.

20 **63. Matters to be considered in deciding applications**

In deciding an application under section 61 the Council must have regard to —

- 25 (a) the extent to which the proposed works, if carried out, are likely to affect the cultural heritage significance of the registered place or State heritage area;
- (b) whether there is any feasible and prudent alternative to the proposed works;

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- (c) the submissions made in relation to the proposed works;
and
- (d) any other matter which in the Council's opinion is
relevant to the application.

5 **64. Time limit for deciding applications**

The Council must either approve or refuse an application under
section 61 —

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

65. Conditions etc.

15 The Council may approve an application under section 61 —

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

66. Notification when application decided

20 Within 7 days of deciding an application under section 61 the
Council must notify —

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

67. Appeals from decisions on applications

5 An applicant who is aggrieved by a decision of the Council on an application under section 61 may, within 60 days of the day on which the applicant is notified of the decision, appeal under the *Planning Appeals Act 1999*.

68. Planning authorities to seek advice of Heritage Council as to works on land adjacent to registered places

10 If, under a planning law, a planning authority receives an application to carry out works on, or in respect of, land that is adjacent to a registered place which, if carried out, are likely to affect the cultural heritage significance of the place, the planning authority must seek the advice of the Heritage Council before making a decision in relation to the application.

69. Relationship to other laws

- 15 (1) Nothing in this Part affects a requirement of any other written law to obtain an approval, authority, consent or permission to carry out works that are the subject of an application under section 61.
- 20 (2) If there is inconsistency between an approval, or a condition of an approval, of the Council under this Part and an approval, authority, consent or permission (or a condition thereto) obtained under any other written law, the Council's approval or condition prevails to the extent of the inconsistency.

Part 9 — Heritage agreements

70. Parties to, and effect of, heritage agreements

- (1) A heritage agreement may be entered into —
- (a) by the Council; or
 - 5 (b) subject to section 72 —
 - (i) by the State of Western Australia; or
 - (ii) by a body corporate (including a public authority that is a body corporate),

10 with an owner or occupier of land in so far as the interest of the owner or occupier permits.

- (2) A heritage agreement attaches to the land and is, to the extent specified in the agreement, binding on each current owner or occupier of the land whether or not that owner or occupier was the person with whom the agreement was made.

15 71. Places to which heritage agreements can apply

- (1) A heritage agreement may be entered into in respect of any land where the land comprises the whole or part of —
- (a) a registered place or a place in a State heritage area;
 - 20 (b) a place, or a place in a heritage area, entered in a local government heritage inventory or a public authority heritage inventory;
 - (c) a place entered in a heritage list, or a place in a heritage area designated, under a town planning scheme; or
 - 25 (d) a place entered in a heritage inventory or list prepared for the purposes of the *East Perth Redevelopment Act 1991* or the *Subiaco Redevelopment Act 1994*.

- (2) A heritage agreement may be entered into in respect of any land where the land is adjacent to or otherwise associated with a place referred to in subsection (1) whether or not the land is of cultural heritage significance.
- 5 (3) For the purposes of subsection (2), land may be said to be associated with a place if town planning development rights or requirements, or other planning considerations or other interests in or affecting the land or the place might be affected as an incentive to, or for the purpose of effecting, the conservation of
- 10 the place.

72. Approval of Heritage Council required

A heritage agreement or a variation or termination of a heritage agreement has no effect unless the Council is a party to, or has approved, the agreement, variation or termination.

15 **73. When heritage agreements have effect**

A heritage agreement or a variation or termination of a heritage agreement has effect from —

- (a) the day the Council becomes a party to, or approves, the agreement, variation or termination; or
- 20 (b) the day specified in the agreement, variation or termination,

whichever is the later.

74. Subject matter of heritage agreements

- (1) A heritage agreement may contain provisions promoting the conservation of a place referred to in section 71(1).
- 25 (2) A heritage agreement may, by covenant or otherwise —
- (a) restrict the use of land to which it applies;

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- 5
- (b) require specified work or work of a specified kind to be done in accordance with specified standards on the land (but the specified standards, if not in accordance with a law that is for the time being in force, must be in accordance with an order under section 83(1));
- (c) restrict the nature of works that can be carried out on the land;
- 10 (d) provide for financial, technical or other professional advice or assistance to an owner or occupier with respect to the maintenance or conservation of the land or the place that is a subject of the agreement;
- (e) provide for the management of the land or a place that is a subject of the agreement, in accordance with a particular management plan or in accordance with management plans to be agreed from time to time between the parties to the agreement; or
- 15 (f) if the relevant planning authorities and other public authorities are parties to the agreement, provide, subject to an order under section 83(1), for —
- 20 (i) matters relating to the title, development and planning in respect of the land, including the transfer of town planning development rights;
- (ii) payment of money; or
- 25 (iii) safety, maintenance, inspection or licensing requirements.

75. Notifications on title

- 30 (1) The Council must, as soon as practicable after a heritage agreement has effect, cause a notification of the agreement to be prepared in a form approved by the Registrar of Titles or the Registrar of Deeds, as the case requires, and deposited at the Department within the meaning of the *Transfer of Land Act 1893*.

- (2) If a notification is deposited under subsection (1) —
- (a) the Registrar of Titles is to endorse each certificate of title in relation to the affected land to that effect; or
 - (b) the Registrar of Deeds is to endorse each memorial or record in relation to the affected land to that effect,
- 5 as the case requires.
- (3) The Council must, as soon as practicable after a variation to, or termination of, a heritage agreement has effect, request the Registrar of Titles or the Registrar of Deeds, as the case
- 10 requires —
- (a) to change the endorsements made under subsection (2) in relation to the land to accord with the variation; or
 - (b) to remove the endorsements made under subsection (2) in relation to the land to accord with the termination,
- 15 as the case requires.
- (4) A request is to be in a form approved by the relevant Registrar.

76. Notification to interested persons

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

77. Other rights of action not affected

A right of action for damages or payment of money that arose before the endorsements referred to in section 75(2) were made

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in relation to the land to which a heritage agreement relates is not affected by the agreement unless the agreement provides otherwise.

78. Damages for breach of heritage agreements

- 5 (1) Damages for contravention of a heritage agreement may be awarded to a party to the agreement who has suffered loss as a result of the contravention unless the person who contravened the agreement shows that the contravention occurred without the person's consent or connivance and that the person
10 exercised all reasonable care to prevent it.
- (2) In assessing damages for contravention of a heritage agreement by an owner or occupier of land to which the agreement relates, a court may, in addition to any actual loss suffered, take into account —
- 15 (a) any detriment to the public interest resulting from the contravention; and
- (b) any financial or other benefit sought to be gained by the contravention.
- (3) A court referred to in subsection (2) is to have regard to the
20 following principles when assessing damages —
- (a) the damages are not only to compensate for loss but to ensure that no person benefits from the contravention;
- (b) the land should be restored to the extent of the damage or deterioration caused by the contravention; and
- 25 (c) subsequent or similar contraventions should be deterred.

79. Records of heritage agreements

- (1) The Council is to cause to be kept a copy of each heritage agreement and the terms of each variation or termination of a

heritage agreement to which the Council is a party, or that has been approved by the Council.

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

Part 10 — Conservation incentives

80. Heritage Council may provide assistance or incentives

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

81. Remission of taxes, rates and charges

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

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

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- (7) Section 42 of the *Interpretation Act 1984* applies to an order under subsection (2) and an order varying or revoking such an order as if the order were regulations within the meaning of that Act.
- 5 (8) No interest can be imposed and no interest accrues under a written law in respect of a tax, rate or charge the payment of which is remitted under an order under subsection (2) unless the order provides otherwise.
- 10 (9) The Council is not liable to fund a tax, rate or charge, or any part of a tax, rate or charge, that is remitted under this section.

82. Payment of remitted taxes, rates and charges

- 15 (1) This section applies where the payment of a tax, rate or charge is remitted under an order under section 81(2) in respect of a registered place or a place that is the subject of a heritage agreement and —
- (a) the order is varied or revoked;
- (b) works are carried out at the place contrary to a provision of this Act or a heritage agreement; or
- 20 (c) on the application or request of an owner, the place ceases to be a registered place or the subject of a heritage agreement.
- (2) The Minister may make an order requiring the immediate payment of any tax, rate or charge that was remitted under the order under section 81(2) in the 5 years preceding the event referred to in subsection (1)(a), (b) or (c).
- 25 (3) The Minister cannot make an order under subsection (2) unless —
- (a) the Minister has consulted with the Council and the Council has recommended that the order be made;

- 5 (b) the person against whom the order is to be made —
- (i) has been notified of the proposed order and the reasons for it; and
 - (ii) has been given 21 days to show cause why the order should not be made;
- and
- (c) the recommendation of the Council is consistent with any relevant determination under the *Planning Appeals Act 1999*.
- 10 (4) A person who is aggrieved by a notice under subsection (3)(b)(i) may, within 14 days of the day on which the person received the notice, refer the matter to be dealt with under section 33 of the *Planning Appeals Act 1999*.
- 15 (5) An order under subsection (2) has effect according to its tenor against the person in whose favour the tax, rate or charge was remitted or any successor in title of that person in accordance with the terms of the order.
- 20 (6) A public authority to which moneys are required to be paid under an order under subsection (2) may recover the moneys in a court of competent jurisdiction as a debt due to the public authority.
- 83. Modification or non-application of laws impeding conservation**
- 25 (1) The Minister may, subject to subsections (2) and (3), by order published in the *Gazette*, declare that a written law or any portion of a written law —
- (a) does not apply; or

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- (b) is modified in the manner specified in the order,
in respect of a registered place, a place in a State heritage area, a
State heritage area or a place that is the subject of a heritage
agreement.
- 5 (2) The Minister cannot make an order under subsection (1)
unless —
- (a) the Minister is of the opinion that —
- 10 (i) the written law prohibits or impedes the
conservation of the place or area; and
- (ii) the order is necessary for the conservation of the
place or area;
- (b) the Minister to whom the administration of the written
law is committed gives written consent to the making of
the order;
- 15 (c) the Council has recommended that the order be made;
and
- (d) a report by the Council on the submissions received
under subsection (3) in support of, or objecting to, the
proposed order accompanies the Council's
20 recommendation to the Minister.
- (3) If an order is proposed to be made under subsection (1) the
Council must —
- (a) give public notice of the proposed order and invite
written submissions to be made to the Council —
- 25 (i) within 14 days of publication in the *Gazette* or
such longer period as specified in the notice;
- (ii) in support of, or objecting to, the proposed order;
and

- (b) provide a copy of the proposed order to each owner of the place, the local government and any other public authority or other person who or which, in the Council's opinion, is likely to be affected by the order if it is made.
- 5 (4) The Council may amend the proposed order after having regard to submissions received under subsection (3) but that subsection does not apply to the proposed order as amended.
- (5) An order under subsection (1) may, subject to subsections (2) and (3) be varied or revoked.
- 10 (6) An order under subsection (1) and any variation or revocation of the order has effect according to its tenor.
- (7) Section 42 of the *Interpretation Act 1984* applies to an order under subsection (2) and an order varying or revoking such an order as if the order were regulations within the meaning of that Act.
- 15

84. Heritage Council approvals override certain decisions of local governments

- (1) This section applies where a local government has refused approval or consent for any works that would contribute to the conservation of a registered place or a State heritage area.
- 20
- (2) If the Council is of the opinion that —
- (a) the cultural heritage significance of the registered place or State heritage area is likely to be adversely affected because the approval or consent for the works has been refused;
- 25
- (b) the refusal was made under the *Local Government (Miscellaneous Provisions) Act 1960*; and

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

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

- 5 (3) Despite the provisions of the *Local Government (Miscellaneous Provisions) Act 1960* it is lawful to act or to carry out the works in accordance with the approval or consent of the Council given under this section.
- 10 (4) The Council may approve, or consent to, the works on an application of an owner of a registered place or a place within a State heritage area or on its own volition.
- (5) The Council must consult with the local government before giving its approval or consent under this section to carry out works.

15 **85. Revaluations**

- (1) This section applies where the Valuer-General has received notice —
 - 20 (a) under section 49(3) of the entry of a place in, or the removal of a place from, the Register or the increase or decrease in the area of a registered place; or
 - (b) under section 76(2) of the approval by the Council of a heritage agreement or the variation or termination of a heritage agreement.
- 25 (2) The Valuer-General must, as soon as practicable, revalue the land affected by a matter referred to in subsection (1)(a) or (b), taking into account any restrictions on the use of the affected land.

(3) For the purposes of a revaluation under this section the Valuer-General is to assume that —

5

(a) all the improvements to or on the land at the date of revaluation are to be conserved and are not to be demolished; and

(b) no improvements are to be made to or on the land after the date of revaluation.

10

(4) Nothing in subsection (3) prevents the Valuer-General from taking into account, in future valuations, the effect of any actual demolition or construction on the land that occurs after the date of revaluation under that subsection.

Part 11 — Protection and conservation orders

Division 1 — Protection orders

86. Protection orders for unregistered places

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

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

(7) If —

- (a) a protection order is revoked; or
- 5 (b) the period of time in which a protection order has effect is extended on a request under section 88,

the Council is to serve notice of the decision in accordance with subsection (5).

(8) The Council is to —

- 10 (a) give public notice of each protection order, revocation of a protection order or determination extending the period of time in which a protection order has effect as soon as is practicable after the order, revocation or determination takes effect; and
- 15 (b) cause a copy of the order, revocation or determination to be served —
 - (i) if each owner or occupier of the place has not already been served, on those persons if practicable to do so;
 - 20 (ii) if a person carrying out works at the place has not already been served, on that person if practicable to do so; and
 - (iii) on the local government of the district in which the place is located.

25 **87. Effect of protection orders**

(1) A protection order —

- (a) takes effect from the time of service; and

- (b) has effect, subject to earlier revocation —
- (i) for 60 days from the time of service or a shorter period stated in the order;
 - (ii) for the period of time specified under the *Planning Appeals Act 1999* for the purposes of section 88 or 90; or
 - (iii) until the place becomes a registered place or a State heritage area or a place in a State heritage area.
- (2) A protection order cannot be made in relation to any place —
- (a) that was affected by a protection order in relation to a similar matter within the preceding 12 months; or
 - (b) which is a place to which section 46 applies for the time being.

88. Extension of protection orders

- (1) The Minister may, while a protection order has effect, make a request to extend the time in which the protection order has effect.
- (2) A request under subsection (1) is to be dealt with under section 34 of the *Planning Appeals Act 1999*.

89. Contravention of protection orders

A person must not contravene a protection order or cause any other person to contravene a protection order.

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

Daily penalty: \$5 000.

90. Appeals as to protection orders

A person who is aggrieved by a protection order may, while the protection order has effect, appeal under the *Planning Appeals Act 1999*.

Division 2 — Conservation orders

91. Conservation orders for registered places and State heritage areas

- 5 (1) The Minister may, on the recommendation of the Council or the chief executive officer, make an order (a “**conservation order**”) to conserve the cultural heritage characteristics of a registered place or a State heritage area.
- (2) A conservation order may require an owner or occupier of a registered place or a place within a State heritage area —
- 10 (a) to take specified action to repair any damage or to do repair works;
- (b) to commence or complete any specified works; or
- (c) to cease any specified action.
- 15 (3) A conservation order must state the period within which anything specified in the order is to be done which must be more than 30 days starting on the day the order is served.
- (4) A conservation order may be served personally or by affixing it in a prominent position at the registered place or a place within the State heritage area.

20 **92. Compliance with conservation orders**

A person must comply with a conservation order and must not cause any other person to contravene a conservation order.

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

Daily penalty: \$5 000.

25 **93. Appeals as to conservation orders**

A person who is aggrieved by a conservation order may, within 30 days of the day on which the order was served, appeal under the *Planning Appeals Act 1999*.

94. Heritage Council may give effect to conservation orders

(1) If an owner or occupier of a registered place or a place within a State heritage area —

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

(b) does not comply with a determination on an appeal under section 93,

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

(c) take any action specified in the order;

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

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

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

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

(4) If, on an appeal under section 93, a determination is made to the effect that the requirements of a conservation order be set aside solely on the ground of financial hardship the Council may, at its own expense, enter the place or any land where the place is situated and —

25 (a) take any action specified in the order;

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

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

Part 12 — Compensation as to approvals and protection orders

95. Definition

In this Part —

5 **“compensable determination”** means —

- (a) a determination on an appeal from a decision of the Heritage Council on an application to approve works to a registered place or a place within a State heritage area (section 67); or
- 10 (b) a determination on an appeal about a protection order (section 90).

96. Compensation

(1) An owner of a registered place or a place within a State heritage area may seek compensation under this Part if the owner has
15 incurred loss because an effect of a compensable determination is to —

- (a) revoke or modify an approval, authority, consent or permission that has been given under a planning law in relation to the place; or
- 20 (b) suspend or delay the operation of an approval, authority, consent or permission that has been given under a planning law in relation to the place.

(2) Subsection (1) applies only if the approval, authority, consent or permission was given before —

- 25 (a) the place became a registered place or part of a State heritage area; or

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(b) the protection order was made in relation to the place,
as is applicable to the case.

97. Losses that can be compensated

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

5

- (a) is directly attributable to the revocation, modification,
suspension or delay referred to in section 96(1);
- (b) is expenditure reasonably incurred in carrying out work
which the compensable determination rendered abortive;
- (c) is capable of being assessed as a liquidated amount;
- (d) arises out of a contractual or statutory obligation
incurred before —

10

(i) the place became a registered place or part of a
State heritage area; or

15

(ii) the protection order was made in relation to the
place,

as is applicable to the case;

(e) does not include any element of capital costs or
depreciation;

20

(f) takes into account any opportunity for recovery of taxes
or tax liabilities; and

(g) is not capable of recovery or mitigation other than under
this Part.

98. Assessment of compensation

25

(1) Compensation payable under this Part is to be assessed having
regard to the following —

(a) any incentive provided under this Act that mitigates the
loss incurred;

-
- 5 (b) any expenditure incurred —
- (i) for the preparation of plans for the purposes of any work; or
- (ii) in other necessary matters preparatory to the work;
- (c) the cost of, and the circumstances relating to, the acquisition of the land by the owner; and
- 10 (d) any sum payable in respect of a breach of contract by the owner directly attributable to the compensable determination,

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

- 15 (2) In determining whether expenditure was reasonably incurred in carrying out work which the compensable determination rendered abortive where —
- (a) the place affected was included in a publicly available list of places of cultural heritage significance (other than the Register); or
- 20 (b) the owner had received, or ought to have taken, notice of the cultural heritage significance of the place,

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

25

99. Commercial Arbitration Act 1985 to apply

- (1) The matters of whether compensation is payable, and the amount of compensation payable, under this Part are, in default of agreement between the parties, to be determined by means of

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a reference to an arbitrator under and in accordance with the provisions of the *Commercial Arbitration Act 1985*.

- (2) The parties to the arbitration are to be the Council and the owner of a place who seeks compensation under this Part.
- 5 (3) Despite section 20(1) of the *Commercial Arbitration Act 1985*, each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.

100. Payment of compensation

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

Part 13 — Enforcement and legal proceedings

Division 1 — Inspectors

101. Appointment of inspectors

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

15 **102. Identity cards**

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

103. Powers of inspectors

- 5 (1) An inspector may enter any land (including a building) with the consent of an owner of the land and make such investigation and inquiry and seek such information as the inspector considers necessary or desirable to ascertain whether there has been compliance with —
- (a) the provisions of this Act or any approval, order, notice, or other requirement given under the Act; or
- 10 (b) a determination under the *Planning Appeals Act 1999* relating to an appeal or referral of a matter under this Act.
- (2) An inspector may require a person —
- (a) to tell the inspector the person's name and address; and
- 15 (b) to produce any document the person is carrying that contains the person's name and address,
- if the inspector reasonably believes that person has committed, is committing or is about to commit an offence under this Act.
- (3) An inspector may require a person who appears to the inspector to be carrying out, or about to carry out, any action that might result in a contravention of this Act to furnish, within the period specified in the notice, either orally or in writing the name and address of any person who, on the date specified in the notice, was —
- 20 (a) an owner of the land concerned;
- (b) an occupier of the land concerned; or
- 25 (c) in control of any equipment, works or activity appearing to relate to the land concerned.
- (4) An inspector may require a person who the inspector reasonably believes has committed, is committing or is about to commit an offence under this Act to immediately leave the land concerned.
- 30

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

104. Warrants for entry onto premises

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

105. Police assistance

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

106. Offences in relation to inspectors

- 25 A person —
- (a) must comply with a requirement lawfully made by an inspector;

(b) must not knowingly furnish to an inspector information that is false or misleading;

(c) must not, without reasonable excuse, hinder or obstruct an inspector in the exercise of a power under this Part;
or

(d) must not pretend to be an inspector.

Penalty: \$10 000.

Division 2 — Legal proceedings

107. Time limit for proceedings

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

108. Who may institute proceedings

(1) Proceedings in respect of a contravention of this Act may be instituted —

(a) by any person whose rights have been infringed by, or as a consequence of, the contravention; or

(b) by the Council and if instituted in the name of the Council, may be conducted by an inspector or a member of the staff of the Council authorized by the Council to do so.

(2) In any proceedings no proof is required of the authorization of a person under subsection (1)(b) and an averment in a complaint that the person is so authorized is to be taken to be proved in the absence of evidence to the contrary.

109. Committal for trial on indictment

If a court of summary jurisdiction hearing a complaint for an offence against this Act is, for any reason, of the opinion that the charge should be dealt with by way of prosecution on

indictment, the court may abstain from dealing with the charge and commit the defendant to trial on indictment.

110. Evidentiary provision

5 In any proceedings a certificate purporting to be signed by the chief executive officer certifying as to a matter relating to —

- (a) the terms of a heritage agreement or a variation or termination of a heritage agreement to which the Council is a party, or that has been approved by the Council;
- 10 (b) the approval of a heritage agreement to which the Council is not a party or a variation or termination of such a heritage agreement;
- (c) the service of a document on behalf of the Council or the Minister;
- 15 (d) the contents of the Register at a specified time; or
- (e) the contents of a protection or conservation order,

constitutes proof, in the absence of evidence to the contrary, of the matter so certified.

111. Defences in certain proceedings

20 It is a defence in proceedings for a contravention of —

- (a) section 59(1) (carrying out works to a registered place or place within a State heritage area without, or not in accordance with, approval);
- (b) section 89 (contravening a protection order); or
- 25 (c) section 118 (damaging or despoiling a registered place),

to show that the action taken was urgently necessary —

- (d) to avoid an imminent danger to life or health; or
- (e) for the prevention of impending damage to a place or its neighbouring property.

112. Offences by bodies corporate

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

113. Court orders in respect of convictions for certain offences

- (1) In this section —
“**specified offence**” means an offence under —
- 15 (a) section 59(1) (carrying out works to a registered place or a place within a State heritage area without, or not in accordance with, approval);
- (b) section 89 (contravening a protection order);
- (c) section 92 (failure to comply with a conservation order); or
- 20 (d) section 118 (damaging or despoiling a registered place).
- (2) If a person is convicted of a specified offence the court before which the person is convicted may, instead of or in addition to any other sentence imposed, order that —
- 25 (a) the person take the action specified in the order to make good damage or disrepair that is the subject of the offence, including the reconstruction of a demolished building;

- 5 (b) the person pay to a person specified in the order an amount determined by the court as appropriate to enable the action to be taken, including an amount payable by way of a bond; or
- 5 (c) no works be undertaken in respect of the place that is the subject of the offence for a period specified in the order not exceeding 10 years, except for action required to make good damage or disrepair.
- 10 (3) Part 16 Division 1 of the *Sentencing Act 1995* applies to an order made under subsection (2) as if the order were a reparation order within the meaning of that Part.
- (4) Nothing in this section prevents a court from making a reparation order within the meaning of Part 16 of the *Sentencing Act 1995*.
- 15 **114. Enforcement of court orders under section 113(2)**
- (1) Section 119 of the *Sentencing Act 1995* applies if an amount payable under an order made under section 113(2)(b) is not paid within 28 days after the date of the order as if the order were a compensation order made under Part 16 of that Act.
- 20 (2) Section 122 of the *Sentencing Act 1995* applies to a person who does not comply with an order made under section 113(2)(a) or (c) as if the order were a restitution order made under Part 16 of that Act.

Part 14 — Acquiring land

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

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

15 116. Compensation for land taken

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

- (2) In a case referred to in subsection (1)(a) or (b) the value of the land is to be assessed —
- (a) having regard to the actual state of the place and of any building at the place;
 - 5 (b) on the assumption that approval would not be given under any written law for the demolition of a building referred to in subsection (1)(a) or (b) or for any development other than restoration and conservation; and
 - 10 (c) without regard to any amount which a particular purchaser might be prepared to offer.

117. Request for land to be taken

- (1) An owner of any interest in land who claims that —
- 15 (a) the land has become incapable of reasonably beneficial use; and
 - (b) the carrying out of any reasonable development could not render the land capable of reasonably beneficial use,
- because of the operation of this Act may, by notice in writing, request the Minister or Council to take that interest, or cause it to be taken, as if section 115 applied to the taking of the interest in the land.
- 20
- (2) If an owner of an interest in land has made a claim for compensation under Part 12 no compensation is payable in respect of a claim made under subsection (1) in respect of the same interest.
- 25

Part 15 — Miscellaneous

118. Damaging or despoiling registered places

(1) A person must not damage or despoil a registered place or any part of a registered place.

5 Penalty: \$5 000.

(2) Subsection (1) does not apply to an action that has the approval of the Council under Part 8, a heritage agreement or a conservation order.

119. Notice of intention to sell land

10 (1) If a certificate of title, or memorial or record, in relation to land has been endorsed following a notification under —

 (a) section 34(c) (entry in the Register); or

 (b) section 75(1) (heritage agreements),

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

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

20 **120. Service of documents**

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

121. Protection from liability for wrongdoing

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

122. Limit on actions

- 15 No action lies, and no claim for compensation other than such as is provided for in this Act, arises by reason only of —
- (a) the entry of a place or area in the Register; or
 - (b) the operation of this Act, otherwise.

123. Confidentiality

- 20 (1) This section applies to a person who is or has been —
- (a) a member of the Council or a committee of the Council;
 - (b) the chief executive officer; or
 - (c) a member of staff of the Council or an officer or employee referred to in section 19(1)(a), (b) or (c).
- 25 (2) A person to whom this section applies must not, directly or indirectly, record, disclose or make use of any information obtained in the course of duty except —
- (a) for the purpose of performing a function under this Act;

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- (b) as required or allowed by this Act or under another written law;
- (c) with the written consent of the person to whom the information relates; or
- 5 (d) in prescribed circumstances.

Penalty: \$10 000 and imprisonment for 12 months.

124. Regulations

- 10 (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for carrying out or giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), regulations may provide for the following —
 - 15 (a) fees for applications under this Act;
 - (b) fees or charges in relation to registered places or places in State heritage areas owned or maintained by the Council, or maintained on behalf of the Council;
 - 20 (c) fees or charges in relation to activities, matters or things promoted, arranged or controlled by, or on behalf of, the Council.

125. Repeal

- (1) The *Heritage of Western Australia Act 1990* is repealed.
- (2) The *Heritage of Western Australia Regulations 1991* are repealed.

25 **126. Transitional and savings**

Schedule 2 has effect.

127. Review of Act

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

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

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Division 1 — Constitution and proceedings of the Heritage Council

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

3. Resignation, removal etc.

- 5
- (1) The office of a Council member becomes vacant if the member —
- (a) resigns the office by written notice addressed to the Minister;
 - (b) is an insolvent under administration, as that term is defined in the Corporations Law; or
 - (c) is removed from office by the Minister under subclause (2).
- (2) The Minister may remove a Council member from office if the Minister is satisfied that the member —
- 10
- (a) has neglected the member's duty;
 - (b) has misbehaved;
 - (c) is incompetent; or
 - (d) is suffering from mental or physical incapacity impairing the performance of the member's functions under this Act.

4. Leave of absence

15 The Council may grant leave of absence to a Council member on such terms and conditions as it thinks fit.

5. Council member unable to act

- 20
- (1) The Minister may appoint a person to act temporarily in the place of a Council member (other than the chairperson) when the Council member is unable to act because of illness, absence or other cause.
- (2) While acting according to the tenor of the appointment, the person appointed to act in the place of a Council member is to be treated as a Council member.
- 25
- (3) The appointment of a person to act in the place of a Council member may be terminated at any time by the Minister.

6. Saving

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

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

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

5 **8. Co-opted Council members**

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

(2) A co-opted member is not entitled to vote but while acting according to the tenor of the appointment, the member—
(a) may take part in the deliberations of the Council; and
(b) is to be treated as a Council member.

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

9. Committees of the Council

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

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

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

10. General procedure

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

5 11. Presiding member

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

10

12. Quorum

The quorum for a Council meeting is 6 members.

13. Voting

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

15

14. Minutes

20 The Council is to —

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

25 15. Decisions may be made without meeting

A decision in writing signed or assented to by at least 6 Council members by letter, facsimile transmission or other written means has effect as if it had been passed at a Council meeting.

16. Telephone or video meetings

5 Despite anything in this Schedule, a communication between Council members constituting a quorum by telephone, audio-visual or other electronic means is a valid Council meeting, but only if each participating member is able to communicate with every other participating member instantaneously at all times while participating in the proceedings.

Division 2 — Disclosure of interests, etc.

17. Disclosure of interests

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

Penalty: \$10 000.

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

18. Voting by interested members

A Council member who has a material personal interest in a matter that is being considered by the Council —

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

(i) on the matter; or

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

25 and

(b) must not be present while —

(i) the matter; or

(ii) a proposed resolution of the kind referred to in paragraph (a)(ii),

30 is being considered at a meeting.

19. Clause 18 may be declared inapplicable

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

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

20. Quorum where clause 18 applies

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

21. Minister may declare clauses 18 and 20 inapplicable

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

Schedule 2 — Transitional and savings

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1. Interpretation

(1) In this Schedule —

- 5 **“commencement”** means the commencement of this Act;
- “former Council”** means the Heritage Council of Western Australia established under section 5 of the repealed Act;
- “new Council”** means the Heritage Council of Western Australia established under section 7 of this Act;
- 10 **“repealed Act”** means the *Heritage of Western Australia Act 1990* repealed by section 125(1).
- (2) The provisions of this Schedule do not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to the repeal effected by section 125(1).

15 **2. Former Council members**

A person who, immediately before the commencement, was a member of the former Council, ceases to hold office on the commencement.

3. Staff

- 20 (1) A person who, immediately before the commencement, was a public service officer as defined in the *Public Sector Management Act 1994* working for the former Council is to be taken on and after the commencement to be an employee of the new Council.
- 25 (2) Except as otherwise agreed by an employee, the remuneration, existing or accrued rights, rights under a superannuation scheme or continuity of service of the employee are not affected, prejudiced or interrupted by the operation of subclause (1) or the abolition of the former Council.

(3) A person referred to in subclause (1) is to be regarded as an employee of an organization for the purposes of Part 6 of the *Public Sector Management Act 1994*.

5 (4) Subclause (3) ceases to apply in relation to the new Council at the expiration of 12 months after the commencement.

(5) A person referred to in subclause (1) is to be regarded as having been engaged under section 18 of this Act.

4. Assets and liabilities of former Council to vest in new Council

10 (1) On the commencement the property of the former Council is, by force of this clause, transferred to the new Council without the need for any conveyance or assignment.

(2) On and after the commencement the liabilities of the former Council are, by force of this clause, the liabilities of the new Council.

5. Stamp duty

15 (1) Stamp duty under the *Stamp Act 1921* is not chargeable on the transfer of property effected by the operation of clause 4.

(2) The Minister may certify in writing that specified property was transferred by operation of clause 4, and such a certificate is conclusive evidence of that fact, unless the contrary is shown.

20 **6. Proceedings and remedies**

On and after the commencement —

- 25 (a) the new Council is a party to any proceedings that were begun before the commencement by or against the former Council; and
- (b) any proceedings or remedy that, but for the repeal effected by section 125(1), might have been commenced by, or available against or to, the former Council may be commenced by, and are available against or to, the new Council.

7. Heritage Fund

- (1) The Heritage Fund established under section 14 of the repealed Act is, on and after the commencement, to be taken to be the Heritage Fund as defined by this Act.
- 5 (2) The Heritage Fund as defined by this Act is charged with any liabilities of the Heritage Fund established under section 14 of the repealed Act which arose before the commencement.

8. Records

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

9. Financial reporting of former Council

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

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

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

25 **10. The Register**

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

11. Local government heritage inventories

5 An inventory compiled by a local government under section 45 of the repealed Act, as it was immediately before the commencement, is to be taken on and after the commencement to be the local government's heritage inventory required under section 51 of this Act.

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

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

13. Heritage agreements

15 A Heritage Agreement that was entered into under section 29 of the repealed Act that had effect immediately before the commencement has effect, subject to clause 14, on and after the commencement as if it had been entered into under this Act.

14. References to the former Council in agreements and instruments

- 20 (1) On and after the commencement agreements and instruments that had effect immediately before the commencement —
- (a) to which the former Council was a party; or
 - (b) which contain a reference to the former Council,
- have effect, by force of this section, as if —
- 25 (c) the new Council were substituted for the former Council as a party to the agreement or instrument; and
 - (d) any reference to the former Council were, unless the context otherwise requires, a reference to the new Council.
- (2) Subclause (1) is subject to clause 15.

15. Conservation and restoration orders

- 5 (1) A Conservation Order as defined in the repealed Act, other than a Stop Work Order as defined in that Act, that had effect immediately before the commencement ceases to have effect on the commencement.
- (2) A Stop Work Order as defined in the repealed Act or an order made under section 62(1) of that Act that had effect immediately before the commencement continues to have effect on and after the commencement —
- 10 (a) subject to paragraph (b), as if the repeal had not been effected by section 125(1); and
- (b) as if a reference in the order to the former Council were a reference to the new Council.

16. Overriding certain decisions of local governments

15 An order made under section 34 of the repealed Act that had effect immediately before the commencement is, on and after the commencement, to be taken to be an approval or consent given by the Council under section 84 of this Act to carry out the work that is the subject of the order.

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

An order made under section 36(2) of the repealed Act that had effect immediately before the commencement is, on and after the commencement, to be taken to have been made under section 81(2) of this Act.

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

30 An order made under section 38 of the repealed Act that had effect immediately before the commencement is, on and after the commencement, to be taken to be an order made under section 83 of this Act.

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

- 5 (1) If section 55 of the repealed Act applied to a place immediately before the commencement, section 46 of this Act applies in respect of the place even though the event referred to in section 55(a), (b) or (c) of the repealed Act, as is applicable to the case, occurred before the commencement.
- 10 (2) The 5 year period referred to in section 46 of this Act is to be calculated in respect of a place referred to in subclause (1) from the time of the event referred to in that subclause.

