Western Australia

Heritage Act 2018

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Defined terms

Western Australia

Heritage Act 2018

An Act to —

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

and for related purposes.

Part 1 — Preliminary

1. Short title

This is the *Heritage Act 2018*.

2. Commencement

This Act comes into operation as follows —

(a) Part 1 (other than sections 3 to 10) — on the day on which this Act receives the Royal Assent;

(b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Objectives

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

(a) to promote understanding and appreciation of Western Australia's cultural heritage; and

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

(c) to provide for the identification and documentation of Western Australia's places of cultural heritage significance; and

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

4. Terms used

In this Act, unless the contrary intention appears —

CEO means the chief executive officer of the Department;

chairperson means the person appointed under section 14(1) as chairperson of the Council;

consent order has the meaning given in section 55;

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

(a) maintenance, preservation, restoration, reconstruction, adaptation and interpretation of the place; and

(b) retention of the associations and meanings of the place; and

(c) retention or reintroduction of a use of the place;

continuing protection order has the meaning given in section 57(1);

Council means the body established by section 11(1);

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

cultural heritage significance has the meaning given in section 5(1);

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

development, in relation to land, has the meaning given in the *Planning and Development Act 2005* section 4(1);

development approval means —

(a) approval under the *Planning and Development Act 2005* for the development of any land; or

(b) approval, authorisation, consent or permission under any other written law to do anything that would or might significantly affect the physical character of any land;

heritage agreement means an agreement in operation under Part 7;

inspector means a person appointed under section 114(1) to be an inspector.

land description, in relation to a place, means a description sufficient to identify the location and boundaries of the land included in the place by reference to —

(a) a certificate of title created for the purposes of the *Transfer of Land Act 1893*; or

(b) particulars of any lot, plan, diagram or survey set out in such a certificate; or

(c) in relation to land that is not under the operation of the *Transfer of Land Act 1893* —

(i) particulars set out in any muniments of title; or

(ii) other particulars sufficient to identify the location and boundaries of the land included in the place;

local planning scheme has the meaning given in *Planning and Development Act 2005* section 4(1);

Minister for Lands means the Minister as defined in the *Land Administration Act 1997* section 3(1);

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 of the land;

owner, in relation to land, has the meaning given in section 6;

owner, in relation to a place, means an owner of any land that is included in the place;

place has the meaning given in section 7(1);

prescribed means prescribed by the regulations;

protection order means —

(a) a consent order; or

(b) a continuing protection order; or

(c) a stop work order;

public authority means any of the following —

(a) a Minister of the Crown;

(b) an agency or an organisation as those terms are defined in the *Public Sector Management Act 1994* section 3(1);

(c) a local government or regional local government;

(d) a body or instrumentality, whether incorporated or not, or the holder of an office, that is established or continued for a public purpose under a written law and that, under the authority of a written law, performs a statutory function on behalf of the State;

register means the State Register of Heritage Places established and maintained under section 35(1);

registered land means land that is included in a registered place;

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

repair order has the meaning given in section 65(1);

staff, in relation to the Council, includes —

(a) staff of the Department provided to the Council under section 25; and

(b) officers and employees of which the Council makes use under section 26(1);

statutory notification means a notification given by the Council in accordance with section 163(3);

stop work order has the meaning given in section 56(1);

Tribunal means the State Administrative Tribunal.

5. Term used: cultural heritage significance

(1) In this Act —

cultural heritage significance means aesthetic, historic, scientific, social or spiritual value for individuals or groups within Western Australia.

(2) Cultural heritage significance may be embodied in a place itself and in any of its fabric, setting, use, associations, meanings, records, related places and related objects.

(3) A place may have diverse values for different individuals or groups.

6. Term used: owner, in relation to land

In this Act —

owner, in relation to land, means —

(a) if the land is Crown land in a managed reserve as defined in the *Land Administration Act 1997* section 3(1), the management body of that reserve; and

(b) if the land is Crown land vested in a person under a written law other than the *Land Administration Act 1997*, that person; and

(c) if the land is Crown land that is a road, whichever of the following has the care, control and management of the road under a written law —

(i) the local government in whose district the road is situated;

(ii) the Commissioner of Main Roads;

(iii) the Minister to whom the administration of the *Public Works Act 1902* is committed;

and

(d) if the land is Crown land not mentioned in paragraph (a), (b) or (c) that is subject to a lease, the Minister for Lands and the lessee under the lease; and

(e) in relation to any other Crown land, the Minister for Lands; and

(f) in relation to land that is not Crown land —

(i) if the land is subject to the *Transfer of Land Act 1893* or the *Land Administration Act 1997*, a

proprietor within the meaning of the *Transfer of Land Act 1893*; and

(ii) if the land is subject to the *Registration of Deeds Act 1856*, the holder of an estate or interest registered by memorial under that Act; and

(iii) a mortgagee or encumbrancee in possession of the land;

and

(g) in any case, a person who is the holder of, or has made application for, a mining tenement under the *Mining Act 1978* in respect of the land or a permit or licence under the *Petroleum and Geothermal Energy Resources Act 1967* in respect of the land.

7. Term used: place

(1) In this Act —

place means a defined or readily identifiable area of land and may include any of the following things that are in, on or over the land —

(a) archaeological remains;

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

(c) equipment, furniture, fittings and other objects (whether fixed or not) that are historically or physically associated or connected with the land;

(d) gardens and man-made parks or sites;

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

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

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

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

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

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

8. Act binds Crown

This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

9. Places to which Act does not apply

This Act does not apply to a place —

(a) that comprises only the natural environment; or

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

[Section 9 amended: No. 27 of 2021 s. 349(2); No. 23 of 2023 s. 29(2).]

10. Other laws not affected

Nothing in this Act affects the operation of —

(a) the *Aboriginal Heritage Act 1972*; or

(b) the *Conservation and Land Management Act 1984*; or

(c) the *Environmental Protection Act 1986*; or

(d) the *Maritime Archaeology Act 1973*.

[Section 10 amended: No. 27 of 2021 s. 349(3); No. 23 of 2023 s. 29(3).]

Part 2 — The Council

Division 1 — Constitution of the Council

11. Council established

(1) A body called the Heritage Council of Western Australia is established.

(2) The Council is a body corporate with perpetual succession.

(3) A proceeding may be taken by or against the Council in its corporate name.

12. Status

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

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

(a) that comprise only the natural environment; or

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

[Section 12 amended: No. 27 of 2021 s. 349(4); No. 23 of 2023 s. 29(4).]

13. Execution of documents by Council

(1) The Council must have a common seal.

(2) A document is duly executed by the Council if —

(a) the common seal of the Council is affixed to it in accordance with subsections (3) and (4); or

(b) it is signed on behalf of the Council by a person or persons authorised to do so under subsection (5).

(3) The common seal of the Council must not be affixed to a document except as authorised by the Council.

(4) The common seal of the Council must be affixed to a document in the presence of 2 members of the Council each of whom must sign the document to attest that the common seal was so affixed.

(5) The Council may, by writing under its common seal, authorise any of the following persons to sign documents on behalf of the Council, either generally or subject to the conditions that are specified in the authorisation —

(a) a member or members of the Council;

(b) a staff member or members.

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

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

14. Membership and proceedings

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

(2) The Minister must nominate for appointment as chairperson of the Council under subsection (1) a person who in the opinion of the Minister has demonstrated knowledge, experience, skills or qualifications relevant to the position of chairperson.

(3) With a view to maintaining a balanced membership reflecting the functions of the Council, the Minister must nominate for appointment as ordinary members of the Council under subsection (1) up to 8 persons who in the opinion of the Minister have —

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

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

(i) archaeology;

(ii) architecture;

(iii) construction;

(iv) engineering;

(v) governance;

(vi) heritage conservation or interpretation;

(vii) history;

(viii) landscape architecture;

(ix) local government;

(x) property ownership, development or marketing;

(xi) urban and regional planning;

(xii) any other field prescribed for the purposes of this subsection.

(4) Regulations may provide for the following —

(a) the publication of advertisements seeking candidates for nomination to membership of the Council;

(b) the term of office, resignation and removal of members;

(c) the appointment of alternate members to deputise for members who are temporarily unable or unavailable to act;

(d) the disclosure, recording and management of members' conflicts of interest;

(e) the convening and conduct of meetings of the Council;

(f) the establishment, membership and proceedings of committees of the Council;

(g) other proceedings of the Council.

15. Co-opted members and role of CEO

(1) The Council may appoint any person having relevant specialised knowledge or experience to be a co-opted member of the Council for a period, or in relation to matters, specified in the instrument of appointment.

(2) A person appointed under subsection (1) or a nominee of that person —

(a) may, for the period or in relation to the matters in respect of which the person is appointed, take part in the deliberations of the Council but cannot vote on a matter unless authorised to do so under the regulations; and

(b) otherwise, has all the functions and entitlements of a member for that period or in relation to those matters.

(3) The CEO, or a nominee of the CEO, is entitled to attend any meeting of the Council and to take part in the consideration and discussion of any matter before a meeting other than a matter concerning the performance of the CEO, but cannot vote on any matter.

16. Remuneration and allowances

The members of the Council, or of a committee of the Council established under section 14(4)(f), are entitled to be paid out of the funds of the Council any remuneration and allowances determined by the Minister on the recommendation of the Public Sector Commissioner.

Division 2 — Functions and powers of Council

17. Functions of the Council

The Council has the following functions —

(a) to assess and to document places of cultural heritage significance in Western Australia;

(b) to advise the Minister on heritage matters and, in particular, on the identification, conservation and protection of places that are, or may be, of cultural heritage significance;

(c) to provide guidance to public authorities on contemporary best practice for the identification and management of heritage assets;

(d) to administer the register;

(e) in accordance with Part 6, to provide or facilitate the provision of financial, technical and professional assistance and other conservation incentives;

(f) if development or other proposals may affect a registered place, to provide advice to decision-making authorities on ensuring that the place's cultural heritage significance is preserved;

(g) to endeavour to prevent the destruction, damage, deterioration or injudicious treatment of places that are, or may be, of cultural heritage significance;

(h) to undertake or provide for the conservation of places that are, or may be, of cultural heritage significance;

(i) to acquire, own, conserve, arrange for the conservation of, lease, manage and dispose of places that are, or may be, of cultural heritage significance;

(j) to advise and assist local governments in identifying and conserving places that are, or may be, of cultural heritage significance;

(k) to promote public awareness and knowledge in relation to Western Australia's cultural heritage;

(l) to provide and to encourage education and training in relation to Western Australia's cultural heritage;

(m) to arrange and to conduct research and investigations in relation to Western Australia's cultural heritage;

(n) to promote and assist in the management and maintenance of registered places;

(o) to enter into agreements under section 90(1) and implement those agreements when in operation;

(p) to advise and assist the Minister and others in relation to heritage agreements;

(q) to perform any other functions required of it by the Minister under, or in furtherance of the objectives of, this Act;

(r) to do anything else that it is required or authorised to do under this Act or any other written law.

18. Powers of Council

(1) The Council has all the powers it needs to perform its functions.

(2) Without limiting subsection (1), the Council may for the purpose of performing a function —

(a) acquire, hold, manage and dispose of real and personal property; and

(b) grant a lease or licence in respect of property that is owned by the Council; and

(c) carry out, or cause to be carried out, the conservation and development of a place; and

(d) enter into arrangements for sponsorship; and

(e) use its expertise and resources to provide consultancy, management, advisory or other services for profit or otherwise.

(3) The Council may, in accordance with the regulations —

(a) impose and recover fees and charges in connection with the performance of its functions; and

(b) recover prescribed costs and expenses arising from the performance of its functions.

19. Delegation by Council

(1) The Council may, by resolution of which notice has been published in the *Gazette* under subsection (2), delegate to a person any function of the Council under another provision of this Act, or under any other written law.

(2) A notice of a delegation under this section published in the *Gazette* must set out the identity of the delegate and the scope of the delegation.

(3) A person to whom a function is delegated under this section cannot delegate that function.

(4) The delegate must perform or discharge functions delegated under this section in accordance with the terms of the delegation.

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

(6) Nothing in this section limits the ability of the Council to perform a function through an officer or agent.

Division 3 — Relationship with other public authorities

20. Public authorities must assist Council

(1) A public authority must, and by this section is authorised to, give the Council prescribed assistance in carrying out the functions of the Council if it is reasonably practicable for the public authority to give the assistance.

(2) A public authority must comply with any reasonable request for information made by the Council.

(3) Nothing in subsection (1) or (2) exempts the Council from the payment of fees or charges payable under any Act.

(4) If the Council is of the opinion that a public authority has not complied with subsection (1) or (2) the Council may request the Minister to notify in writing the Minister responsible for the administration of the public authority.

(5) A Minister notified under subsection (4) may direct the public authority to provide the assistance or information to the Council.

(6) A direction under subsection (5) may require the public authority to make the services of any person employed or engaged by the public authority available to provide the assistance or information.

Division 4 — Relationship between Minister and Council

21. Administration of this Act

It is a function of the Council to advise the Minister on the administration of this Act.

22. Minister's directions

(1) The Minister may give the Council written directions of a general character with respect to its functions.

(2) Except as provided in subsection (3), the Council must comply with a direction given under subsection (1).

(3) The Council is not required to comply with a direction given under subsection (1) with respect to its functions of —

(a) evaluating the cultural heritage significance of a place; and

(b) giving advice to the Minister or to a decision-making authority with respect to a place.

(4) The text of a direction given under subsection (1) must be included in the annual report submitted by the accountable

authority of the Council under the *Financial Management Act 2006* Part 5.

23. Minister to have access to information

(1) In this section —

document includes any tape, disk 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.

(2) The Minister is entitled —

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

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

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

(a) request the Council to provide information to the Minister; and

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

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

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

24. Delegation by Minister

(1) The Minister may, by instrument in writing of which notice has been published in the *Gazette* under subsection (2), delegate to a

person any function of the Minister under another provision of this Act other than —

(a) this power of delegation; and

(b) functions under sections 14, 22 and 23; and

(c) functions under Part 3; and

(d) functions under Part 4; and

(e) functions under Part 6 Division 3; and

(f) functions under Part 7; and

(g) functions under Part 10.

(2) A notice of a delegation under this section published in the *Gazette* must set out the identity of the delegate and the scope of the delegation.

(3) A person to whom a function is delegated under this section cannot delegate that function.

(4) The delegate must perform or discharge functions delegated under this section in accordance with the terms of the delegation.

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

(6) Nothing in this section limits the ability of the Minister to perform a function through an officer or agent.

Division 5 — Staff

25. CEO to provide assistance, staff and facilities

(1) The CEO must provide the Council with any staff and facilities of the Department, and any other assistance, the Council may reasonably require to perform its functions.

(2) The CEO may engage persons as wages staff for the purposes of this Act.

(3) Subject to any relevant award or industrial agreement, the terms and conditions of engagement under subsection (2) are to be the terms and conditions that the CEO, with the approval of the Public Sector Commissioner, determines.

(4) A person engaged under subsection (2) is not a person appointed under the *Public Sector Management Act 1994* Part 3.

(5) This section does not affect the power that the *Public Sector Management Act 1994* section 100 gives the CEO to engage a person under a contract for services or appoint a person on a casual employment basis for the purposes of this Act.

26. Use of other government staff and facilities

(1) The Council may by arrangement with the relevant employing authority make use, either full-time or part-time, of the services of any officer or employee —

(a) in the Public Service; or

(b) in a State agency; or

(c) otherwise in the service of the State.

(2) The Council may, by arrangement with the employing authority of a department of the Public Service or a State agency, make use of any facilities of the department or agency.

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

Division 6 — Finance

27. *Financial Management Act 2006* and *Auditor General Act 2006* apply

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

28. Funds of Council

The funds available to the Council for the purposes of this Act are —

(a) money appropriated by Parliament; and

(b) money received by the Council in the performance of its functions; and

(c) money borrowed by the Council under section 30; and

(d) other money lawfully received by, made available to, or payable to, the Council.

29. Heritage Fund

(1) An account called the Heritage Fund is established as an agency special purpose account under the *Financial Management Act 2006* section 16.

(2) The funds mentioned in section 28 must be credited to the Heritage Fund.

(3) Moneys standing to the credit of the Heritage Fund may be applied in payment of —

(a) the remuneration and allowances payable under section 16; and

(b) interest on, other fees and charges in respect of, and repayment of moneys borrowed by, the Council under section 30; and

(c) costs and expenses lawfully incurred by the Council in the performance of its functions.

30. Borrowing

(1) The Council may with the prior approval in writing of the Treasurer and on terms and conditions approved by the Treasurer, 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 any manner the Treasurer approves.

31. Guarantee by Treasurer

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

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

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

(a) give the Treasurer any security the Treasurer requires; and

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

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

32. Effect of guarantee

(1) The due payment of moneys under a guarantee given under section 31 must be —

(a) made by the Treasurer; and

(b) charged to, and paid out of, the Consolidated Account, which this subsection appropriates accordingly.

(2) The Treasurer must cause to be credited to the Consolidated Account 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 31.

33. Notice of financial difficulty

(1) The Council must notify the Minister if it forms the opinion that it is unable to, or will be unlikely to be able to, satisfy any of its financial obligations from the financial resources available to it or likely to be available to it at the time the financial obligation is due.

(2) The notice must be in writing and give reasons for the Council's opinion.

(3) Within 7 days after receipt of the notice, the Minister must —

(a) confer with the Treasurer and the Council for the purpose of determining what action is required to ensure that the Council is able to satisfy the relevant financial obligation when it is due; and

(b) initiate such action as is required to ensure that the Council is able to satisfy the relevant financial obligation when it is due.

(4) For the purposes of subsection (3), the Minister may give the Council a direction requiring the Council to cease or limit the performance of any function.

(5) The Council must comply with a direction given under subsection (4).

(6) The text of a direction given under subsection (4) must be included in the annual report submitted by the accountable authority of the Council under the *Financial Management Act 2006* Part 5.

34. Exemption from rates

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

Part 3 — The State Register of Heritage Places

Division 1 — The register

35. The register

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

(2) It is the objective of the Council and the Minister that the register is a comprehensive register of places of cultural heritage significance that make an important contribution to understanding the heritage of Western Australia.

(3) The register must include places that the Minister, on the advice of the Council, has directed to be entered in the register in accordance with Division 2.

(4) The Council must make the register available for public inspection in accordance with the regulations.

(5) The Council must make information regarding amendments to, and removals of, entries in the register available for public inspection in accordance with the regulations.

36. Form and content of register

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

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

(a) a land description of the place; and

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

(c) any other prescribed particulars.

Division 2 — Entry in the register

Subdivision 1 — Registration conditions

37. Conditions for registration

(1) It is a condition for the entry of a place in the register that the Council has determined in accordance with section 38 that the place has cultural heritage significance.

(2) Subject to subsection (3), it is a condition for the entry of a place in the register that the place not include land that within the preceding 5 years —

(a) was removed from a registered place by an amendment made under section 46; or

(b) was included in an entry that has been removed from the register under section 51.

(3) The Council may apply to the Supreme Court for an order that the condition mentioned in subsection (2) is not to apply to a place specified in the order.

38. Factors relevant to cultural heritage significance

(1) In determining whether a place has cultural heritage significance the Council must have regard to the following —

(a) its importance in demonstrating the evolution or pattern of Western Australia's history;

(b) its importance in demonstrating rare, uncommon or endangered aspects of Western Australia's heritage;

(c) its potential to yield information that will contribute to an understanding of Western Australia's history;

(d) its importance in demonstrating the characteristics of a broader class of places;

(e) any strong or special meaning it may have for any group or community because of social, cultural or spiritual associations;

(f) its importance in exhibiting particular aesthetic characteristics valued by any group or community;

(g) any special association it may have with the life or work of a person, group or organisation of importance in Western Australia's history;

(h) its importance in demonstrating a high degree of creative or technical achievement;

(i) any other characteristic it may have that in the opinion of the Council is relevant to the assessment of cultural heritage significance.

(2) A place may have cultural heritage significance despite lacking physical material that substantially contributes to its cultural heritage significance.

Subdivision 2 — Process for entry into register

39. Nomination for entry in the register

(1) A person may, in accordance with the regulations, nominate a place for entry in the register.

(2) Within the prescribed period after receipt of a nomination, the Council must make a preliminary determination as to whether the nominated place warrants review under section 40(1).

(3) The Council must give notice in accordance with section 163 of the preliminary determination and the reasons for it to —

(a) each owner of the place; and

(b) the person that made the nomination; and

(c) each person prescribed for the purposes of this subsection.

40. Review and registration recommendation

(1) The Council may review a place nominated under section 39(1), or any other place that the Council is considering for recommendation for entry in the register, by —

(a) determining under section 38 whether the place has cultural heritage significance; and

(b) consulting each owner of the place, and undertaking public consultation, in accordance with the regulations, in relation to the entry of the place in the register and the content of a draft statement of cultural heritage significance for the place; and

(c) if the Council thinks it necessary and appropriate, making an application under section 37(3).

(2) When the Council has completed its review under subsection (1) it may recommend to the Minister that the place be entered in the register.

(3) If the Council recommends to the Minister that a place be entered in the register, it must —

(a) advise the Minister on the cultural heritage significance of the place and on any submissions received in the course of consultation under subsection (1)(b); and

(b) prepare and provide to the Minister a draft register entry (including a proposed statement of cultural heritage significance) in relation to the place.

(4) The Council must publish, in accordance with the regulations, an advertisement in relation to a recommendation made under subsection (2).

(5) The Council must not include in the advertisement information regarding any person consulted, or any submission received, in the course of public consultation without the consent of the person consulted or the person making the submission.

41. Direction by Minister

(1) If the Council recommends under section 40(2) that a place be entered in the register the Minister must, within the prescribed period —

(a) direct the Council to enter the place in the register; or

(b) direct the Council not to enter the place in the register and state in writing the reasons for the direction.

(2) In giving the direction the Minister must have regard to —

(a) the recommendation and advice of the Council under section 40; and

(b) any other matter that the Minister considers relevant.

(3) The Council must —

(a) give notice in accordance with section 163 of the direction and any statement of reasons to —

(i) each owner of the place; and

(ii) each person prescribed for the purposes of this subsection;

and

(b) publish, as soon as practicable, in accordance with the regulations, an advertisement in relation to the direction and any statement of reasons.

42. Entry in register

(1) As soon as practicable after receiving a direction under section 41(1)(a) in relation to a place, the Council must make an entry in the register in relation to the place in accordance with section 36(2).

(2) The Council must —

(a) publish in the *Gazette* a notice in relation to the entry in the register setting out a land description of the place and any other prescribed particulars; and

(b) give notice in accordance with section 163 of the entry in the register to —

(i) each owner of the place; and

(ii) each person prescribed for the purposes of this subsection;

and

(c) give statutory notification of the entry in the register; and

(d) notify the Valuer-General of the entry in the register.

(3) The Council may publish, in accordance with the regulations, an advertisement in relation to the entry in the register.

Division 3 — Amendment of register entries

43. Request for amendment of land description in register entry

(1) An owner of land included in a registered place, or if there is more than one owner of that land each of those owners acting jointly, may, in accordance with the regulations, request the Council to amend the land description with respect to that land in an entry in the register relating to the place.

(2) Within the prescribed period after receipt of a request under subsection (1), the Council must make a determination as to whether the requested amendment warrants consideration in detail.

(3) The Council must give notice in accordance with section 163 of its determination under subsection (2) and the reasons for the determination to —

(a) each owner of the land; and

(b) each person prescribed for the purposes of this subsection.

44. Detailed consideration of amendment to land description

(1) If the Council determines under section 43 or otherwise that an amendment to the land description in an entry in the register warrants consideration in detail it may —

(a) review the cultural heritage significance of the place; and

(b) consult each owner of the place, and undertake public consultation in relation to the proposed amendment, in accordance with the regulations; and

(c) consider whether the requested amendment is desirable, having regard to —

(i) the cultural heritage significance of the place; and

(ii) the way in which the amendment would affect the cultural heritage significance of the place; and

(iii) any submissions received in the course of consultation under paragraph (b);

and

(d) if the Council thinks it necessary and appropriate, make an application under section 37(3).

(2) When the Council has completed consideration in detail under subsection (1), it may recommend to the Minister that the amendment be made.

(3) If the Council recommends to the Minister that an amendment to the land description in an entry in the register be made, it must —

(a) advise the Minister on —

(i) the cultural heritage significance of the place; and

(ii) any submissions received in the course of consultation under subsection (1)(b); and

(iii) its reasons for recommending the amendment be made;

and

(b) if the amendment was initiated by a request under section 43(1), recommend any conditions that the owner of the land should be required to satisfy before the amendment is made; and

(c) prepare and provide to the Minister the amendment that it recommends be made.

(4) The Council must publish, in accordance with the regulations, an advertisement in relation to a recommendation made under subsection (2).

(5) The Council must not include in the advertisement information regarding any person consulted, or any submission received, in the course of public consultation without the consent of the person consulted or the person making the submission.

45. Land description amendment direction by Minister

(1) If the Council recommends to the Minister under section 44(2) that an amendment to the land description in an entry in the register be made, the Minister must, within the prescribed period —

(a) direct the Council to make the proposed amendment; or

(b) direct the Council not to make the proposed amendment and state in writing the reasons for the direction.

(2) In giving the direction the Minister must have regard to the advice and recommendations of the Council under section 44(3).

(3) A direction under subsection (1)(a) may, if the amendment was initiated by a request under section 43(1), be conditional upon the owner of the land —

(a) discharging any costs associated with making the amendment; and

(b) satisfying any other conditions specified by the Minister.

(4) The Council must —

(a) give notice in accordance with section 163 of a direction under subsection (1) and any statement of reasons to —

(i) each owner of the land; and

(ii) each person prescribed for the purposes of this subsection;

and

(b) publish, as soon as practicable, in accordance with the regulations, an advertisement in relation to the direction and any statement of reasons.

46. Amending land description in register entry

(1) The Council must amend a land description in an entry in the register as soon as practicable after —

(a) it receives a direction under section 45(1)(a) to do so; and

(b) any conditions imposed under section 45(3) in relation to making the amendment are satisfied.

(2) The Council must —

(a) publish in the *Gazette* a notice setting out the amended land description of the place and any other prescribed particulars; and

(b) give notice in accordance with section 163 of the amendment to —

(i) each owner of the land; and

(ii) each person prescribed for the purposes of this subsection;

and

(c) give statutory notification of the amendment; and

(d) give the Valuer-General notification of the amendment.

(3) The Council may publish, in accordance with the regulations, an advertisement in relation to the amendment.

47. Other amendments

(1) The Council must make amendments to the statement of cultural heritage significance in an entry to the register in accordance with regulations made for the purposes of section 53(1).

(2) If regulations prescribe other particulars to be included in an entry in the register, the regulations must prescribe procedures for the amendment of those particulars.

Division 4 — Removal of entries from register

48. Request for removal

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

(2) Within the prescribed period after receipt of a request under subsection (1), the Council must make a determination as to whether the requested removal warrants consideration in detail.

(3) The Council must give notice in accordance with section 163 of its determination under subsection (2) and the reasons for the determination to each owner of the registered place.

(4) If the Council determines that the requested removal does not warrant consideration in detail, the owner of the registered place or, if more than one owner, the owners acting jointly, may, in

accordance with the regulations, request the Council to refer the matter to the Minister, who must, within the prescribed period —

(a) confirm the Council's determination; or

(b) direct the Council to give consideration in detail to the requested removal under section 49.

49. Detailed consideration of removal

(1) If the Minister directs the Council under section 48(4)(b) to give consideration in detail to the removal of an entry in the register the Council must —

(a) review the cultural heritage significance of the registered place; and

(b) undertake public consultation in accordance with the regulations in relation to the removal; and

(c) consider whether the removal is desirable, having regard to —

(i) the cultural heritage significance of the registered place; and

(ii) the way in which the removal would affect the heritage significance of the registered place; and

(iii) any submissions received in the course of consultation under paragraph (b) and subsection (3)(b).

(2) The Council may act under subsection (1) in relation to an entry in the register without the direction of the Minister if the Council considers it appropriate to do so.

(3) If the Council acts under subsection (1) in relation to an entry in the register without the direction of the Minister it must —

(a) notify the Minister that it is so acting; and

(b) consult each owner of the registered place in accordance with the regulations.

(4) When the Council has completed consideration in detail under subsection (1) after direction of the Minister, it must recommend to the Minister —

(a) that the entry be removed; or

(b) that the entry not be removed.

(5) When the Council has completed consideration in detail under subsection (1) without direction of the Minister, it may —

(a) decide to take no further action and notify the Minister accordingly; or

(b) recommend to the Minister that the entry be removed.

(6) When the Council makes a recommendation under subsection (4) or (5)(b) it must advise the Minister on —

(a) the cultural heritage significance of the registered place; and

(b) any submissions received in the course of consultation under subsections (1)(b) and (3)(b); and

(c) the Council's reasons for its recommendation; and

(d) if the Council's recommendation for removal of the entry was initiated by a request under section 48(1), any conditions that the owner of the registered place should be required to satisfy before the entry is removed.

(7) The Council must publish, in accordance with the regulations, an advertisement in relation to a recommendation made under subsection (4) or (5)(b).

(8) The Council must not include in the advertisement information regarding any person consulted, or any submission received, in the course of public consultation without the consent of the person consulted or the person making the submission.

50. Removal direction by Minister

(1) Within the prescribed period after the Council makes a recommendation under section 49(4) or 49(5)(b) the Minister must —

(a) direct the Council to remove the entry; or

(b) direct the Council not to remove the entry.

(2) In giving the direction the Minister must have regard to the advice and recommendation of the Council under section 49.

(3) The Minister must state the reasons for the direction.

(4) A direction under subsection (1)(a) to remove an entry may, if the removal was initiated by a request under section 48(1), be conditional upon the owner of the registered place —

(a) discharging any costs associated with the removal; and

(b) satisfying any other conditions specified by the Minister.

(5) A direction under subsection (1)(a) does not take effect until it has been approved by a resolution of each House of Parliament.

(6) The Council must —

(a) give notice in accordance with section 163 of a direction under subsection (1) and the statement of reasons to —

(i) each owner of the registered place; and

(ii) each person prescribed for the purposes of this subsection;

and

(b) publish, as soon as practicable, in accordance with the regulations, an advertisement in relation to the direction and the statement of reasons.

51. Removing entry from register

(1) The Council must remove an entry from the register if directed to do so under section 50(1)(a) as soon as practicable after —

(a) the satisfaction of any conditions imposed under section 50(4); and

(b) the approval of both Houses of Parliament under section 50(5).

(2) The Council must —

(a) publish in the *Gazette* a notice of the removal, setting out a land description of the place to which the entry related and any other prescribed particulars; and

(b) give notice in accordance with section 163 of the removal to —

(i) each owner of the place to which the entry related; and

(ii) each person prescribed for the purposes of this subsection;

and

(c) give statutory notification of the removal; and

(d) notify the Valuer-General of the removal.

(3) The Council may publish, in accordance with the regulations, an advertisement in relation to the removal.

Division 5 — Statements of cultural heritage significance

52. Adoption of statement of cultural heritage significance

(1) The Council must adopt a statement of cultural heritage significance in relation to each registered place.

(2) A statement of cultural heritage significance must include the prescribed matters.

53. Updating and amending statements of cultural heritage significance

(1) The Council must review and update the statement of cultural heritage significance for a registered place in accordance with the regulations.

(2) The Council may update a statement of cultural heritage significance, without prior notice to or consultation with the owners of the registered place concerned, to —

(a) correct or update a name, title, designation or other description; or

(b) correct a clerical error or an error because of an accidental omission; or

(c) correct information that is factually erroneous; or

(d) make any other change to the statement that, in the opinion of the Council, would not be materially relevant to the conservation or management of the place.

(3) The Council may amend a statement of cultural heritage significance in any way not mentioned in subsection (2) —

(a) if —

(i) each owner of the registered place concerned is notified under section 163 of the proposed amendment and, in accordance with the regulations, has an opportunity to make submissions in relation to it; and

(ii) no owner objects to the proposed amendment;

or

(b) if —

(i) each owner of the registered place concerned is notified under section 163 of the proposed amendment and, in accordance with the regulations, has an opportunity to make submissions in relation to it; and

(ii) the Council undertakes public consultation in relation to the proposed amendment in accordance with the regulations; and

(iii) the Minister directs that the proposed amendment be made.

54. Notification of adoption, update or amendment

The Council must —

(a) give notice in accordance with section 163 of the adoption, updating or amendment of a statement of cultural heritage significance under this Division to —

(i) each owner of the registered place concerned; and

(ii) each person prescribed for the purposes of this subsection;

and

(b) publish, in accordance with the regulations, an advertisement in relation to the adoption, updating or amendment of the statement of cultural heritage significance.

Part 4 — Protection orders and repair orders

Division 1 — Protection orders

55. Consent order

The Minister may make an order under this section in relation to a place (a ***consent order***) if —

(a) the Minister considers that —

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

(ii) the likelihood of damage to the place means that a specific prohibition is necessary;

and

(b) each owner of the place has given prior consent in writing as to the terms of the order.

56. Stop work order

(1) The Minister may make an order under this section in relation to a place (a ***stop work order***) if the Minister considers that —

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

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

(2) Subject to subsection (3), the Minister may make the stop work order without the prior consent in writing of each owner of the place as to the terms of the order.

(3) Except with the authorisation of the Tribunal under subsection (4), the Minister must not make a stop work order in relation to a place if —

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

(b) the place includes land that within the preceding 5 years —

(i) was removed from a registered place by an amendment made under section 46; or

(ii) was included in an entry that has been removed from the register under section 51.

(4) The Tribunal may make an order authorising the making of a stop work order that would otherwise be prohibited under subsection (3).

57. Continuing protection order

(1) The Minister may make an order under this section in relation to a place (a ***continuing protection order***) if —

(a) the Minister considers that it is necessary or desirable to provide special protection in relation to the place; and

(b) the requirements of subsection (2) have been satisfied.

(2) The Minister must not make a continuing protection order unless the Council has —

(a) given notice in accordance with section 163 to each owner of land that is likely to be directly affected by the proposed continuing protection order, explaining the nature of the special protection proposed and the reason for it; and

(b) consulted each owner of land that is likely to be directly affected by the proposed continuing protection order, and undertaken public consultation in relation to the proposed continuing protection order, in accordance with the regulations; and

(c) considered, and advised the Minister on, submissions received in the course of consultation under paragraph (b); and

(d) recommended to the Minister that the proposed continuing protection order be made; and

(e) published any advertisement required by the regulations.

(3) The Minister must state the reasons for making, or determining not to make, a protection order.

(4) If, after the Council has recommended to the Minister that a continuing protection order be made, the Minister determines not to make the order, the Council must publish, as soon as practicable, in accordance with the regulations, an advertisement in relation to the Minister's determination and any statement of reasons.

58. Content of protection order

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

(2) A protection order may contain prohibitions relating to any or all of the following —

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

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

(c) any activity of a kind that, in the opinion of the Minister, is likely to affect detrimentally —

(i) the cultural heritage significance of the place; or

(ii) the capacity to effect conservation of its cultural heritage significance;

(d) the demolition, damage or alteration of the place or any part of the place;

(e) anything that, in the opinion of the Minister, is likely to cause disturbance to the place;

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

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

(4) Regulations may prescribe activities that may be carried out despite the terms of a protection order or of a particular class of protection orders and the protection order or class of protection orders are taken not to apply to those activities.

59. Notification of protection order

If a protection order is made, the Council —

(a) must serve a copy of the order, where practicable, on each owner and occupier of the place to which the order relates; and

(b) must give statutory notification of the making of the order; and

(c) except in the case of a stop work order, must publish the order in the *Gazette*; and

(d) may publish, in accordance with the regulations, an advertisement containing a summary of the terms of the order and setting out a sufficient description to identify the place to which the order relates; and

(e) may erect signs on or near the place to which the order relates for the purpose of informing the public of the making of the order and of the matters the order prohibits.

60. Coming into effect of protection order

(1) A consent order or a continuing protection order takes effect on the day after the day on which it is published in the *Gazette*.

(2) A stop work order takes effect when whichever of the following happens first—

(a) a copy of the order is affixed in a prominent position on the place to which the order relates;

(b) a copy of the order is served on a person carrying out, or causing to be carried out, any works or other activity at the place to which the order relates, whether or not served at the place.

61. Duration of protection order

(1) The Minister may revoke a protection order, after consultation with the Council, by an order published in the *Gazette*.

(2) A protection order ceases to have effect —

(a) in the case of a consent order, on the expiry date, if any, specified in the order;

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

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

(ii) if the order is continued in force by the Tribunal under section 62(5), on the expiry date fixed by the Tribunal;

(c) in the case of a continuing protection order, on the expiry date, if any, specified in the order;

(d) in any case, when an order revoking the protection order is published under subsection (1).

(3) If a protection order ceases to have effect, the Council must —

(a) give notice in accordance with section 163 that the order has ceased to have effect to —

(i) each owner of the place to which the order relates; and

(ii) each person prescribed for the purposes of this subsection;

and

(b) give statutory notification of the cessation; and

(c) remove any signs erected under section 59(e).

62. Tribunal's powers as to protection order

(1) The owner of a place to which a stop work order or a continuing protection order relates may apply to the Tribunal for a review of the order.

(2) The Minister may refer a stop work order to the Tribunal seeking a determination that the order continue to have effect for a period greater than 60 days from the making of the order.

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

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

(a) revoke the protection order; or

(b) confirm the protection order; or

(c) modify the protection order.

(5) On a referral under subsection (2) the Tribunal may order that the stop work order continues in force in relation to such of the prohibitions contained in the order as the Tribunal specifies —

(a) permanently; or

(b) for a period that expires on a date fixed by the Tribunal.

(6) The operation of a stop work order that is the subject of an application or referral under this section is not stayed by the application or referral and the Tribunal cannot stay the operation of the order.

Division 2 — Repair orders

63. Terms used

In this Division —

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

repair notice means a notice given under section 64(2) in accordance with section 163;

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

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

64. Repair notice

(1) This section applies if —

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

(b) the Council considers that, as a consequence of the neglect, works are required to prevent irreversible deterioration to the place.

(2) The Council may give a notice to the owner or occupier of the place stating that, unless works specified in the notice are completed by a date specified in the notice, the Council will advise the Minister to make a repair order in relation to the place.

(3) A repair notice must include any prescribed details.

(4) Regulations made for the purposes of this section —

(a) must prescribe steps to be taken by the Council to afford the owner or occupier of the place opportunities for consultation and negotiation with the Council regarding works to be undertaken; and

(b) may provide for the Council, with the agreement of the owner or occupier of the place, to arrange for works to be undertaken at the expense of the owner or occupier; and

(c) if the owner or occupier of the place agrees to the Council arranging works, may provide for the Council to —

(i) accept payment from the owner or occupier in respect of the works; or

(ii) take a charge over property or other assets to secure payment in respect of the works.

65. Repair order

(1) Subject to subsections (2) and (3), the Minister may make an order under this section in relation to a registered place (a ***repair order***) requiring the owner or occupier of the place to undertake specified works for any or all of the following purposes —

(a) protecting the place from damage or deterioration due to fire, weather or other causes;

(b) securing the place from intrusion or vandalism;

(c) maintaining or repairing the place to remedy or prevent serious or irreparable damage or deterioration from any cause.

(2) The Minister must not make a repair order unless —

(a) the Council has advised the Minister that —

(i) it has given a repair notice to the owner or occupier of the place and has taken the prescribed steps for consultation and negotiation; and

(ii) neither the works specified in the repair notice nor other works satisfactory to the Council have been carried out; and

(iii) the Council considers that works specified in the Council's advice are necessary for any of the purposes mentioned in subsection (1);

and

(b) the Minister considers, having regard to the advice of the Council, that —

(i) a repair order is necessary for any of the purposes mentioned in subsection (1); and

(ii) the order is unlikely to cause undue hardship to the person to whom the order is directed.

(3) The Minister must not make a repair order in relation to —

(a) unallocated Crown land or an unmanaged reserve, except with the consent of the Minister for Lands; or

(b) a managed reserve placed in the care, control and management of a Minister of the Crown or another public authority that is responsible to a Minister of the Crown, except with the consent of that Minister; or

(c) a place that is owned by a Minister of the Crown or another public authority that is responsible to a Minister of the Crown, except with the consent of that Minister.

(4) A repair order must include the following —

(a) a land description of the place to which it relates;

(b) particulars of the works to be undertaken;

(c) a statement of the date by which the works must be completed.

66. Notification of repair order

(1) The Council must —

(a) serve a copy of a repair order on the person to whom it is directed; and

(b) give statutory notification of the order.

(2) The Council may, on or near the place to which a repair order relates, erect signs displaying a copy of the order.

67. Standard of works

A person undertaking works under a repair notice or repair order must comply with —

(a) any applicable requirements under the *Building Act 2011*, the *Local Government Act 1995*, the *Planning and Development Act 2005* and any other written law specified in the regulations; and

(b) any prescribed requirements or standards; and

(c) any requirements or standards specified in the repair order or repair notice.

68. Termination of repair order

(1) A repair order terminates if —

(a) the Minister withdraws the repair order by notice given in accordance with section 163 to the person to whom the repair order is directed; or

(b) the Council confirms by notice given in accordance with section 163 to the person to whom the repair order is directed that the works required by the order have been satisfactorily completed; or

(c) the Tribunal revokes the repair order under section 69(3)(a).

(2) When a repair order terminates the Council must —

(a) withdraw any notification given under section 66(1)(b) in respect of the order; and

(b) remove any signs relating to the order erected under section 66(2).

69. Tribunal's powers as to repair order

(1) A person to whom a repair order is directed may apply to the Tribunal for a review of the order.

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

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

(a) revoke the repair order; or

(b) confirm the repair order; or

(c) modify the repair order.

70. Exclusion of liability

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

Part 5 — Proposals affecting places of heritage interest

Division 1 — Preliminary

71. Terms used

In this Part —

decision-maker means a public authority empowered under a written law to make a decision or recommendation in respect of a proposal;

proposal means —

(a) an application for development approval; or

(b) a proposal, project, plan, programme, policy, public work, operation or undertaking for or relating to the development of any land owned, occupied or managed by a public authority; or

(c) any other proposal by a public authority to exercise any of its powers in a way that would or might significantly affect the physical character of any land; or

(d) a submission or application relating to the development of land of a kind prescribed to be a proposal for the purposes of Division 2;

referred proposal means a proposal referred to the Council under section 73(1).

Division 2 — Referral of proposals

Subdivision 1 — Proposals that must be referred

72. Proposals to which Subdivision applies

(1) This Subdivision applies to a proposal that, if implemented, would, or would be likely to, affect —

(a) a registered place; or

(b) a place that is the subject of a heritage agreement to which the Council is a party; or

(c) a place that is the subject of a protection order, if the terms of the order give the Council discretion to authorise works that the order would otherwise prohibit.

(2) For the purposes of subsection (1), a proposal may affect a place even if it is not directly related to that place.

73. Referral of certain proposals to Council

(1) A decision-maker considering a proposal to which this Subdivision applies must refer the proposal to the Council for its advice.

(2) The decision-maker must refer the proposal under subsection (1) as soon as practicable after it becomes aware of the proposal.

(3) Subsection (1) does not apply to a proposal to alter the interior fabric of a church or other building used primarily for services of worship if —

(a) the church or other building is not a place mentioned in section 72(1)(c); and

(b) an owner of the place to which the proposal relates gives the Council at least 60 days notice in writing of the proposed alterations; and

(c) the notice includes a declaration by an officer of the church or denomination concerned that the alterations are required solely for liturgical purposes.

(4) Regulations may exempt any of the following from the application of subsection (1) —

(a) a class of proposals other than proposals that, if implemented, would, or would be likely to, affect a place mentioned in section 72(1)(c);

(b) a decision-maker or a class of decision-makers;

(c) a proposal that applies to a prescribed place or class of place (other than a place mentioned in section 72(1)(c)).

74. Advice on referred proposal

(1) The Council must provide advice on a referred proposal to the decision-maker and, if the proposal is an application for development approval, to the applicant.

(2) In its advice the Council may address all aspects of conserving the place concerned, including —

(a) maintenance, preservation, restoration, reconstruction, adaptation and interpretation of the place; and

(b) retention of the associations and meanings of the place; and

(c) retention or reintroduction of a use of the place.

(3) In its advice the Council may have regard to unrectified errors, omissions, refusals or failures in complying with —

(a) any advice or approval that the Council has previously given relating to the place concerned; or

(b) any obligation under this Act relating to the place concerned.

(4) Without limiting any other advice the Council may give in respect of a proposal relating to land of the kind mentioned in section 91, the Council may advise that a decision to approve a proposal relating to the land must be conditional upon the owner of that land entering into a heritage agreement in relation to the land with such parties and on such terms as the Council advises.

(5) The Council may modify advice provided, or withdraw advice provided and provide new advice, if —

(a) in the view of the Council there has been a material change of circumstances or a substantial lapse of time since it provided the advice; and

(b) the decision-maker has not made a decision with respect to the relevant proposal.

75. Decision on referred proposal

(1) In respect of a referred proposal, a decision-maker must not make a decision that would, or would be likely to, adversely affect to a significant extent a place mentioned in section 72(1) (even though the decision is not directly related to that place) unless —

(a) the decision-maker has used its best endeavours to ensure that each person involved in the implementation of the proposal will take all measures to minimise any adverse effect that they can reasonably take; and

(b) the decision-maker has complied with section 73; and

(c) the decision-maker has either received advice on the referred proposal from the Council under section 74 or waited the prescribed period to receive advice; and

(d) subject to subsection (2), the decision made is consistent with advice received from the Council.

(2) Subsection (1)(d) does not apply if the decision-maker finds that there is no feasible and prudent alternative to the decision made.

(3) If the Council gives advice as mentioned in section 74(4) in respect of a proposal relating to land of the kind mentioned in section 91, the decision-maker must specify that its decision to approve the proposal is conditional upon the owner of the land entering into a heritage agreement in relation to the land with such parties and on such terms as the Council advises.

(4) Unless the Council so advises under section 74(4), a decision-maker must not specify that its decision to approve a proposal relating to land of the kind mentioned in section 91 is conditional upon the owner of the land entering into a heritage agreement in relation to the land.

(5) The decision-maker must notify the Council in writing of its decision in respect of a referred proposal within the prescribed period after making the decision.

76. Effect on certain proposals and decisions when place becomes registered place

(1) In this section —

prescribed proposal , in relation to a registered place, means a proposal that —

(a) if implemented or acted upon, would, or would be likely to, affect the place; and

(b) is a proposal of a prescribed kind or class.

(2) If, at the time that a place becomes a registered place, a decision-maker is considering a prescribed proposal, sections 73, 74 and 75 apply in relation to the prescribed proposal.

(3) If, at the time that a place becomes a registered place, a decision to approve, implement or act upon a prescribed proposal has been made by a decision-maker but has not been substantially implemented or acted upon, the Council may direct in writing that the operation of the decision is suspended for a period determined in accordance with the regulations.

(4) Regulations may —

(a) require a decision-maker to give the Council notice of a prescribed proposal that, if implemented, would, or would be likely to, affect a place that is under consideration for registration under Part 3; and

(b) prescribe the circumstances in which a decision-maker must give the Council notice of a decision to which subsection (3) applies.

(5) The Council must give notice of a direction under subsection (3) to —

(a) the relevant decision-maker; and

(b) any person who made an application to the decision-maker in relation to the proposal.

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

Subdivision 2 — Proposals that are not required to be referred

77. Decision on certain unreferred proposals

(1) This section applies to a proposal that would, or would be likely to, affect a place that is —

(a) the subject of a heritage agreement to which the Council is not a party; or

(b) the subject of a protection order under which a person other than the Council can authorise works that the order would otherwise prohibit.

(2) For the purposes of subsection (1), a proposal may affect a place even if it is not directly related to that place.

(3) A decision-maker considering a proposal to which this section applies must make a decision that is consistent with the heritage agreement or protection order, as the case requires.

Subdivision 3 — General

78. Regulations

Regulations may provide for the following —

(a) forms to be used to refer proposals for advice, and for the other purposes of this Part;

(b) information, evidence or assistance to be given to the Council in connection with a referred proposal;

(c) matters to which the Council must have regard in providing its advice on a referred proposal, and the form and content of that advice;

(d) time limits within which the Council must provide advice;

(e) persons (in addition to the decision-maker) who must be notified of advice;

(f) the Council to reconsider, at the request of a decision-maker or an applicant for approval of a proposal and in prescribed circumstances and no other circumstances, advice provided with a view to —

(i) amending it; or

(ii) setting it aside and substituting fresh advice;

(g) fees, charges and costs to be paid in connection with the making of a request to reconsider advice provided.

Division 3 — Proposed works for which there is no decision-maker

79. Permit for works affecting registered place

(1) In this section —

works means anything —

(a) the doing of which would contravene section 129 but not section 130; and

(b) in respect of which no written law provides for authorisation, permission, consent or approval pursuant to an application for development approval; and

(c) proposed to be done by a person not empowered under a written law to make a decision or recommendation to do the works.

(2) A person may, on payment of the prescribed fee, if any, apply to the Council in accordance with the regulations for a works permit authorising the doing of specified works.

(3) Within the prescribed period the Council must consider the application and —

(a) grant the works permit, either unconditionally or subject to specified conditions the Council considers to be in furtherance of the objectives of this Act; or

(b) refuse the application.

(4) The Council must give the applicant notice of its decision in accordance with section 163.

(5) Conditions imposed under subsection (3)(a) may include the giving of a bond or other security to ensure compliance with the conditions imposed.

(6) If the Council does not notify the applicant of its decision within the prescribed period, it is taken to have refused the application.

(7) If the Council proposes to do any works —

(a) the Council may apply to the Minister for a works permit authorising the doing of the works; and

(b) the Minister must consider and determine the application in accordance with subsections (3) to (6) as if references in those subsections to the Council were references to the Minister.

80. Tribunal's powers as to works permit

(1) An applicant for a works permit under section 79 who is aggrieved by a decision of the Council made under section 79(3) to refuse the application or attach any condition to the works permit may apply to the Tribunal for a review of the decision.

(2) An applicant for a works permit under section 79 who is aggrieved by a decision of the Council taken to have been made under section 79(6) may within 28 days after the expiry of the prescribed period referred to in section 79(6) apply to the Tribunal for a review of the decision.

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

Part 6 — Support for conservation

Division 1 — Valuation of land

81. Land to which this Division applies

This Division applies to —

(a) registered land; and

(b) land that is subject to a heritage agreement.

82. Valuation of land

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

(a) must take into account any restrictions on the use of the land arising out of the entry of the land in the register or the heritage agreement to which the land is subject, as the case requires; and

(b) must assume —

(i) that all improvements to or on the land at the date of valuation that contribute to its cultural heritage significance must be conserved and are not to be demolished; and

(ii) that no improvements may be made to or on the land after the date of valuation.

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

83. Request for interim valuation

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

(2) The Valuer-General must deal with a request for an interim valuation under subsection (1) as a circumstance in which it is expedient that the land be valued if, after the coming into operation of this section and since the last occasion on which the land was valued —

(a) the land has become registered land; or

(b) the land has become subject to a heritage agreement; or

(c) there has been a material amendment to the terms of a heritage agreement to which the land is subject.

(3) Nothing in this section affects the operation of the *Valuation of Land Act 1978* section 23.

Division 2 — Conservation assistance

84. Provision of financial, technical and professional assistance

(1) The Council may, to assist with the identification, documentation and conservation of places of cultural heritage significance, and to assist with education, research and publication that furthers the objectives of this Act —

(a) with the Minister's prior approval in writing, make grants; and

(b) make loans and provide other types of financial assistance; and

(c) provide technical or professional assistance.

(2) Regulations may provide for the following —

(a) types of financial assistance the Council may provide;

(b) types of technical or professional assistance the Council may provide;

(c) persons who are eligible to receive assistance;

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

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

(f) the terms and conditions upon which assistance may be provided, including —

(i) the provision of security by recipients of assistance for the performance of their obligations in connection with that assistance; and

(ii) the entry by recipients of assistance into heritage agreements;

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

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

Division 3 — Modification of planning instruments

85. Terms used

In this Division —

modification order means an order made under section 87(2);

planning instrument means —

(a) a planning scheme or other planning instrument in force under the *Planning and Development Act 2005*; or

(b) an approved redevelopment scheme or other planning instrument in force under the *Metropolitan Redevelopment Authority Act 2011*; or

(c) the master plan or another planning instrument in force under the *Hope Valley-Wattleup Redevelopment Act 2000*; or

(d) the Swan Valley Planning Scheme in force under the *Swan Valley Planning Act 2020*.

[Section 85 amended: No. 45 of 2020 s.106.]

86. Council may recommend modification order

(1) At the request of an owner of a registered place or otherwise, the Council may —

(a) advise the Minister that in its opinion a planning instrument or a provision of a planning instrument effectively prevents the conservation of the registered place by making it unlawful or economically unviable; and

(b) recommend that the Minister make a modification order in terms set out in the recommendation to enable conservation of the registered place.

(2) In acting under subsection (1) the Council must —

(a) give due consideration to the public interest and the protection of public health and safety; and

(b) take account of any submissions received in accordance with the regulations.

(3) The Council must —

(a) give notice in accordance with section 163 to interested persons and the public of any advice and recommendation it is considering, setting out proposed terms for the modification order and describing how the order would enable conservation of the registered place; and

(b) in accordance with the regulations, consult the following on the advice and recommendation it is considering —

(i) the agency or local government responsible for the planning instrument;

(ii) the owners of the registered place;

(iii) other interested persons and the public.

87. Minister may modify planning instruments

(1) In this section —

specified means specified in the modification order.

(2) Subject to subsection (4), the Minister may, by order published in the *Gazette*, order that a specified planning instrument is taken to be modified so that, in relation to a specified registered place —

(a) it does not apply or have effect; or

(b) it applies or has effect subject to specified amendments, in specified circumstances or subject to specified conditions.

(3) A modification order has effect according to its terms and the specified planning instrument is taken to have been modified accordingly.

(4) The Minister must not make a modification order unless —

(a) the Council has recommended the terms of the order under section 86; and

(b) the Minister considers that in making the recommendation, the Council has given due consideration to the public interest and the protection of public health and safety; and

(c) if the Governor has committed the administration of the written law under which the planning instrument concerned was made to another Minister of the Crown, that other Minister has consented in writing to the making of the order; and

(d) the Minister considers that the need to conserve the registered place warrants the making of the order, even though the order may affect the interests of persons in a way that is not acceptable to them.

(5) If, after the Council has recommended that the Minister make a modification order, the Minister determines not to make the

order, the Council must publish, as soon as practicable, in accordance with the regulations, an advertisement in relation to the Minister's determination and the reasons for it.

(6) A modification order takes effect —

(a) on the day of publication in the *Gazette*; or

(b) if a later day is specified in the order, on that day.

(7) The Council must notify each owner of the registered place to which a modification order relates of the making and terms of the order and of the day on which it takes effect.

(8) The Minister may, by order published in the *Gazette* —

(a) amend a modification order by making another modification order; or

(b) revoke a modification order.

88. Powers of the Tribunal in relation to modification order

(1) Within the period of 28 days after the day on which a modification order is published in the *Gazette*, a person aggrieved by the order may apply to the Tribunal for a review of the order.

(2) The Tribunal may make an order setting aside or amending the modification order if it is satisfied —

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

(b) that the failure to comply has substantially prejudiced the interests of the applicant.

(3) If a modification order is amended by the Tribunal it has effect according to its amended terms.

Part 7 — Heritage agreements

89. Terms used

In this Part —

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

successor in title, in relation to land, includes a person who is a mortgagee or the proprietor of an encumbrance in possession of the land pursuant to a mortgage or encumbrance, despite the mortgage or encumbrance being entered into before a memorial was entered on the title or notification of the heritage agreement was otherwise registered under section 97 or notice was given under section 98.

90. Heritage agreements

(1) The Council or another public authority may make an agreement on behalf of the State with an owner of land of the kind mentioned in section 91 under which the owner, in so far as the owner's interest in the land permits, makes commitments, undertakes obligations, or agrees to provisions, of the kind mentioned in section 92.

(2) If another public authority makes an agreement under subsection (1), it must provide each executed copy of the agreement to the Council.

(3) The Council must consider whether an agreement made by another public authority under subsection (1) is appropriate for certification by the Minister.

(4) The Council —

(a) must provide each executed copy of an agreement made by the Council to the Minister and recommend that the Minister certifies the agreement under this section; and

(b) may, if it considers that an agreement made by another public authority is appropriate for certification by the

Minister, provide each executed copy of the agreement to the Minister and recommend that the Minister certifies the agreement under this section,

(5) If the Minister is satisfied that the agreement is desirable for the purposes of, and complies with, this Act, the Minister must certify that fact on each executed copy of the agreement.

(6) The heritage agreement comes into operation on —

(a) the day on which the Minister certifies the agreement under subsection (5); or

(b) if the agreement is certified under subsection (5) but a later day, or the day on which a later event happens, is specified in the agreement as the day on which the agreement comes into operation, that day.

91. Land to which a heritage agreement may relate

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

(a) a registered place; or

(b) a place in relation to which —

(i) the Council has made a recommendation under section 40(2); and

(ii) the Minister has not yet given a direction under section 41(1);

or

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

(d) a place included in —

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

(ii) a heritage area designated under a local planning scheme;

or

(e) any other place the Council has approved as the subject of a heritage agreement by reason of —

(i) special interest, not necessarily amounting to significance, relevant to the cultural heritage the place possesses; or

(ii) the relationship of the place to a registered place; or

(iii) the nature of, or the potential relationship of the place to and its effect or potential effect upon, a particular environment meriting conservation.

(2) A heritage agreement may relate to land contiguous to or associated with a place mentioned in subsection (1), but only in so far, and to such depth below the natural surface, as may be reasonably necessary for the purposes of the agreement.

92. Form and content of heritage agreement

(1) A heritage agreement must be expressed to be made for the purposes of this Part.

(2) A heritage agreement —

(a) must, in so far as the interest of the owner of the subject land permits, provide for commitments by the owner and the obligations of the owner regarding conservation of the subject land; and

(b) subject to the regulations, may include any other provision necessary or convenient for the purposes of carrying into effect the objectives of this Act.

(3) Without limiting subsection (2), a heritage agreement may provide for —

(a) the carrying out of specified works or works of a specified kind or standard; and

(b) restrictions on the carrying out of specified works or works of a specified kind or standard; and

(c) requirements or restrictions regarding the design, height, scale, siting, materials or colours connected with any development of the subject land; and

(d) requirements or restrictions regarding the use of the subject land; and

(e) requirements or restrictions regarding the conservation, interpretation, maintenance or management of the subject land, or of specimens or artefacts in, on or connected with the subject land; and

(f) the inspection, by or on behalf of the Council or the public authority that enters into the agreement, of the subject land or of works carried out on the subject land; and

(g) the payment of a contribution towards, or the provision of an indemnity in respect of, costs incurred by the Council or the public authority that enters into the agreement in relation to the subject land; and

(h) if the Minister has given prior approval in writing, the provision by the owner of the subject land of security for the performance of any commitment or obligation contained in the agreement; and

(i) any other prescribed matter.

93. Implied and model provisions for heritage agreements

(1) Regulations may prescribe provisions relating to —

(a) the terms used in heritage agreements and the interpretation of those terms; and

(b) the scope, duration and termination of heritage agreements; and

(c) the manner of providing notices under heritage agreements; and

(d) remedies for breach or repudiation of heritage agreements or default under heritage agreements; and

(e) the governing law of heritage agreements; and

(f) procedures for resolving disputes arising under or in connection with heritage agreements; and

(g) the measurement of damages, compensation or penalties in connection with heritage agreements; and

(h) any other matter connected with the formation, interpretation and enforcement of heritage agreements.

(2) The regulations must designate each provision prescribed under subsection (1) as —

(a) an implied provision; or

(b) a model provision.

(3) A designation under subsection (2)(a) may be expressed to have effect in relation to all heritage agreements, or prescribed heritage agreements, or a prescribed class of heritage agreements.

(4) An implied provision cannot apply to a heritage agreement made before the coming into operation of this section.

(5) If a provision is designated under subsection (2)(a) as an implied provision in relation to a heritage agreement —

(a) the implied provision has effect as a provision of the heritage agreement; and

(b) if it is inconsistent with another provision of the heritage agreement, the implied provision prevails and the other provision is, to the extent of the inconsistency, of no effect.

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

94. Termination or variation of heritage agreement

(1) A heritage agreement may be terminated —

(a) by a subsequent heritage agreement made between the same parties or their successors in title that relates to the same subject land; or

(b) in a manner or in circumstances provided for in the agreement; or

(c) in accordance with the regulations.

(2) A heritage agreement may be varied —

(a) by a subsequent heritage agreement made between the same parties or their successors in title in relation to the same subject land; or

(b) otherwise, in a manner or in circumstances provided for in the agreement.

(3) The Council must provide each executed copy of the document evidencing the variation to the Minister and recommend that the Minister certifies it under this section.

(4) If the Minister is satisfied that the agreement as varied is desirable for the purposes of, and complies with, this Act, the Minister must certify that fact on each executed copy of the document evidencing the variation.

(5) The variation to the heritage agreement comes into operation on the day on which the Minister certifies the document evidencing the variation under subsection (4).

(6) Subsections (3) to (5) do not apply to a variation to a heritage agreement that, in accordance with the agreement, extends any time period specified in the agreement within which actions are required to be completed.

95. Evidential status of certified agreement

In any legal proceeding, an apparently genuine document purporting to be a copy of a heritage agreement or of a document evidencing a variation to a heritage agreement certified under section 90(5) or 94(4) or mentioned in section 94(6) is, in the absence of proof to the contrary, proof of the agreement and its provisions.

96. Record of heritage agreements

(1) The Council must maintain a record of the text of each heritage agreement, and each variation to a heritage agreement, in operation under this Act.

(2) Subject to subsection (3), the Council must make available to any person, on payment of the prescribed fee, if any, a copy of a heritage agreement and of any variation to the agreement.

(3) Details or items of information specified in the regulations must be redacted from a copy of a heritage agreement and of any variation to the agreement before it is made available under subsection (2).

97. Notification to Registrar

(1) In this section —

Registrar means the Registrar of Titles or the Registrar of Deeds and Transfers, whichever of them is responsible for registering a notification given under this section.

(2) The Council or other public authority that entered into the heritage agreement may, in accordance with the regulations, notify the Registrar of the coming into operation of a heritage agreement.

(3) The Registrar, on payment of the prescribed fee, if any, must register the notification and make appropriate endorsements on the title and records in relation to the land to which the heritage agreement relates.

(4) If notification of the coming into operation of a heritage agreement is registered under subsection (3) —

(a) the rights and obligations of the State and of all parties to the agreement pass to and are binding on and enforceable against or by their respective successors in title; and

(b) each successor in title is taken to have notice that the agreement is in operation.

98. Notification to Mining CEO

(1) The Council or other public authority that entered into the heritage agreement may, in accordance with the regulations, notify the chief executive officer of the department of the Public Service principally assisting in the administration of the *Mining Act 1978* (the ***Mining CEO***) of the coming into operation of a heritage agreement.

(2) If notification is given under subsection (1) in relation to a heritage agreement, the Mining CEO must —

(a) take such steps as may be necessary for the purpose of bringing the agreement to the attention of any person seeking information about a mining tenement granted under the *Mining Act 1978* in respect of land to which the agreement relates; and

(b) advise the Council or public authority of the name and any known address of each of the persons appearing to hold a mining tenement in respect of land to which the agreement relates.

(3) If the Mining CEO provides the name and address of a person under subsection (2)(b) the Council or public authority must take reasonable steps to ensure that notice of the heritage agreement is given to the person.

(4) If notice of a heritage agreement is given under subsection (3) to a person who is the holder of a mining tenement —

(a) the rights and obligations of the State and of all parties to the agreement pass to and are binding on and enforceable against or by their respective successors in title in relation to the mining tenement; and

(b) each successor in title is taken to have notice that the agreement is in operation.

99. Notification to Valuer-General

The Council must notify the Valuer-General of the coming into operation of a heritage agreement.

100. Enforcement of heritage agreement by Council or public authority

(1) A heritage agreement is a contract binding on the State and on all parties and, if notification in relation to the heritage agreement is registered under section 97 or notification is given under section 98, on their respective successors in title.

(2) Subject to subsection (3), the Council, or the other public authority that entered into the agreement, on behalf of the State may enforce a heritage agreement against any owner of subject land upon whom it is binding.

(3) The Council on behalf of the State must not institute or intervene in a proceeding arising out of a heritage agreement to which the Council is not a party, unless —

(a) the public authority that entered into the heritage agreement on behalf of the State consents; or

(b) the Minister certifies that in the Minister's view the consent of the public authority has been unreasonably withheld.

(4) If a public authority consents as provided in subsection (3)(a) or the Minister certifies as provided in subsection (3)(b) —

(a) the Council on behalf of the State may be or become a party to the proceeding as if it had always been a party to the heritage agreement; and

(b) the Council has all the rights, including rights of appeal, of a party to the heritage agreement and the proceeding; and

(c) the costs of the proceeding on behalf of the State are to be borne by the Council unless the court otherwise orders.

101. Powers of the Tribunal in relation to heritage agreement

(1) The owner of land to which a heritage agreement may relate under section 91 may apply to the Tribunal to consider stated matters of concern and to determine what provisions a heritage agreement should contain in respect of those matters if —

(a) the owner is willing to enter into a heritage agreement with the Council or another public authority; but

(b) negotiations for a heritage agreement have not resolved all matters of concern to the owner.

(2) On the application of any party to a heritage agreement, the Tribunal may —

(a) make an order directing any person to perform their obligations under the agreement; or

(b) make an order for the payment of damages or compensation for failure to perform obligations under the agreement; or

(c) make any other order that is consistent with the objectives of this Act to secure performance of the agreement.

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

(4) Nothing in this section affects the jurisdiction of any court.

Part 8 — Local heritage surveys

102. Term used: local heritage survey

In this Part —

local heritage survey means a survey prepared under section 103(1).

103. Local heritage survey

(1) A local government must prepare a survey of places in its district that in its opinion are, or may become, of cultural heritage significance.

(2) In preparing, or reviewing and updating, a local heritage survey, a local government must have regard to —

(a) the purposes set out in section 104; and

(b) guidelines published under section 105.

(3) Nothing in subsection (2) —

(a) derogates from the duty of the local government to exercise its discretion in a particular case; or

(b) precludes the local government from taking into account matters not set out in the guidelines.

(4) After preparing a local heritage survey, or reviewing and updating, a local heritage survey, a local government must —

(a) provide the Council with a copy of the local heritage survey; and

(b) make the local heritage survey available to the public.

104. Purposes of local heritage survey

The purposes of a local heritage survey by a local government include —

(a) identifying and recording places that are, or may become, of cultural heritage significance in its district; and

(b) assisting the local government in making and implementing decisions that are in harmony with cultural heritage values; and

(c) providing a cultural and historical record of its district; and

(d) providing an accessible public record of places of cultural heritage significance to its district; and

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

105. Guidelines for local heritage surveys

(1) The Council must issue guidelines about the preparation, review and periodic updating of local heritage surveys, including guidelines about the following —

(a) criteria for the inclusion of places in the survey;

(b) assessment processes;

(c) processes for consultation with interested parties and with the public;

(d) processes for reviewing and updating the survey, and the frequency of reviews;

(e) processes and mechanisms for making surveys available to the public;

(f) any other matter the Council considers appropriate.

(2) The guidelines must be published in the prescribed way.

(3) The Council may amend or revoke the guidelines.

(4) An amendment or revocation under subsection (3) must be published in the prescribed way.

(5) The guidelines are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

Part 9 — State government heritage

106. Terms used

In this Part —

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

(a) a registered place; or

(b) a place prescribed to be a heritage asset for the purposes of this Part;

State agency means —

(a) a department of the Public Service; or

(b) an agency or instrumentality of the State; or

(c) a statutory authority as defined in the *Financial Management Act 2006* section 3.

107. Guidelines about State government heritage

(1) The Council must issue guidelines for State agencies about the preparation, review and periodic updating of inventories of places they own, occupy or control.

(2) The Council must issue guidelines for State agencies about the management of their heritage assets and about the integration of heritage management into asset management generally.

(3) Guidelines issued under subsection (1) or (2) (***the guidelines***) must be published in the prescribed way.

(4) The Council may amend or revoke the guidelines.

(5) An amendment or revocation under subsection (4) must be published in the prescribed way.

(6) The guidelines are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

108. Disposal of heritage assets

(1) In this section —

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

(a) to sell all or part of the heritage asset to a person other than a State agency; or

(b) to lease all or part of the heritage asset for a period of 10 years or longer to a person other than a State agency; or

(c) to demolish all or part of structures erected on the heritage asset.

(2) Regulations may provide that, before a State agency disposes of a heritage asset —

(a) it must give the Council prescribed notice of, and provide prescribed information regarding, the proposed disposal; and

(b) it must consult the Council regarding the preparation of a plan or strategy for the continuing conservation of the heritage asset; and

(c) in the case of a heritage asset that is a registered place, it must require each purchaser or lessee to enter into a heritage agreement in relation to the heritage asset before the asset is sold or leased.

Part 10 — Acquisition and compensation

109. Compulsory acquisition

(1) The Council, after consulting the owner of registered land in accordance with the regulations, may advise the Minister as to whether a declaration should be made under subsection (2) in relation to the land.

(2) The Minister, after considering the advice of the Council, may declare that the registered land is required for the protection and preservation of a place of cultural heritage significance.

(3) The Minister must not make a declaration under subsection (2) unless —

(a) a person has been convicted of an offence under section 132(1) in relation to the registered land; or

(b) in the Minister's opinion the owner of the registered land has failed to comply with a repair order in relation to the registered land; or

(c) it appears to the Minister on the advice of the Council that the continuation of the registered land in a condition suitable to effect conservation of its cultural heritage significance is in jeopardy.

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

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

110. Compensation for compulsory acquisition

(1) This section applies to registered land if —

(a) the land is the subject of a declaration made under section 109(2); and

(b) an interest in the land is taken under the *Land Administration Act 1997* Part 9; and

(c) at least one of the following applies in relation to the land —

(i) the owner has been convicted of an offence under section 132(1);

(ii) the Minister has reasonable cause to believe that a building or other feature on the land that is of cultural heritage significance has been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and redevelopment or the redevelopment of the land;

(iii) the Minister has reasonable cause to believe that the land was acquired by the person claiming compensation within the period of 3 years preceding the taking of the interest in the land.

(2) In assessing compensation payable under the *Land Administration Act 1997* Part 10 in relation to registered land to which this section applies —

(a) the value to be attributed to the land must be assessed having regard to the actual condition of the land and of any building or other feature on the land that is of cultural heritage significance; and

(b) it must be assumed that consent would not be granted under any written law for the removal of a building or other feature on the land, or for any development of a building or other feature on the land other than its restoration and conservation; and

(c) no account can be taken of the potential use of the land or of any adjacent land; and

(d) any amount a particular purchaser might be prepared to offer by reason of the special needs of that purchaser must be disregarded.

111. Tribunal's powers as to acquisition and compensation decision

(1) A person who is aggrieved by a declaration made under section 109(2) may apply to the Tribunal to determine whether the Minister has reasonable cause to declare that the land concerned is required for the protection and preservation of a place of cultural heritage significance.

(2) A person who is adversely affected by a belief mentioned in section 110(1)(c)(ii) or (iii) held by the Minister may apply to the Tribunal to determine whether the Minister has reasonable cause to hold that belief.

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

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

112. Acquisition by consent

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

113. Request for acquisition

(1) An owner of land other than Crown land who claims to be denied all economically viable use of the land by the operation of this Act may, by notice in writing, request the Council to acquire the land, or cause it to be acquired, under section 112.

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

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

(b) if so, whether it is appropriate for the Council to acquire the land to conserve its cultural heritage significance.

(3) If the Tribunal determines under subsection (2) that it is appropriate for the Council to acquire the land, it may require the Council to acquire the land where practicable upon terms agreed between the Council and the owner but otherwise by taking it under the *Land Administration Act 1997* Part 9 as read with section 109 as though the land were the subject of a declaration made under section 109(2).

Part 11 — Enforcement

Division 1 — Inspectors

114. Appointment of inspectors

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

(2) An appointment may be for a fixed period specified in the instrument of appointment or for an indefinite period.

(3) The functions of an inspector are subject to any limitations or conditions specified in the instrument of appointment.

(4) The Minister may, by instrument in writing, revoke the appointment of an inspector at any time.

(5) The appointment of an inspector does not —

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

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

115. Police officers to have functions of inspectors

(1) For the purposes of this Act, a police officer —

(a) has and may perform all of the functions of an inspector; and

(b) when performing those functions, has all the powers and immunities of an inspector.

(2) The powers that a police officer may exercise in performing a function under this section are in addition to the powers that the police officer has under any other law.

116. Identity cards

(1) The CEO must give each inspector an identity card.

(2) The identity card must —

(a) identify the person as an inspector; and

(b) contain a recent photograph of the person.

(3) An inspector must produce the inspector's identity card whenever requested to do so in connection with the performance of the functions of an inspector under this Act.

(4) A person must not, without reasonable excuse, fail to return the person's identity card to the CEO within 14 days of ceasing to be an inspector.

Penalty for this subsection: a fine of $5 000.

Division 2 — Entry and investigation

117. Term used: investigation purposes

In this Division —

investigation purposes means —

(a) ascertaining whether the requirements of this Act, or requirements arising under this Act or an agreement made under this Act, are being or have been observed; and

(b) obtaining evidence of a suspected offence under this Act or a suspected breach of a heritage agreement or other agreement made under this Act.

118. Entry for investigation purposes

Subject to section 114(3), an inspector may, for investigation purposes enter any land with the consent of the occupier or a person apparently in charge of the land.

119. General powers for investigation purposes

(1) Upon entry of a place for investigation purposes, an inspector may do any of the following —

(a) make any investigation, observation or inquiry;

(b) direct a person who is at the place to do any of the following —

(i) state the person's full name, date of birth, the address of where the person is living and the address of where the person usually lives;

(ii) answer (orally or in writing) questions asked by the inspector;

(iii) produce records that are relevant to the inspection and are in the person's custody or under the person's control;

(iv) give other assistance or facilities the inspector reasonably requires;

(c) examine, photograph or film the place and any thing at the place;

(d) seize any thing that is or may afford evidence of a suspected offence under this Act or a suspected breach of a heritage agreement or other agreement made under this Act.

(2) In the exercise of powers under this section an inspector must conform so far as is practicable to any reasonable requirements of the person owning or using the place that are necessary to prevent obstruction of business or operations on or in the place.

(3) Regulations may make provision relating to the procedures to be followed by inspectors when carrying out functions under this Act.

120. Use of assistance

(1) An inspector may exercise a power under this Division with the assistance of as many other persons as the inspector considers are reasonably necessary in the circumstances.

(2) A person assisting an inspector to exercise a power under this Division has the same protection under this Act as if the person were exercising that power as an inspector.

121. Application for entry warrant

(1) An inspector may apply to a justice or magistrate for an entry warrant authorising the entry of a place for investigation purposes.

(2) An inspector may apply for an entry warrant for a place even if the inspector has power to enter the place without a warrant.

(3) The *Criminal Investigation Act 2006* section 13 applies to and in respect of an application made under this section and section 13(8) of that Act applies in relation to an entry warrant.

(4) An application for an entry warrant must —

(a) contain a reasonably particular description of the place to be entered; and

(b) state that the inspector has reasonable grounds for believing that entry to the place is necessary for investigation purposes; and

(c) state the purposes for which entry to the place is required; and

(d) include any other information that is prescribed.

122. Issue of entry warrant

(1) A justice to whom an application is made under section 121 may issue an entry warrant, if satisfied that there are reasonable grounds for believing that entry of the place is necessary for investigation purposes.

(2) An entry warrant must contain the following information —

(a) a reasonably particular description of the place to be entered;

(b) a reasonably particular description of the purposes for which entry to the place is required;

(c) the period (not exceeding 30 days) during which it may be executed;

(d) the name of the justice or magistrate who issued it;

(e) the date and time when it was issued.

123. Duration of entry warrant

(1) An entry warrant remains in force for the period (not exceeding 30 days) specified in the warrant as the period during which it remains in force.

(2) However, an entry warrant ceases to be in force when it is executed.

124. Effect of entry warrant

(1) An entry warrant has effect according to its content and this section.

(2) An entry warrant comes into force when it is issued by a justice or magistrate.

(3) An entry warrant authorises the inspector executing the warrant, at the times and during the period stated in the warrant —

(a) to enter the place described in the warrant; and

(b) to exercise the powers referred to in section 119.

125. Execution of entry warrant

(1) An entry warrant may be executed by the inspector to whom it is issued or by any other inspector.

(2) An inspector executing an entry warrant must, at the reasonable request of a person apparently in charge of the place, produce the warrant.

126. Powers to obtain information

(1) The Council may direct an owner or occupier of any place to give the Council any information relating to the place that the Council requires.

(2) An inspector may direct an owner or occupier of a place, or a person in charge or apparently in charge of a place, to give the inspector information required by the inspector for the purpose of the performance of the inspector's functions under this Act.

(3) An inspector may direct a person who appears to the inspector to be carrying out on a place, or proposing to carry out on a place, works that might involve an offence under this Act to give the name and address of the person who on the date specified in the direction was —

(a) the owner of the place or part of the place; or

(b) the occupier of the place or part of the place; or

(c) in control of any equipment, works or activity appearing to relate to the place or part of the place.

(4) A direction under subsection (1) or (3) —

(a) must be in writing given to the person required to give the information; and

(b) must specify the time at or within which the information is to be given; and

(c) may require any of the following —

(i) the information to be given orally or in writing;

(ii) the information to be given or delivered to a place specified in the direction;

(iii) in the case of written information, to be delivered by means specified in the direction;

(iv) in the case of written information, to be verified by statutory declaration.

(5) An inspector may require a person who the inspector believes has committed, or is about to commit, an offence under this Act to state the person's full name and usual place of residence.

127. Obstructing performance of functions

A person must not —

(a) without reasonable excuse hinder or obstruct a person performing a function under this Act; or

(b) without reasonable excuse fail to comply with a requirement made or direction given by a person under this Act; or

(c) when required to give any information under this Act, give or cause to be given information that the person knows is false or misleading in a material particular.

Penalty: a fine of $10 000.

128. Impersonation

(1) A person must not impersonate an inspector.

Penalty for this subsection: a fine of $5 000.

(2) A person must not impersonate a member of the Council or a member of the staff or an agent of the Council.

Penalty for this subsection: a fine of $500.

Division 3 — Offences

129. Damaging registered place

(1) Subject to subsection (4), a person must not in, or in relation to, a registered place —

(a) alter the fabric of the place or any part of, or thing in, the place so that the cultural heritage significance of the place is detrimentally affected; or

(b) authorise, cause or permit another person to do anything mentioned in paragraph (a).

Penalty for this subsection: a fine of $1 000 000.

Daily penalty for this subsection: a fine of $50 000.

(2) Subject to subsection (4), a person must not in, or in relation to, a registered place —

(a) demolish, damage or despoil the place or any part of, or thing in, the place; or

(b) authorise, cause or permit another person to do anything mentioned in paragraph (a).

Penalty for this subsection: a fine of $1 000 000.

Daily penalty for this subsection: a fine of $50 000.

(3) Subject to subsection (4), a person must not in, or in relation to, a registered place —

(a) remove any thing from that place so that the cultural heritage significance of that place is detrimentally affected; or

(b) authorise, cause or permit another person to do anything mentioned in paragraph (a).

Penalty for this subsection: a fine of $1 000 000.

Daily penalty for this subsection: a fine of $50 000.

(4) Subsections (1), (2) and (3) do not apply to a person in respect of work that is authorised by —

(a) a decision made in accordance with Part 5 Division 2; or

(b) a works permit granted under section 79.

130. Contravention of protection order

(1) A person must not contravene, or authorise, cause or permit another person to contravene, a prohibition contained in a protection order so that the cultural heritage significance of the place to which the order relates is detrimentally affected.

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

Daily penalty for this subsection: a fine of $50 000.

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

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

Daily penalty for this subsection: a fine of $50 000.

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

Penalty for this subsection: a fine of $1 000 000.

Daily penalty for this subsection: a fine of $50 000.

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

131. Onus of proof in demolition offences

In any prosecution of an owner of a place for an offence under section 129 or 130 arising from the substantial demolition of a building or structure, if the circumstances suggest that the owner has not suffered significant financial loss as a result of the demolition the owner is presumed to have carried out, or authorised, caused or permitted another person to carry out, the demolition unless it is proved that the owner did not do so.

132. Contravention of repair order

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

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

Daily penalty for this subsection: a fine of $50 000.

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

Division 4 — Orders following offences

133. Restoration order

(1) In this section —

specified means specified in the order.

(2) If a person is convicted of an offence under this Act involving the alteration of the fabric of, or the demolition, damage or despoliation of, any place or the removal of any thing from any place, a court of competent jurisdiction may, instead of or in

addition to any other penalty imposed, order the person, within the specified period —

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

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

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

(3) Before making an order under subsection (2), the court must obtain and have regard to the recommendation of the Council as to whether the order should be made and, if the Council recommends the order should be made, the measures to be specified.

(4) A person must comply with an order made under subsection (2).

Penalty for this subsection: a fine of $1 000 000.

Daily penalty for this subsection: a fine of $50 000.

(5) If a person fails to comply with an order made under subsection (2), the Council —

(a) may enter upon the land to which the order relates with such persons and things as may be necessary; and

(b) may carry out any measures specified in the order; and

(c) may recover, in a court of competent jurisdiction, the reasonable expenses of doing so from the person who failed to comply with the order or any successor in title as if it were a debt due.

134. Prohibition order

(1) In this section —

prohibition order means an order made under subsection (2).

(2) Subject to subsection (4), if a person is convicted of an offence under Division 3 in relation to a place, the Governor may order that, during a period of not more than 10 years specified in the order —

(a) the land or a specified part of the land included in the place —

(i) must not be developed, used or subdivided; or

(ii) may be developed, used or subdivided only in accordance with conditions specified in the order;

or

(b) a specified building or structure in the place —

(i) must not be developed or used; or

(ii) may be developed or used only in accordance with conditions specified in the order.

(3) The order must be published in the *Gazette*.

(4) The Governor must not make a prohibition order if the court recording the conviction recommends that no prohibition order be made.

(5) The Governor may —

(a) vary a prohibition order by making another prohibition order; or

(b) revoke a prohibition order by order published in the *Gazette*.

(6) A person must not contravene a prohibition order or authorise, cause or permit another person to do so.

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

Daily penalty for this subsection: a fine of $50 000.

(7) If a prohibition order is in force in relation to land included in a place or a building or structure in the place, no approval, permit or other instrument under any written law —

(a) operates to authorise or permit a development, subdivision or use of the land, building or structure that would be contrary to the terms of the order; or

(b) provides a defence to a charge under subsection (6).

(8) If a prohibition order is made in relation to a place, the Council —

(a) must, where practicable, serve a copy of the prohibition order on each owner and each occupier of the place to which it relates; and

(b) must give statutory notification of the making of the order; and

(c) may publish, in accordance with the regulations, an advertisement setting out a summary of the terms of the order and a land description of the place to which it relates.

Division 5 — Miscellaneous provisions regarding offences

135. Time limit for commencing criminal proceeding

A proceeding for an offence under this Act must be commenced within 3 years after the day on which the offence is alleged to have been committed.

136. Council or authorised person may commence prosecution

(1) A prosecution for an offence under this Act may be commenced by the Council or by a person authorised in writing by the Council to do so.

(2) Subsection (1) does not limit the ability of a person to commence a prosecution for an offence if the person has authority at law to do so.

(3) In a proceeding for an offence under this Act, unless evidence is given to the contrary, proof is not required —

(a) that the prosecutor is authorised to commence the prosecution; or

(b) that a signature on a prosecution notice is the signature of a person authorised to commence the prosecution.

(4) In a proceeding for an offence under this Act an officer of the Council authorised by the Council may appear on behalf of the Council.

137. Compensation order

(1) Where in a proceeding taken in the Supreme Court or the District Court against a person contravening or involved in a contravention of this Act (the ***accused***) the court is satisfied that some other person has suffered, or is likely to suffer, loss or damage by reason of the contravention the court may make such order as the court thinks appropriate against the accused for the purpose of compensating the other person wholly or in part for the loss or the cost of making good any damage or reducing the extent of the loss or damage.

(2) The court may make an order under subsection (1) whether or not an injunction or other relief is granted.

138. Finding of fact in certain proceedings to be evidence in other proceedings

(1) In a proceeding under this Act, a finding of fact by a court made in another proceeding against a person for an offence in which that person has been found to have contravened, or to have been involved in a contravention of, this Act is evidence of that fact.

(2) A finding of fact mentioned in subsection (1) may be proved by production of a document under the seal of the court from which the finding appears.

139. Enforcement of requirement to pay money

If a person defaults on a requirement, arising from a conviction or an order of a court in respect of a contravention of this Act, to pay costs or another sum of money, the court making the order may —

(a) on the application of the Council, whether or not on behalf of another person, order that the amount unpaid be recoverable as if it were a judgment debt payable by the defaulter to the State under a judgment entered in the court; or

(b) exercise any power that the court has apart from paragraph (a).

140. Continuing offence

If a person is convicted of an offence under this Act for a contravention of a continuing nature, the penalty applicable to the offence is a penalty not exceeding —

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

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

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

(ii) if no daily penalty is specified, $50.

141. Requirement to mitigate damage

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

(2) A person who fails to take reasonable steps as required under subsection (1) commits an offence.

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

142. Liability of successors in title

(1) This section applies if —

(a) a person who is an owner of land is served under this Act with a notice or order in relation to the land, or is authorised under this Act to execute any works in relation to the land subject to conditions; and

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

(c) the person shows that a contravention in relation to the notice or order or a condition of the authorisation was attributable, in whole or in part, to the act or default of a subsequent owner who had knowledge of the notice or order or the conditions of the authorisation.

(2) If this section applies —

(a) the subsequent owner may be brought before the court in the proceeding and found liable in respect of the contravention; and

(b) the original owner, on proof that the original owner took all reasonable precautions to secure compliance with the notice or order or the conditions of the authorisation, must not be found liable in respect of the contravention.

143. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

s. 129(1), (2) and (3)	s. 130(1), (2) and (3)
s. 132(1)	s. 133(4)
s. 134(6)	

[Section 143 inserted: No. 9 of 2023 s. 87.]

*[**144.** Deleted: No. 9 of 2023 s. 87.]*

145. Liability of principals for offence by agent

(1) If a person (the ***agent***) acting, otherwise than as an employee, for or on behalf of another person (the ***principal***) is charged with an offence under this Act, the principal may also be charged with the offence.

(2) If a principal is charged as permitted by subsection (1) and the agent is convicted of the offence, the principal is to be taken to have also committed the offence, subject to subsection (5).

(3) If a person (the ***agent***) acting, otherwise than as an employee, for or on behalf of another person (the ***principal***) commits an offence under this Act, then, although the agent is not charged with the offence, the principal may be charged with the offence.

(4) If a principal is charged as permitted by subsection (3) and it is proved that the agent committed the offence, the principal is to be taken to have also committed the offence, subject to subsection (5).

(5) If under this section a principal is charged with an offence it is a defence to prove that —

(a) the offence was committed without the principal's consent or connivance; and

(b) the principal took all the measures to prevent the commission of the offence that the principal could reasonably be expected to have taken having regard to all the circumstances.

146. Liability of employers for offence by employee

(1) If an employee of another person (the ***employer***) is charged as an employee with an offence under this Act, the employer may also be charged with the offence whether or not the employee acted without the employer's authority or contrary to the employer's orders or instructions.

(2) If an employer is charged as permitted by subsection (1) and the employee is convicted of the offence, the employer is to be taken to have also committed the offence, subject to subsection (5).

(3) If an employee of another person (the ***employer***) commits an offence under this Act as an employee, then, although the employee is not charged with the offence, the employer may be charged with the offence whether or not the employee acted without the employer's authority or contrary to the employer's orders or instructions.

(4) If an employer is charged as permitted by subsection (3) and it is proved that the employee committed the offence, the employer is to be taken to have also committed the offence, subject to subsection (5).

(5) If under this section an employer is charged with an offence it is a defence to prove that —

(a) the offence was committed without the employer's consent or connivance; and

(b) the employer took all the measures to prevent the commission of the offence that the employer could reasonably be expected to have taken having regard to all the circumstances.

147. Agency or employment no defence

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

(a) that the person was the agent or employee of another person; or

(b) that the person was acting in pursuance of an order or direction given by another person.

(2) Subsection (1) does not apply if the court is satisfied that the person acted without the knowledge, and could not reasonably be expected to have known, that this Act would be contravened.

148. Defences

(1) Subject to this section and to sections 142, 143, 145, 146 and 147, it is a defence for a person who would otherwise be liable for a contravention of this Act to prove that —

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

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

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

(2) If a defence to a proceeding under this Act involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the accused is not entitled to rely on the defence unless —

(a) the court gives leave; or

(b) the accused has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a notice in writing giving whatever information the accused then had that would identify or assist in identifying the other person.

149. Offence that is also breach of heritage agreement

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

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

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

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

Division 6 — Miscellaneous provisions regarding civil proceedings

150. Action for damages

(1) A person who suffers loss or damage by reason of a contravention of this Act may recover the amount of the loss or damage by action against the person who engaged in the conduct that constituted the contravention.

(2) An action under subsection (1) must be commenced within 3 years after the day on which the cause of action accrued.

151. Securing compliance with Act

(1) The Minister or the Council may apply to the Supreme Court, the District Court or the Tribunal for an order or injunction for the purpose of securing compliance with this Act or any other written law to give effect to the objectives of this Act.

(2) The court or Tribunal may —

(a) make an order or grant an injunction as the court or Tribunal thinks fit, including an order or injunction directing a person to do or refrain from doing a specified act; and

(b) make any ancillary orders the court or Tribunal thinks fit.

(3) The court or Tribunal must not make an order or grant an injunction under subsection (2) unless it is satisfied that the person to whom it is directed —

(a) has engaged, or is proposing to engage, in conduct that constitutes or would constitute a contravention of this Act or any other written law by reason of the operation of this Act; or

(b) is involved in a contravention of this Act or any other written law by reason of the operation of this Act.

(4) The court or Tribunal may grant an interim injunction ex parte pending final determination of an application under this section.

(5) In an application under this section the court or Tribunal must not require the applicant to give any undertaking as to damages or costs.

Part 12 — Compensation in relation to work prohibition

152. Terms used

In this Part —

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

(a) is capable of being assessed by way of a liquidated amount; and

(b) arises out of a contractual or statutory obligation incurred prior to the work prohibition; and

(c) except insofar as section 154(2) provides, does not include any element of capital costs or capital depreciation; and

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

(e) is not capable of recovery or mitigation, or further recovery or mitigation;

work prohibition means —

(a) the making of a stop work order; or

(b) the suspension under section 76(3) of the operation of a decision.

153. Application for compensation

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

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

(b) the person —

(i) has reasonably and properly incurred expenditure in carrying out work rendered abortive; and

(ii) has sustained compensable loss directly attributable to the suspension or delay.

154. Recommendation by Minister for compensation

(1) When a person applies for compensation under section 153, the Minister must —

(a) inquire into whether there are grounds for recommending the payment of compensation; and

(b) within the prescribed period make a recommendation to the Treasurer —

(i) as to whether the Treasurer should pay compensation to the applicant; and

(ii) if the recommendation is that compensation should be paid, on what terms and, having regard to subsections (4) and (5), of what amount.

(2) When enquiring under subsection (1)(a) whether expenditure incurred by the applicant was reasonably incurred, the Minister must have regard —

(a) to whether —

(i) the place concerned was included in a publicly available list of places that for historic or other reasons should be protected; or

(ii) the applicant had received, or ought to have taken, notice of the cultural heritage significance of the place;

and

(b) to the consequential possibility of legal protection or conservation, so that a reasonable person intending to incur expenditure would have been likely to proceed

with caution and in consultation with relevant authorities and interested bodies.

(3) When recommending under subsection (1)(b) that the Treasurer should pay compensation, the Minister may recommend that the applicant should enter into a heritage agreement in relation to the place as a condition of receiving compensation.

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

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

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

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

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

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

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

155. Treasurer's determination if no recommendation by Minister

(1) If the Minister does not make a recommendation in accordance with section 154(1)(b) the applicant may require that the Treasurer determine the matter immediately.

(2) If the Treasurer does not refuse the application, the Treasurer is liable to pay to the applicant —

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

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

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

(ii) failing agreement on the appointment of a valuer, under and in accordance with the *Commercial Arbitration Act 2012*, or under and in accordance with some other method of determination agreed between the Treasurer and the applicant.

(3) The determination of an amount under subsection (2)(b) must take into account the factors mentioned in section 154(2) and (4).

156. Restriction on claim for compensation

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

Part 13 — Miscellaneous

157. No private cause of action

This Act does not create —

(a) any private cause of action for a remedy for an offence under this Act, other than under section 150; or

(b) in relation to a heritage agreement, any cause of action available to a person who is not a party to the agreement for any breach of the agreement.

158. Limited effect of processes under the Act

(1) In this section —

process means —

(a) the entry of a place in the register, or the removal or amendment of the entry; or

(b) the giving of advice on a referred proposal under section 74; or

(c) the making of a protection order, a repair order, an order under section 133 or a prohibition order under section 134; or

(d) the formation of a heritage agreement; or

(e) the making of a grant or loan or the provision of financial or other assistance under section 84.

(2) Except as expressly provided under this Act, no process has the effect, with respect to any land affected, of —

(a) giving the State, the Minister or the Council any interest in, claim to, responsibility for or obligation with respect to the land; or

(b) affecting the rights or obligations of an owner of the land, or of another person with an interest in or a claim to the land.

159. Confidentiality

The Council must not disclose any written, oral, electronic or other communication between the Council and an owner or occupier of land, except —

(a) with the written consent of the owner or occupier, as the case requires; or

(b) for the purposes of, or in connection with, performing functions under this Act or another written law; or

(c) as required or allowed under this Act or another written law; or

(d) for the purposes of investigating a suspected offence under this Act or the conduct of a proceeding before a court or tribunal arising out of the operation of this Act; or

(e) in prescribed circumstances.

160. Challenge to entry in register

Without prejudice to any shorter limitation period provided under another written law, a proceeding for a review of an action taken by the Council or the Minister under Part 3 cannot be commenced in any court or tribunal if 3 years have elapsed since the day on which the action was taken.

161. Protection from personal liability

(1) An action in tort does not lie against a person for anything that the person has done, in good faith, 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 or any other written law had been enacted.

(3) Despite subsection (1), neither the State nor the Council 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 an omission to do anything.

162. Fees and charges for recovery of costs by Council

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

(2) Regulations made for the purposes of subsection (1) must not provide for the imposition of any fee or charge in connection with —

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

(b) the performance of the Council's functions under Part 5 Division 2, other than a fee or charge of the kind mentioned in section 78(g).

(3) Regulations made for the purposes of subsection (1) may —

(a) prescribe fees or charges in connection with the performance of a prescribed function; or

(b) prescribe a method for calculating the fees or charges.

163. Notices and statutory notification

(1) Unless this Act provides otherwise, notice may be given to a person —

(a) by giving the person notice in writing; or

(b) if permitted under the regulations, by giving the person notice by means of an electronic communication (as defined in the *Electronic Transactions Act 2011* section 5(1)); or

(c) if permitted under the regulations, by publishing an advertisement in accordance with the regulations; or

(d) in another prescribed way.

(2) Notice must be given within the period, if any, specified in the regulations.

(3) A requirement under this Act to give statutory notification of an event is satisfied, subject to and in accordance with regulations, by taking steps to have the event registered, recorded or noted by the Registrar of Titles, the Registrar of Deeds and Transfers, or another person or agency, as appropriate to the case, under —

(a) the *Mining Act 1978*; or

(b) the *Registration of Deeds Act 1856*; or

(c) the *Transfer of Land Act 1893*; or

(d) any other written law dealing with the registration of interests in or affecting land.

164. Regulations

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

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

(a) the form and content of notices and orders given under this Act; and

(b) subject to section 162, fees and charges payable under this Act, the persons liable for payment and the recovery of fees and charges.

(3) The regulations may provide that contravention of a regulation is an offence, and provide, for an offence against the regulations, a penalty not exceeding a fine of $5 000.

(4) Regulations made in relation to the manner of publication of an advertisement may provide for the advertisement to be —

(a) published in a newspaper circulating generally throughout the State; or

(b) published in another newspaper; or

(c) published on the Council's website; or

(d) published in another prescribed way.

165. Review of Act

(1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after the 5th anniversary of the commencement of this section.

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

Part 14 — Repeal, savings and transitional provisions

Division 1 — Repeal

166. *Heritage of Western Australia Act 1990* repealed

The *Heritage of Western Australia Act 1990* is repealed.

Division 2 — Savings and transitional provisions

167. Terms used

In this Division —

1990 Act means the *Heritage of Western Australia Act 1990*, repealed by section 166;

commencement day means the day on which section 166 comes into operation;

former Council means the Heritage Council of Western Australia established under the 1990 Act section 5 and in existence immediately before commencement day;

former register means the register established and maintained under the 1990 Act section 46;

interim period means the period beginning on commencement day and ending on the 2nd anniversary of commencement day;

liability means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owed alone or jointly or jointly and severally with any other person;

new Council means the Heritage Council of Western Australia established by section 11(1);

new register means the State Register of Heritage Places established and maintained under section 35(1);

right means any right, power, privilege or immunity whether actual, contingent or prospective.

168. *Interpretation Act 1984* not affected

This Division is in addition to the provisions of the *Interpretation Act 1984* and, unless the contrary intention appears, does not limit or otherwise affect the operation of those provisions.

169. Council a continuation of former Council

(1) The new Council is a continuation of, and the same legal entity as, the former Council.

(2) The assets, rights and liabilities of or in relation to the former Council continue as assets, rights and liabilities of or in relation to the new Council.

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

170. Members of former Council continue in office

(1) A person who, immediately before commencement day, was a member of the former Council continues in office under and subject to this Act as a member of the new Council under this Act on and from commencement day.

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

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

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

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

171. Unfinished proceedings: Council

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

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

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

172. Completion of things commenced

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

173. Continuing effect of things done

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

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

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

(i) has any force or significance; and

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

174. First annual report of Council

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

175. Heritage Fund a continuation of former Heritage Account

The Heritage Fund referred to in section 29 is a continuation of the Heritage Account referred to in the 1990 Act section 14(4).

176. Heritage Conservation Incentive Account closed

On commencement day the Heritage Conservation Incentive Account referred to in the 1990 Act section 14(5) is closed.

177. Register

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

(2) The entry of a place in the former register is taken to be sufficient for the purposes of section 36(2) and to comply with the conditions under section 37(1) and (2).

(3) Without prejudice to any shorter limitation period provided under any other written law, no objection to anything done under the 1990 Act Part 5 Division 2 in relation to the former register as it exists immediately before commencement day may be raised or determined in proceedings instituted in any court or tribunal after the expiry of the interim period.

178. Interim registration

(1) In this section —

interim registered place means a place that, immediately before commencement day, is the subject of an interim registration under the 1990 Act section 50;

previously registered place means a place that, immediately before commencement day, is the subject of a permanent registration under the 1990 Act section 51.

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

(3) During the interim period —

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

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

(4) If, after commencement day and by the 2nd anniversary of commencement day, no entry has been made in the new register in respect of an interim registered place, the interim registered place —

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

(b) for the purposes of section 37(2) is taken to have been included in an entry that was removed from the register on the 2nd anniversary of commencement day.

179. Conservation orders

(1) On and from commencement day —

(a) a conservation order made under the 1990 Act section 59(2)(a) that is in effect on commencement day is taken to be a consent order for the purposes of this Act; and

(b) a conservation order made under the 1990 Act section 59(2)(b) that is in effect on commencement day is taken to be a stop work order for the purposes of this Act; and

(c) a conservation order made under the 1990 Act section 59(4) that is in effect on commencement day is taken to be a continuing protection order for the purposes of this Act.

(2) Without limiting subsection (1), section 61 applies to a conservation order that is taken under this section to be a consent order, stop work order or continuing protection order.

180. Heritage agreements

A Heritage Agreement entered into under the 1990 Act section 29 that is in effect on commencement day —

(a) continues to have effect as if it were a heritage agreement certified under section 90(5); and

(b) continues to bind any successors in title in relation to interests in the land to which the agreement applies, to the extent to which successors in title would have been bound under the 1990 Act.

181. Local heritage survey

An inventory compiled and maintained under the 1990 Act section 45 is, on and from commencement day, taken for the purposes of Part 8 to be a survey prepared under section 103(1).

182. Powers in relation to transitional matters

(1) In this section —

specified means specified or described in the regulations;

transitional matter means a matter that arises as a result of —

(a) the repeal of the 1990 Act; or

(b) an amendment made under Part 15; or

(c) the enactment of this Act.

(2) If this Division does not deal sufficiently with a transitional matter the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed in relation to that matter.

(3) Regulations made under subsection (2) may provide that a specified provision of this Act does not apply, or applies with specified modifications, to or in relation to any matter.

(4) If regulations made under subsection (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the

regulations are published in the *Gazette* but not earlier than commencement day, the regulations have effect according to their terms.

(5) If regulations contain a provision referred to in subsection (4), the provision does not operate so as —

(a) to affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the day of publication of those regulations; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

Part 15 — Amendments to other Acts

183. *Building Act 2011* amended

(1) This section amends the *Building Act 2011*.

(2) In section 20(1)(m) delete "*Heritage of Western Australia Act 1990*" and insert:

Heritage Act 2018

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

Heritage Act 2018

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

Heritage Act 2018

184. *Constitution Acts Amendment Act 1899* amended

(1) This section amends the *Constitution Acts Amendment Act 1899*.

(2) In Schedule V Part 3 delete the item for the Heritage Council of Western Australia and insert:

The Heritage Council of Western Australia established by the *Heritage Act 2018*.

185. *Liquor Control Act 1988* amended

(1) This section amends the *Liquor Control Act 1988*.

(2) In section 77(5a)(a) delete "Register of Heritage Places compiled under the *Heritage of Western Australia Act 1990*; or" and insert:

State Register of Heritage Places established and maintained under the *Heritage Act 2018*; or

186. *Planning and Development Act 2005* amended

(1) This section amends the *Planning and Development Act 2005*.

(2) In section 4(1):

(a) in the definition of ***development*** paragraph (c) delete "Conservation Order made under section 59 of the *Heritage of Western Australia Act 1990*" and insert:

protection order made under the *Heritage Act 2018* Part 4 Division 1

(b) in the definition of ***Heritage Council*** delete "under the *Heritage of Western Australia Act 1990*;" and insert:

by the *Heritage Act 2018*;

(3) In section 36(b):

(a) delete "any Order made under section 59 of the *Heritage of Western Australia Act 1990*," and insert:

any protection order made under the *Heritage Act 2018* Part 4 Division 1,

(b) delete "section 60" and insert:

section 62

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

the register established and maintained under the *Heritage Act 2018* section 35(1) or in any local heritage survey prepared under section 103(1) of that Act

(5) In section 103(2)(d) delete "*Heritage of Western Australia Act 1990*" and insert:

Heritage Act 2018

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

the *Heritage Act 2018* Part 5 Division 2.

(7) In section 112(5) delete "*Heritage of Western Australia Act 1990*" and insert:

Heritage Act 2018

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

included in a place of a kind mentioned in the *Heritage Act 2018* section 72(1).

(9) Delete section 137(2) and insert:

(2) The Commission must not grant an application for its approval under section 135 or 136 in respect of land to which this section applies unless the requirements of the *Heritage Act 2018* Part 5 Division 2 have been observed.

(10) In section 137(3):

(a) delete "section 78(2)(a) of the *Heritage of Western Australia Act 1990*" and insert:

the *Heritage Act 2018* section 76(3)

(b) in paragraph (a) delete "section 78 of the *Heritage of Western Australia Act 1990*; or" and insert:

the *Heritage Act 2018* section 76(3); or

(c) in paragraph (b) delete "section 78(2)(b) and (c) of the *Heritage of Western Australia Act 1990*." and insert:

the *Heritage Act 2018* section 76(6).

(11) Delete section 137(4).

(12) Delete section 163 and insert:

163. Application for development of heritage place

An application for approval of development must, if the application is a proposal to which the *Heritage Act 2018* section 73(1) applies, be made —

(a) in the case of an application under a local planning scheme or local interim development order, to the responsible authority; and

(b) in any other case, to the Commission.

(13) In section 241(2):

(a) delete "*Heritage of Western Australia Act 1990*" and insert:

Heritage Act 2018

(b) in paragraph (d) delete "*Heritage of Western Australia Act 1990*." and insert:

Heritage Act 2018.

(14) In section 245(5)(b) delete "land or water to which an entry in the Register maintained under section 46 of the *Heritage of Western Australia Act 1990* relates," and insert:

land included in a place of a kind mentioned in the *Heritage Act 2018* section 72(1),

(15) In section 246(3)(a) delete "*Heritage of Western Australia Act 1990*; or" and insert:

Heritage Act 2018; or

(16) Delete section 249(2)(c) and insert:

(c) an order made under the *Heritage Act 2018* Part 4 or Part 11 Division 4.

(17) Delete section 250(2).

187. *Strata Titles Act 1985* amended

(1) This section amends the *Strata Titles Act 1985*.

(2) In section 25(7) delete "section 78 of the *Heritage of Western Australia Act 1990*." and insert:

the *Heritage Act 2018* Part 5 Division 2.

(3) In section 25(8) delete "land to which section 78 of the *Heritage of Western Australia Act 1990* applies." and insert:

included in a place of a kind referred to in the *Heritage Act 2018* section 72(1).

188. *Swan Valley Planning Act 1995* amended

(1) This section amends the *Swan Valley Planning Act 1995*.

(2) In section 3 in the definition of ***development*** paragraph (b) delete "Conservation Order made under section 59 of the *Heritage of Western Australia Act 1990*" and insert:

protection order made under the *Heritage Act 2018* Part 4 Division 1

Notes

This is a compilation of the *Heritage Act 2018* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Heritage Act 2018	22 of 2018	18 Sep 2018	Pt. 1 (other than s. 3-10): 18 Sep 2018 (see s. 2(a)); Act other than the heading to Pt. 1 and s. 1 and 2: 1 Jul 2019 (see s. 2(b) and *Gazette* 27 Jun 2019 p. 2375)
Swan Valley Planning Act 2020 Pt. 10 Div. 4	45 of 2020	9 Dec 2020	1 Aug 2021 (see s. 2(1)(e) and SL 2021/124 cl. 2)
Aboriginal Cultural Heritage Act 2021 s. 349	27 of 2021	22 Dec 2021	1 Jul 2023 (see s. 2(e) and SL 2023/40 cl. 2(b))
Directors' Liability Reform Act 2023 Pt. 3 Div. 33	9 of 2023	4 Apr 2023	5 Apr 2023 (see s. 2(j))
Aboriginal Heritage Legislation Amendment and Repeal Act 2023 s. 29	23 of 2023	24 Oct 2023	15 Nov 2023 (see s. 2(d) and SL 2023/161 cl. 2)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
Petroleum Legislation Amendment Act 2024 s. 433(2)	17 of 2024	14 May 2024	To be proclaimed (see s. 2(b))

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

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