

**ACTS AMENDMENT
(HERITAGE COUNCIL) ACT**

No. 97 of 1990

AN ACT to amend certain Acts in consequence of the enactment of the *Heritage of Western Australia Act 1990*.

[Assented to 22 December 1990.]

The Parliament of Western Australia enacts as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Acts Amendment (Heritage Council) Act 1990*.

Commencement

2. This Act shall come into operation on such day as is fixed by proclamation.

PART 2—CONSEQUENTIAL AMENDMENTS

*Division 1—Financial Administration and Audit Act 1985***Amendment to Schedule**

3. Schedule 1 to the *Financial Administration and Audit Act 1985** is amended by inserting, in its appropriate alphabetical sequence, the following—

“ Heritage Council of Western Australia ”.

[*Act No. 117 of 1985. Reprinted as at 4 March 1987 and as subsequently amended by Acts Nos. 94 of 1986; 9, 32, 65, 88, 89, 91, 99 and 113 of 1987; 4, 19, 21 and 52 of 1988; and 5 of 1989, and by regulations published in the Gazette on 30/6/87, 25/9/87, 4/12/87, 8/4/88, 16/12/88, 9/6/89, and 30/6/89.]

*Division 2—Parliamentary Commissioner Act 1971***Amendment to Schedule**

4. The Schedule to the *Parliamentary Commissioner Act 1971** is amended by inserting, in its appropriate alphabetical sequence, the following—

“ Heritage Council of Western Australia established under the *Heritage of Western Australia Act 1990* ”.

[*Reprinted as approved 19 July 1983 and amended by Acts Nos. 124 of 1984; 69, 92, 98, 107 and 110 of 1985; 39, 51, 94 and 101 of 1986; 2, 9, 43, 47, 50, 64, 89, 91, 99, 113 and 114 of 1987; and 4, 21, 59 and 75 of 1988.]

*Division 3—Local Government Act 1960***Principal Act**

5. In this Division, the *Local Government Act 1960** is referred to as the principal Act.

[*Act No. 84 of 1960. Reprinted as approved 24 June 1983 and amended by Acts Nos. 6 and 84 of 1983; 17, 25, 42 and 79 of 1984; 35, 98, 99, 105 and 109 of 1985; 9 and 26 of 1986; 42 and 126 of 1987; and 10 and 39 of 1988.]

Section 6 amended

6. Section 6 of the principal Act is amended by inserting in its appropriate alphabetical sequence the definition following—

“ “Heritage Council” means the Heritage Council of Western Australia established pursuant to the *Heritage of Western Australia Act 1990*; ”.

Section 374 amended

7. Section 374 of the principal Act is amended—

(a) in subsection (2a), by inserting after “thirty-five days” the following—

“ , or in the case to which subsection (6) applies sixty days, ”;

and

(b) by adding the subsection following—

“ (6) In the case of land to which the *Heritage of Western Australia Act 1990* applies, this section and the operation of any licence issued under this section is subject to the requirements of section 78 of that Act. ”.

Amendments to s. 374A

8. Section 374A of the principal Act is amended—

(a) in subsection (2), by deleting “The” and substituting the following—

“ Subject to subsection (2A), the ”;

(b) by inserting a new subsection (2A) as follows—

“ (2A) Where the *Heritage of Western Australia Act 1990* applies to any land—

(a) if the land is subject to—

(i) an Order under Part 6 of that Act; or

(ii) an Order in Council made under section 80 of that Act,

the council shall refuse an application made under subsection (1); and

(b) in any other case, the council shall, in accordance with section 11 and section 78 of that Act, refer the application to the Heritage Council and have regard to any advice furnished by the Heritage Council. ”;

and

(c) in subsection (3), by deleting “A” and substituting the following—

“ Except where the condition was by reason of the operation of section 78 (4) of the *Heritage of Western Australia Act 1990* imposed so as to be consistent with conditions imposed under that Act in relation to a related or similar matter that affects all or part of the same land, any ”.

Division 4—Town Planning and Development Act 1928

Principal Act

9. In this Division, the *Town Planning and Development Act 1928** is referred to as the principal Act.

[*Act No. 39 of 1928. Reprinted as approved 19 December 1988 and amended by Act No. 21 of 1988.]

Section 2 amended

10. Section 2 (1) of the principal Act is amended—

(a) by deleting the definition of the term “development” and substituting the definition following—

“ “development” means the development or use of any land, including any demolition, erection, construction, alteration of or addition to any building or structure on the land and the carrying out on the land of any excavation or other works

and, in the case of a place to which a Conservation Order made under section 59 of the *Heritage of Western Australia Act 1990* applies, also includes any act or thing that—

(a) is likely to change the character of that place or the external appearance of any building; or

(b) would constitute an irreversible alteration of the fabric of any building; ”;

and

(b) by inserting in the appropriate alphabetical sequence the definition following—

“ “Heritage Council” means the Heritage Council of Western Australia established pursuant to the *Heritage of Western Australia Act 1990*; ”.

Section 5AA amended

11. Section 5AA of the principal Act is amended in subsection (3) (b) by inserting after “natural” the following—

“ or cultural ”.

Section 7 amended

12. Section 7 of the principal Act is amended by inserting after subsection (5) the following subsection—

“ (6) Where any entry in the Register or on any list maintained under section 46 or section 45 of the *Heritage of Western Australia Act 1990* relates to land or waters that are within or abut the district of any municipality, the local authority in preparing or amending a town planning scheme shall refer the proposed scheme to the Heritage Council for advice in so far as any proposal under that scheme affects or may affect any such land or waters, shall have regard to any advice furnished, and shall not, without the consent of the Minister, proceed with the proposal unless or until that advice has been received. ”.

Section 7B amended

13. Section 7B of the principal Act is amended—

- (a) in subsection (5) (a) by adding, after subparagraph (iii), the following—

“ or

- (iv) in the case of land to which the *Heritage of Western Australia Act 1990* applies, require the council administering the order before granting an application for permission to carry out any development to refer the application in question to the Heritage Council, not to proceed with the application unless or until the advice of the Heritage Council has been received, and to have regard to that advice; ”;

- (b) in subsection (6) (c), by inserting after “interim development order” the following—

“ or of any Order made under Part 6, or Order in Council made under section 80, of the *Heritage of Western Australia Act 1990* ”;

and

- (c) in subsection (6) (d), by inserting after “this section,” the following—

“ or, in the case of land in relation to which the council has referred the application to the Heritage Council and has so notified the applicant, where a period of 60 days has elapsed since that notification and the council has failed to make its decision known, ”.

Section 12 amended

14. Section 12 (2) of the principal Act is amended by inserting after “purpose” the following—

- “ or which provide for the conservation of any land to which the *Heritage of Western Australia Act 1990* applies ”.

Section 18C added

15. The principal Act is amended by inserting a new section as follows—

Heritage Places

“ 18C. (1) Where any land comprised within a place entered in the Register maintained by the Heritage Council under the *Heritage of Western Australia Act 1990*, or of which such a place forms part, is to be the subject of development, an application for approval of that development shall be made—

(a) in the case of land subject to a town planning scheme prepared under section 7, to the responsible authority;

and

(b) in any other case, to the Commission,

and any such approval may be given subject to conditions.

(2) A person shall not, without the approval referred to in subsection (1) or otherwise than in accordance with any condition to which the giving of the approval was subject, carry out, or cause or permit to be carried out, any development affecting land to which subsection (1) applies.

Penalty: \$10 000.

Section 20 amended

16. Section 20 of the principal Act is amended by adding the subsection following—

“ (4) In the case of land to which section 78 of the *Heritage of Western Australia Act 1990* applies—

(a) the Commission shall not grant any application for its approval under this section unless—

(i) the requirements of subsection (1) and subsection (4) of that section have been observed; and

- (ii) regard has been had to any advice received from the Heritage Council;
- (b) the holder of any approval given by the Commission under this section shall not, where subsection (2) (a) of that section applies, give effect to that approval—
 - (i) during such time as the operation of the approval is suspended under that section; or
 - (ii) otherwise than in accordance with subsection (2) (b) and (c) of that section; and
- (c) in relation to any place which is entered in the Register maintained by the Heritage Council under that Act, any approval given shall be deemed to be revoked pursuant to subsection (3) of that section. ”.

Section 20A amended

17. Section 20A of the principal Act is amended by inserting after “for the purpose of”, in both places where it appears, the following—

“ conservation or protection of the environment or ”.

Section 37 amended

18. Section 37 of the principal Act is amended, in the definition of “appeal”—

(a) by deleting “and” after paragraph (c); and

(b) by adding after paragraph (d) the following—

“ and

(e) an appeal referred to the Tribunal under the *Heritage of Western Australia Act 1990*; ”.

Section 42 amended

19. Section 42 of the principal Act is amended by deleting subsection (4) and substituting the following—

- “ (4) The member appointed pursuant to subsection (2) (a) shall be the Chairman of the Appeal Tribunal. ”.

Section 53 amended

20. Section 53 of the principal Act is amended—

- (a) by inserting after the section designation “53.” the subsection designation “(1)”; and
- (b) by adding the subsection following—

- “ (2) In the case of an appeal that relates to land to which the *Heritage of Western Australia Act 1990* applies, and whether or not the statement of planning policy provides for the conservation of that land, the Minister or the Appeal Tribunal, as the case may be, shall refer the matter to the Heritage Council for advice, may hear representations made on behalf of the Heritage Council, may join the Heritage Council as a party to the appeal, and shall have regard to the objects of that Act. ”.

Section 54 amended

21. Section 54 of the principal Act is amended by inserting after subsection (6) the subsection following—

- “ (7) In this section, where an area in which the land the subject of the appeal is situated includes, or is included in, or abuts any land or waters to which an entry in the Register maintained under section 46 of the *Heritage of Western Australia Act 1990* relates, “Minister” includes a reference to the Minister to whom the administration of that Act is committed. ”.

First Schedule amended

22. The First Schedule to the principal Act is amended—

(a) in clause 10—

(i) by inserting, before “educational”, the following—

“ cultural heritage conservation, ”;

and

(ii) by inserting, before “waterway development”, the following—

“ protection of the environment or landscape or to provide for ”;

and

(b) in clause 12, by deleting “historic buildings and objects of historical or” and substituting the following—

“ places and objects of cultural heritage significance or other ”.

Division 5—Metropolitan Region Town Planning Scheme Act 1959

Principal Act

23. In this Division, the *Metropolitan Region Town Planning Scheme Act 1959** is referred to as the principal Act.

[*Act No. 78 of 1959 reprinted as approved 20 February 1984 and amended by Acts Nos. 54, 92, 98 and 109 of 1985; 6 of 1986; and 21 of 1988.]

Section 6 amended

24. Section 6 of the principal Act is amended by inserting in the appropriate alphabetical sequence the definition following—

“ “Heritage Council” means the Heritage Council of Western Australia established pursuant to the *Heritage of Western Australia Act 1990*; ”.

Section 32A amended

25. Section 32A of the principal Act is amended—

- (a) by inserting after the section designation “32A.” the subsection designation “(1)”; and
- (b) by adding the subsection following—

“ (2) The Scheme shall not be amended under section 33 or 33A in a manner that is contrary to or inconsistent with any Order made under section 59 of the *Heritage of Western Australia Act 1990*, except in so far as may be ordered on an appeal or referral made under section 60 of that Act to the Town Planning Appeal Tribunal. ”.

Section 35B amended

26. Section 35B of the principal Act is amended by adding the subsection following—

- “ (3) This Part of this Act and the operation of any approval of development granted under this Part shall have effect subject to section 78 of the *Heritage of Western Australia Act 1990*. ”.

Section 35C amended

27. Section 35C of the principal Act is amended by adding the subsection following—

- “ (4) Where any land is comprised within an area to which the Commission considers that this section should apply and is land to which the *Heritage of Western Australia Act 1990* applies, the Commission shall satisfy the Minister before seeking approval to the declaration of that land as a planning control area that full disclosure has been made to, and consultations concluded with, the Heritage Council as to the likely effect of the declaration as regards places to which that Act applies. ”.

Section 35F amended

28. Section 35F of the principal Act is amended—

- (a) by inserting after the section designation “35F.” the subsection designation “(1)”; and
- (b) by adding the subsection following—

“ (2) An appeal under subsection (1) in relation to any condition which is imposed in consequence of advice furnished by the Heritage Council or by the operation of section 78 of the *Heritage of Western Australia Act 1990* shall be referred to the Heritage Council for advice, and section 53 (2) of the *Town Planning Act* applies in relation thereto. ”.

Second Schedule amended

29. The Second Schedule to the principal Act is amended by adding the following—

“ 18. Cultural heritage conservation. ”.

Division 6—Strata Titles Act 1985

Section 25 amended

30. Section 25 of the *Strata Titles Act 1985** is amended by adding the subsections following—

“ (7) This section and the giving of a certificate of approval by the Town Planning Board for the purposes of this section shall be subject to the requirements of section 78 of the *Heritage of Western Australia Act 1990*.

(8) No exemption from the requirements of this section shall take effect where the land or any part of the land to which the strata scheme relates is land to which section 78 of the *Heritage of Western Australia Act 1990* applies. ”.

[*Act No. 33 of 1985 as amended by Acts Nos. 42 of 1986 and 24 of 1987.]