



Western Australia

## **Heritage of Western Australia Act 1990**

Compare between:

[11 Jul 2011, 04-b0-01] and [13 Mar 2012, 04-c0-01]



Western Australia

## **Heritage of Western Australia Act 1990**

**An Act to provide for, and to encourage, the conservation of places which have significance to the cultural heritage in the State, to establish the Heritage Council of Western Australia, and for related purposes.**

## Part 1 — Preliminary

### 1. Short title

This Act may be cited as the *Heritage of Western Australia Act 1990*<sup>1</sup>.

### 2. Commencement

The provisions of this Act shall come into operation on the day fixed by proclamation<sup>1</sup>.

### 3. Terms used

(1) In this Act, unless the context otherwise requires —

**Account** means the Heritage Account established under section 14;

**building**, in relation to any land, includes any structure erected or placed on or in that land, and any part of the building or fence or other appurtenance to the building;

**Chairperson** means the person holding or acting in the office of Chairperson of the Council;

**conservation** means, in relation to any place, the management of that place in a manner that will —

- (a) enable the cultural heritage significance of that place to be retained; and
- (b) yield the greatest sustainable benefit for the present community without diminishing the cultural heritage significance of that place,

and may include the preservation, stabilization, protection, restoration, reconstruction, adaptation, and maintenance of that place in accordance with relevant professional standards, and the provision of an appropriate visual setting;

**Conservation Order** means an order made under section 59;

**Council** means the Heritage Council of Western Australia established pursuant to section 5;

***cultural heritage significance*** means, in relation to a place, the relative value which that place has in terms of its aesthetic, historic, scientific, or social significance, for the present community and future generations;

***decision-making authority*** means, in relation to any proposal, a public authority who or which in the course of the administration of a written law or otherwise in the carrying on of any function makes, or is empowered to make, a decision in respect of that proposal, and includes any Minister of the Crown who in relation to that particular proposal or a proposal of that kind is specifically prescribed for the purposes of this definition;

***develop*** includes demolish;

***development*** means the development or use of any land, including —

- (a) any demolition, erection, construction, alteration or addition to any building or structure on the land; and
- (b) the carrying out on the land of any excavation or other works; and
- (c) in the case of a place to which a Conservation Order applies, any act or thing that —
  - (i) is likely to change the character of the place or the external appearance of any building; or
  - (ii) would constitute an irreversible alteration of the fabric of any building,

but shall be taken not to include any works of a kind, or any act or thing, that is for the time being excluded from the operation of this definition by a regulation;

***entry***, in relation to the Register, includes entry as an interim registration;

***Heritage Agreement*** or ***Agreement*** means an agreement entered into pursuant to section 29;

***inspector*** means a person appointed under section 71;

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***interim registration*** means registration in accordance with section 50;

***land*** includes —

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

***member*** means a member of the Council, and may include a person to whom section 20(7) applies;

***occupier***, in relation to any land, means a person by whom or on whose behalf that land is lawfully occupied or, if there is no person in lawful occupation, a person entitled to possession;

***owner***, in relation to any land, shall be construed in accordance with subsection (2)(a);

***place*** means an area of land sufficiently identified by survey, description or otherwise as to be readily ascertainable, and includes —

- (a) an area of land situate below low water mark on the sea shore or on the bank of tidal waters, or in the bed of any watercourse, lake or estuary; and
- (b) any works or buildings situated there, their contents relevant to the purposes of this Act and such of their immediate surroundings as may be required for the purposes of the conservation of those works or buildings; and
- (c) as much of the land beneath the place as is required for the purposes of its conservation;

***possession*** in relation to land includes the receipt of income from the land or the right to receive that income;

***presentation*** in relation to any place includes —

- (a) its exhibition or display; and
- (b) the provision of access to it; and
- (c) the publication of information in relation to it;

**proposal** means a project, plan, programme, policy, operation, undertaking or development or change in land use, or any amendment of such a proposal, affecting a registered place or a place which is the subject of a Heritage Agreement;

**public authority** means —

- (a) a Minister of the Crown in right of the State acting in an official capacity, a department of the Public Service of the State, a State agency or instrumentality, or a local government; or
- (b) any other person, whether corporate or not, who or which under the authority of a written law administers or carries on in the State any statutory function on behalf of the Government;

**Register** means the Register of Heritage Places compiled pursuant to section 46;

**registered** means entered, whether pursuant to section 50 or section 51, in the Register under this Act;

**Stop Work Order** means a Conservation Order made under section 59(2)(b);

**this Act** includes the *Acts Amendment (Heritage Council) Act 1990*;

**Treasurer** means the Treasurer of the State.

(2) In this Act —

- (a) a reference to the owner of land includes a reference to —
  - (i) where the land is unalienated, the Crown; and
  - (ii) where 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
  - [(iii) *deleted*]

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- (iv) where 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
  - (v) a person who is the holder of, or has made application for, a mining tenement under the *Mining Act 1978* or a permit or licence under the *Petroleum and Geothermal Energy Resources Act 1967*; and
  - (vi) a mortgagee or encumbrancee in possession of the land,
- subject to subsection (3); and
- (b) a reference to **public advertisement** is a reference to the bringing of a matter to the notice of the public by means of —
    - (i) publication of a notice in the *Gazette*; and
    - (ii) a notice published in a local newspaper, if any, circulating in the area concerned; and
    - (iii) a notice published in a daily newspaper circulating throughout the State,or by such other means as the Minister may direct.
- (3) Where under this Act the Council is required to give notice to, or to consult with, any owner of land, the Council shall not be required to give notice to, or to consult with or have regard to, such a person who is not in possession of the land where —
- (a) the estate or interest of that person does not appear from an inspection of the register books, or a search of memorials registered, under a relevant Act referred to in subsection (2); and
  - (b) the identity of that person, or the address of that person, cannot with reasonable diligence be ascertained.



*[Section 3 amended by No. 14 of 1996 s. 4; No. 31 of 1997  
s. 33(1); No. 55 of 2004 s. 500; No. 77 of 2006 Sch. 1 cl. 83(1);  
No. 35 of 2007 s. 96.]*

## Part 2 — Administration

### 4. Crown bound and objects of Act

- (1) This Act binds the Crown.
- (2) The Council shall be an instrumentality of the Crown in right of the State.
- (3) The objects of this Act, with due regard to the rights of property ownership, are —
  - (a) to identify, conserve and where appropriate enhance those places within Western Australia which are of significance to the cultural heritage; and
  - (b) in relation to any area, to facilitate development that is in harmony with the cultural heritage values of that area; and
  - (c) to promote public awareness as to the cultural heritage, generally.

### 5. The Council

- (1) There shall be established, pursuant to this Act, a body to be known as the Heritage Council of Western Australia.
- (2) The Council —
  - (a) is a corporate body, which under its corporate name —
    - (i) has perpetual succession and a common seal; and
    - (ii) may sue and be sued in any court; and
    - (iii) may acquire, hold and dispose of real and personal property; and
    - (iv) subject to this Act, is capable of doing and suffering all that bodies corporate may lawfully do or suffer;and

- (b) shall be constituted by persons appointed as members pursuant to Division 4 of Part 3.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Council, and where a document is produced bearing a seal purporting to be the common seal of the Council shall, in the absence of proof to the contrary, presume that the seal is the common seal of the Council and that it was duly affixed.
- (4) The common seal of the Council shall be —
  - (a) kept in such custody as the Council directs; and
  - (b) used only as authorised by the Council.

**6. Minister's functions**

- (1) Responsibility for the administration of this Act is vested in the Minister, who shall be advised and assisted by the Council.
- (2) The Minister may, in writing, give to the Council directions of a general character with respect to its functions and, subject to subsection (3), the Council shall give effect to any such direction.
- (3) In relation to its function of giving advice and the evaluation of the cultural heritage significance of any place the Council is not required to give effect to a direction of the Minister.
- (4) The text of any direction received by the Council under subsection (2) shall be included in the annual report submitted by the accountable authority of the Council under Part 5 of the *Financial Management Act 2006*.
- (5) The Council shall furnish, or cause to be furnished, to the Minister —
  - (a) all documents and information required under any Act or any order or resolution of either House of Parliament; and

- (b) full information on all business of the Council as to which the Minister requires information —
  - (i) for the proper conduct of the Minister’s public business; or
  - (ii) to enable answers to be made to all questions asked in Parliament concerning the Council; or
  - (iii) to enable the Minister to furnish returns required by Parliament.
- (6) The Minister shall be entitled —
  - (a) at all times to see all documents in the possession or control of the Council that the Minister requires to see for any purpose mentioned in subsection (5); and
  - (b) to be supplied with copies of documents referred to in paragraph (a); and
  - (c) to make use of the services of any person employed, engaged or utilised by the Council for the purposes of obtaining access to or copies of documents referred to in paragraph (a).
- (7) The Minister may delegate, either generally or as otherwise provided by the instrument of delegation, to —
  - (a) the Chairperson, or any officer or other person appointed or engaged under section 27; or
  - (b) a public authority, or an officer or employee of a public authority; or
  - (c) any other person,specified in the instrument of delegation (in this section called the *delegate*) all or any of the powers and duties of the Minister under this Act, other than the power to give directions to the Council and this power of delegation.
- (8) Where the power to delegate conferred by subsection (7) is exercised, the Minister shall cause the name or title of the

delegate and the subject matter of the delegation to be published in the *Gazette*.

- (9) A power or duty delegated by the Minister under this section shall, if exercised or performed by the delegate, be exercised or performed in accordance with the instrument of delegation.

*[Section 6 amended by No. 77 of 2006 Sch. 1 cl. 83(2).]*

## **Part 3 — The Council**

### **Division 1 — Functions**

#### **7. Functions of Council**

(1) The functions of the Council are —

- (a) to advise the Minister, either of its own motion or upon the request of the Minister, as to matters relating to or associated with places that have or may have cultural heritage significance or possess special interest related to or associated with the cultural heritage in the State, and as to the conservation, presentation and use of those places and to represent the Minister, where the Minister so requires, in negotiations relating to such matters with the Commonwealth or other persons having related interests; and
- (b) to advise the Minister in relation to the Register, and to maintain the Register and records of places in accordance with this Act; and
- (c) to advise the Minister, and with the consent of the Minister other persons, and to negotiate for its own purposes or on behalf of the Minister or those persons, in relation to Heritage Agreements or proposed Heritage Agreements; and
- (d) to provide, or facilitate the provision of, financial or technical assistance or other conservation incentives; and
- (e) to prevent or to endeavour to prevent the destruction of, or deterioration or damage occurring in, or the injudicious treatment of, places that have or may have cultural heritage significance or special interest; and
- (f) in consultation with the National Trust of Australia (W.A.) Inc. and other relevant persons, to undertake, or to arrange, the recording, conservation and presentation

of places that have cultural heritage significance or special interest; and

- (g) to cooperate, so far as may be practicable and the Council may wish to do so, with all persons charged with, or undertaking, the making of a record of, or the conservation or presentation of, the works, documents, things, events and circumstances, whether past or present, associated with such places but, in general, not to act as a custodian except upon an interim basis; and
  - (h) to encourage public interest in, and public understanding of, and to promote, organize or engage in research and investigation relating to, issues relevant to the cultural heritage, or to the conservation of any aspect of the cultural heritage, in the State; and
  - (j) to promote or provide education or training as to matters related to any such issues; and
  - (k) to authorise payments from the moneys standing to the credit of the Account for the purposes of this Act; and
  - (l) to carry out such other duties as may be required of it by the Minister under, or in furtherance of the objects of, this Act.
- (2) In performing its functions the Council shall —
- (a) so administer the Account and any other resources from time to time available to the Council; and
  - (b) so consult with local and regional heritage groups; and
  - (c) so advise and assist other persons having objectives similar to those of the Council,

as to ensure that the various measures approved, and the various powers available, for the purpose of recording, conserving, and presenting the places of cultural heritage significance in the State are utilised effectively.

*[Section 7 amended by No. 49 of 1996 s. 64; No. 77 of 2006 Sch. 1 cl. 83(5).]*

**8. Powers of Council**

- (1) Subject to section 6, the Council may do all things that are necessary or expedient to enable the Council to carry out its functions.
- (2) Subject to this Act, but without derogating from the generality of subsection (1), the Council may —
  - (a) formulate and implement policies to give effect to its functions; and
  - (b) enter into, implement, and enforce Heritage Agreements, including, subject to subsection (3), Agreements to which the Council is not a party; and
  - (c) negotiate, provide or arrange for the financial, technical, and administrative measures required in relation to any proposal for the conservation of a place; and
  - (d) negotiate with public authorities, owners, occupiers and their agents, persons contemplating development proposals, and other persons likely to be of assistance in concluding concessions, plot ratio adjustments, transfers of development rights, and other planning measures that will enable or encourage persons to record or conserve, or to facilitate the presentation of, places of cultural heritage significance in the State; and
  - (e) advise and assist persons who are responsible for, or may be prepared to undertake, the management or maintenance of any place having cultural heritage significance, or of any building, exhibition or thing relevant to the recording, conservation or presentation of any such place, or who are concerned with matters or things associated with any such place or likely to promote public interest in the cultural heritage; and
  - (f) acquire by agreement, or in default of agreement and with the consent of the Minister compulsorily, places of cultural heritage significance, for the purpose of acting as interim custodian until such time as satisfactory



arrangements for the conservation of the places by other persons can be concluded, and enter into leases, lease-back arrangements, or other agreements related to the occupation or use of those places; and

- (g) deliver any place, matter or thing related to or associated with the cultural heritage and of which the Council has possession or control into the possession or control of any local government, museum, gallery, library or person, whether incorporated or not, for the purpose of making it accessible to the public or for the purpose of study; and
  - (h) undertake or assist other persons to undertake studies, assignments, commissions, investigations, the preservation of techniques and crafts or the gaining of experience, and the publishing of information, whether in the State or elsewhere, in respect of matters related to the functions of the Council relevant to any place, matter or thing significant to the cultural heritage; and
  - (j) make charges or impose fees in relation to places maintained or activities, matters or things promoted, arranged or controlled by or on behalf of the Council, and otherwise as the regulations may require; and
  - (k) enforce any order made under Part 6, and prosecute persons contravening this Act or any prescribed provision of any other written law.
- (3) The Council on behalf of the Crown shall not institute, or intervene in, any proceedings arising out of a Heritage Agreement to which the Council was not a party, unless —
- (a) the party which entered into the Agreement on behalf of the Crown so consents; or
  - (b) the Minister is of the opinion that such consent has been unreasonably withheld, and so certifies,

in which case the Council on behalf of the Crown shall be, or shall become, a party to those proceedings as though the

Council acting on behalf of the Crown had always been a party to the Agreement and the Council shall thereupon have all the rights, including rights of appeal, of a party to the proceedings, and the costs of those proceedings on behalf of the Crown shall be borne by the Council unless the court otherwise orders.

- (4) For the purposes of this Act, but subject to the approval of the Treasurer, financial assistance or incentives may be offered by the Council with or without a requirement for the giving of security and either free of interest or at such rates of interest as the Council determines.
- (5) Subject to the approval of the Treasurer and of the Minister, the Council may establish or participate in any scheme of endowment, or create any trust, upon such terms and conditions and having such objects not inconsistent with this Act as the Council thinks fit, appoint or act as trustees in relation thereto, and implement the provisions of that endowment or trust.
- (6) The Council, unless the Minister otherwise directs, may —
  - (a) accept any moneys or property, or the care and control thereof for the time being, by way of gift or loan (not being a gift or loan expressly prohibited by any Act or instrument of trust); and
  - (b) act as manager for the time being of any trust, endowment, bequest, gift, property, or moneys (including trust moneys) for the purposes of the Council or in furtherance of the work of the Council; and
  - (c) use and apply any moneys or property not immediately required for the purposes of a trust declared in relation thereto in any manner not at variance with the trust.
- (7) The Council may refuse to accept any endowment, bequest, gift, moneys or other property, or to act in any trust, where in the opinion of the Council any condition attaching thereto, or the intention or subject matter, is not consistent with the objects of the Council or is otherwise not acceptable.

*[Section 8 amended by No. 14 of 1996 s. 4.]*

**Division 2 — Referrals, and relationship with governmental bodies, etc.**

**9. Public referrals to Council of matters etc. to do with conserving registered places etc.**

- (1) Any person may refer in writing to the Council any act, matter or thing which gives rise to concern as to the conservation of a registered place or any other place which is or may be of cultural heritage significance.
- (2) Where any referral is made to the Council under subsection (1) the Council —
  - (a) shall where the Council considers it appropriate report and make recommendations thereon to any Minister of the Crown to whose administration the matter relates, or to any decision-making authority; or
  - (b) may otherwise deal with it as the Council thinks fit,and shall inform the person making the referral accordingly.

**10. Public authorities to assist Council**

- (1) All public authorities shall, and are hereby authorised to, give to the Council such assistance in the carrying out of the functions of the Council as is reasonably practical, and shall comply with all reasonable requests for information made by the Council, but this Act shall not be taken as exempting the Council from any requirement as to the payment of fees or charges.
- (2) Where the Council is of the opinion that a public authority has not complied with subsection (1) the Minister of the Crown having responsibility for that public authority may, on the request of the Council and after consultation with the Public Sector Commissioner, direct that authority to provide the assistance to the Council, and any such direction may require

that the services of any person employed or engaged by that authority shall be made available for the purpose.

*[Section 10 amended by No. 39 of 2010 s. 89.]*

**11. Public authorities to assist in conservation of registered places**

- (1) A person who, as a Minister of the Crown, is responsible as the Minister under any written law —
- (a) shall not, as such Minister, initiate or take any action under that law; and
  - (b) shall give all such directions and do all such things as, consistently with that written law, can be given or done under that law by the responsible Minister to ensure that any decision-making authority in respect of which that Minister has a responsibility does not take any action under that law,

which will, or will be likely to, adversely affect a registered place unless that Minister is satisfied that there is no feasible and prudent alternative to the taking of that action and that all measures which can reasonably be taken to minimize any adverse effect will be taken.

- (2) Where an application is referred pursuant to section 78 or it otherwise comes to the notice of a decision-making authority that a proposal being considered by, or referred to or initiated by, that authority may affect any registered place or place which is the subject of a Heritage Agreement that authority shall refer the proposal to the Council as soon as is practicable and thereafter furnish to the Council all such aid, information and facilities as are practicable, and the Council shall thereupon advise both the Minister and the authority making the referral.
- (3) A decision-making authority shall not take any action that might (whether or not adversely) affect to a significant extent a registered place or a place which is the subject of a Heritage

Agreement (even though that action is not directly related to the place) unless —

- (a) subsection (2) has been complied with by the authority; and
  - (b) the authority has informed the Council of the proposed action and given the Council a reasonable opportunity to consider it and to advise both the Minister and that authority; and
  - (c) that action is consistent with advice received from the Council, or there is no feasible and prudent alternative to the taking of that action; and
  - (d) the decision-making authority has used its best endeavours to ensure that all measures which can reasonably be taken by any person involved in the implementation of the proposal are taken so as to minimize any adverse effect.
- (4) For the purposes of this section —
- (a) the making of a decision or recommendation; or
  - (b) the grant of an approval or permission, or the issue of a licence; or
  - (c) a refusal so to do,

constitutes the taking of action, and where the adoption of a recommendation would adversely affect a place the making of that recommendation shall be deemed to be action affecting the place adversely.

## **12. Differences etc. between Ministers**

- (1) Any question, difference or dispute arising with respect to the exercise of any right, power or authority or the discharge of any duty under this Act as between Ministers of the Crown having responsibilities affected by this Act, may be finally and conclusively determined by the Governor.

- (2) Subsection (1) does not prejudice the power of the Council, whether or not in a matter the subject of a direction by the Minister, to perform its advisory and technical functions.

### **Division 3 — Finance**

#### **13. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

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.

*[Section 13 amended by No. 77 of 2006 Sch. 1 cl. 83(3).]*

#### **14. Funds etc. of Council**

- (1) Subject to this Act, the Council shall be responsible for managing its own resources.
- (2) The funds and property available to the Council for the purposes of this Act are —
- (a) such moneys as are appropriated by Parliament; and
  - (b) moneys derived, whether from the National Estate Grants programme or otherwise, from Commonwealth sources and to be —
    - (i) administered by the Council in accordance with the terms upon which the moneys are provided; or
    - (ii) utilised by the Council for its own purposes;
  - and
  - (c) moneys borrowed by the Council or advanced by the Treasurer under section 15; and
  - (d) moneys paid, contributed or repaid to the Council, including moneys received by way of charges or fees, or

- the sale, rental or management of property owned or administered by the Council; and
- (e) the proceeds of investment of moneys referred to in subsection (6); and
  - (f) moneys or property accepted by the Council for application towards any purpose that is included in the functions of the Council; and
  - (g) other moneys or property that may lawfully be received by the Council.
- (3) Subject to the maintenance of adequate records showing the sources from and purposes for which moneys are received and the manner in which moneys are used, the funds of the Council may, in so far as not derived for or attributed to a specific purpose, be utilised for the general purposes of the Council.
- (4) An agency special purpose account called the Heritage Account is established under section 16 of the *Financial Management Act 2006* to which, subject to this Division, all moneys received by the Council are to be credited.
- (4a) Subject to any direction given by the Minister, the Account is to be controlled by the Council and may be operated in such manner as the Treasurer approves.
- (5) There shall be established under section 16 of the *Financial Management Act 2006* an agency special purpose account to be called the “Heritage Conservation Incentive Account” and such other agency special purpose accounts for such purposes, in such terms, and comprising such moneys as the Treasurer may approve, and in relation to any such account —
- (a) there shall be credited the moneys derived for or attributed to the purpose for which the account is established, and the proceeds of the investment under subsection (6) of moneys so credited; and
  - (b) where any money represents funds held upon trust and made payable to the Council upon lawful conditions, the

Council shall utilise it in accordance with those conditions and not otherwise; and

- (c) the balance of the account shall not be overdrawn except with the prior approval of, and subject to any condition imposed by, the Treasurer; and
  - (d) in so far as the money represents an appropriation made by Parliament for the service of a financial year, it may, unless the Treasurer otherwise directs, be accrued for the service of an ensuing financial year for a like purpose to that for which it was appropriated (and shall not be required to be transferred to a suspense account in connection with a specified commitment) sections 26 and 30 of the *Financial Management Act 2006* notwithstanding.
- (6) The Council may invest any moneys standing to the credit of the Account which are not immediately required for the purpose of this Act in any manner in which moneys standing to the credit of the Public Bank Account may be invested under the *Financial Management Act 2006* and, subject to the approval of the Treasurer, in other forms of investment.
- (7) Subject to this Division, all expenditure incurred by the Council in carrying this Act into effect, including the repayment of advances borrowed from the Treasurer under section 15 and discharge of any liability to which section 16 applies and the payment of interest and charges on such moneys, shall be charged to the Account.
- (8) The Council shall in each year pay to the Treasurer such amounts as may be fixed by the Treasurer —
- (a) as the interest and sinking fund contributions for the year in respect of any proportion of the Consolidated Account applied for purposes to which the functions of the Council relate, regard having been had to any repayment or payment of interest to which section 15 applies; and



- (b) for the use by or on behalf of the Council of Government buildings or other Government property, and for services rendered by any officers of the Public Service or any public authority.
- (9) The Council shall make provision, by way of a sinking fund or in such other manner as the Treasurer may require, in respect of any moneys advanced or guaranteed by the Treasurer and for the payment of interest and charges on such moneys.
- (10) The Council shall ensure that the moneys standing to the credit of the Account are applied in accordance with this Act, and not otherwise.

*[Section 14 amended by No. 6 of 1993 s. 15; No. 49 of 1996 s. 64; No. 28 of 2006 s. 308; No. 77 of 2006 s. 4 and Sch. 1 cl. 83(4)-(6).]*

## **15. Borrowing by Council**

- (1) The Council may borrow from the Treasurer such amounts as the Treasurer may advance, on such conditions, including conditions as to repayment and payment of interest, as the Treasurer may impose and the Treasurer is hereby authorised to make such advances.
- (2) Where an advance is made under subsection (1) the Council shall —
  - (a) repay the amount of the advance; and
  - (b) pay interest in accordance with the conditions imposed under subsection (1); and
  - (c) comply with any other conditions imposed.
- (3) The Council may, subject to the prior written approval of the Treasurer and only upon such terms and conditions as may be specified in that approval, borrow moneys for the purposes of this Act from persons other than the Treasurer.

- (4) By virtue of this subsection the assets of the Council are charged with the due discharge by the Council of all obligations arising under this section.

**16. Treasurer may give guarantees**

- (1) Subject to the prior approval of the Governor, the Treasurer may, on behalf of the Crown in right of the State and on such terms and conditions as the Treasurer may determine, guarantee the payment of any moneys payable by the Council, or the discharge of any liability, or the performance of any obligation (however or wherever arising, entered into or to be entered into), of the Council.

- (2) The performance of a guarantee given by the Treasurer on behalf of the State under this Act is hereby authorised and the due payment of moneys payable by the Treasurer thereunder with all interest thereon —
- (a) is hereby guaranteed by the State; and
  - (b) shall be charged to the Consolidated Account, which is hereby to the extent necessary appropriated accordingly,

and any sums received or recovered by the Treasurer, from the Council or otherwise, in respect of an amount so charged shall be credited to the Consolidated Account.

- (3) Where the Treasurer becomes liable to make any payment under subsection (2) —
- (a) the assets of the Council are hereby; and
  - (b) if the Treasurer so requires, the funds and other assets of a person associated with the Council in respect of a matter in relation to which the guarantee is given, shall by the instrument of guarantee be,

charged (by way of floating charge unless otherwise provided by that instrument of guarantee), to the extent that repayment of moneys paid by the Treasurer is not received or recovered by the Treasurer in accordance with the guarantee, with repayment

to the Treasurer of the amount for which the Treasurer is so liable, upon such terms and conditions as may have been determined and specified on the giving of that guarantee.

- (4) The liability of the State pursuant to a guarantee under this section shall not be affected or discharged —
- (a) by the granting to the Council or a person associated with the Council in relation to the guarantee of any time or other indulgence or consideration; or
  - (b) by reason of any transaction that may take place between the Council and any person having the benefit of the guarantee; or
  - (c) by any other act or omission of the person having the benefit of the guarantee,

whereby the liability of the State as guarantor would but for this provision have been affected or discharged.

- (5) In respect of every guarantee given by the Treasurer under this section, the Council shall cause to be credited to the Consolidated Account such annual fee, if any, as the Treasurer may require.
- (6) The annual fee referred to in subsection (5) shall be determined by the Treasurer not later than the time when the guarantee is given, but may be varied from time to time by the Treasurer by notice in writing to the Council.
- (7) An instrument of guarantee given pursuant to subsection (1) shall be executed by —
- (a) the Treasurer; or
  - (b) a person authorised —
    - (i) by the Treasurer in writing; or
    - (ii) by operation of law.
- (8) All instruments of guarantee given pursuant to subsection (1) shall be scheduled and included in the Annual Report submitted

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

*[Section 16 amended by No. 6 of 1993 s. 11; No. 49 of 1996 s. 64; No. 77 of 2006 s. 4 and Sch. 1 cl. 83(8).]*

**17. Evidence of Treasurer's approval etc.**

- (1) In relation to any power of approval or direction on the part of the Treasurer provided for in this Act the Treasurer may, by an instrument signed by the Treasurer, delegate all or any of those powers to an officer of the Treasury and thereupon —
  - (a) the person to whom power is so delegated may exercise the power in the same manner and with the same effect as if the power were directly conferred upon the officer by this Act and not by delegation; and
  - (b) a person who purports to exercise power pursuant to a delegation conferred under this subsection is presumed to do so in accordance with the terms of the delegation in the absence of proof to the contrary.
- (2) Where under this Act the approval of the Treasurer is required in relation to any transaction or any matter is or may be affected by a direction given by the Treasurer, if the person for the time being holding or acting in the office of Under Treasurer of the State is satisfied —
  - (a) that the Council has complied with this Act and any such direction of the Treasurer; and
  - (b) that any requirements of the Treasury as to —
    - (i) the disclosure to the Treasury of relevant information; and
    - (ii) the terms and conditions applicable and the manner by which the transaction is to be effected; and
    - (iii) the form and content of any security or other document required to be executed relating to the proposals,

have been met; and

- (c) that the approval required by this Act in respect thereto has been given,

that person may give a signed certificate, in a form agreed with the parties to the relevant transaction, expressed to have been prepared in respect of that transaction and to be given for the purposes of this section, as to the matters referred to in this subsection.

- (3) A certificate given under subsection (2) shall be conclusive evidence of the facts therein stated as between the parties to the original transaction or their successors or assignees in any proceedings arising from or relating to that transaction.

**18. Duty, taxes and rates, exemptions from**

- (1) Notwithstanding the provisions of the *Duties Act 2008*, no duty shall be payable in respect of any agreement, conveyance or transfer, or lease, deed of gift or deed of settlement, or other document entered into for the purposes of this Act and in relation to which the Council would otherwise be liable to pay the duty under that Act.
- (2) A tax or rate shall not be charged or levied by or under any law of the State on or in respect of any land for the time being vested in, leased to, or placed under the control of, the Council and used or preserved by, or by arrangement with, the Council unless —
- (a) that land is leased to, or occupied by, some other person for a purpose that —
- (i) is not directly related to the carrying out by the Council of its functions under this Act; and
- (ii) is not necessary or conducive to the attainment of the objects of this Act;
- or
- (b) the Council otherwise agrees.

*[Section 18 amended by No. 12 of 2008 Sch. 1 cl. 14.]*

### **Division 4 — Membership**

#### **19. Membership and quorum of Council**

- (1) The membership of the Council shall be appointed by the Governor on the recommendation of the Minister, having regard to subsections (4) and (5), and shall comprise —
  - (a) a Chairperson; and
  - (b) a nominee of the National Trust of Australia (W.A.); and
  - (c) a person appointed to represent the interests of local government; and
  - (d) a person appointed to represent the interests of owners; and
  - (e) a person appointed to represent professional organizations having relevant professional skills; and
  - (f) 4 other persons,having qualifications particularly relevant to, or expertise or experience or a practical interest in, matters within the functions of the Council.
- (2) A quorum of the Council shall be constituted by 6 members entitled to vote.
- (3) The Minister shall recommend for appointment under subsections (1)(c), (d) and (e) respectively a person chosen from nominees put forward by —
  - (a) local government interests; and
  - (b) groups purporting to represent the interests of owners; and
  - (c) professional organizations with skills relevant to the conservation of places of cultural heritage significance.

- (4) In recommending appointments under subsection (1)(f) the Minister shall have regard to representations made by relevant local interest groups or persons which may include those referred to in subsection (3).
- (5) Any interest group or person seeking to obtain the recommendation of the Minister in respect of any prospective appointment to the Council shall furnish to the Minister —
  - (a) the name or names of any nominees having the support of that group or person; and
  - (b) particulars of the area of interest sought to be represented, and of the qualifications, expertise and experience of each prospective member nominated; and
  - (c) a signed consent on the part of each person so nominated.

**20. Term of office**

- (1) Subject to this section, the term of tenure of office of a member shall be 5 years or such lesser period as the Governor, having regard to the need to maintain continuity of membership on the Council, may determine and cause to be specified in the instrument of appointment.
- (2) A member may resign office by a written notice given under the hand of the member addressed to, and received by, the Minister, but a member whose term of office expires or who resigns from office shall be eligible for re-appointment.
- (3) If a member —
  - (a) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
  - (b) is absent, without the permission of the Minister, from 3 consecutive meetings of the Council of which the member has been given notice; or
  - (c) is removed from office pursuant to subsection (4),

the office becomes vacant and the person shall not thereafter be eligible for re-appointment.

- (4) A member may, at any time, be removed from office by the Governor, on the recommendation of the Minister and on grounds established to the satisfaction of the Governor, by reason of impairment, within the meaning of Part IVA of the *Equal Opportunity Act 1984*, affecting the performance of his or her duties, incompetence, inefficiency, neglect of duty or misconduct.

*[(5) deleted]*

- (6) A member may be appointed on terms that require the member to devote his or her full time to the performance of the duties of that office, but may be granted leave of absence by the Minister.

- (7) Any reference in this Act to a member shall, unless the context otherwise requires, be construed as including a reference to a person who is —

- (a) the Chairperson; or
- (b) appointed by the Minister under section 21 to act in a vacant office or in the place of an appointed member during any vacancy, absence, or temporary incapacity; or
- (c) appointed as a co-opted member under section 23,

whilst the person holds or acts in that office.

*[Section 20 amended by No. 57 of 1997 s. 71; No. 18 of 2009 s. 41.]*

## **21. Acting members**

- (1) The Minister may appoint a person to act in the place of the member during any period when a member is absent or unable to perform the functions of that office, or if the office is vacant and is for the time being not filled, as the case requires, and any



person so appointed has, while so acting, all the functions and entitlements of a member.

- (2) Where a person is to be appointed under subsection (1) to act in the place of a member, the Minister shall first seek the advice of the relevant interest group.

## 22. Delegation by Council or Chairperson

- (1) Any function of the Council may be performed, and any power (other than this power of delegation) may be exercised or duty carried out on behalf of the Council by a person other than the Council, if the Council delegates, by resolution of which notice is published in the *Gazette*, that function, power or duty to that person, either generally or in respect to any particular matter.
- (2) The Chairperson may, whenever it is necessary to do so, delegate generally to a member or to an officer or other person referred to in section 27 who is —
- (a) specified in the instrument of delegation; and
  - (b) approved by the Minister for the purposes of this subsection,

(in this section called the *delegate*) all of the powers and duties of the Chairperson under this Act in relation to meetings of the Council, other than this power of delegation, but in default of any such delegation the exercise and performance of those powers and duties may be undertaken by a member so authorised by the Minister.

- (3) Notwithstanding subsection (2) but subject to the approval of the Minister, the Chairperson may by notice published in the *Gazette* delegate, either generally or as otherwise provided by that notice, to —
- (a) a member, or any officer or other person appointed or engaged under section 27; or
  - (b) a committee of the Council; or

- (c) a public authority or officer or employee of a public authority,

specified in that notice (in this section also called the *delegate*) all or any of the powers and duties of the Chairperson under this Act, other than the powers and duties in relation to meetings of the Council and this power of delegation.

- (4) The Chairperson shall cause the name or title of the delegate to be published in the *Gazette*.
- (5) A power or duty delegated by the Council or the Chairperson under this section shall, if exercised or performed by the delegate, be exercised or performed in accordance with the instrument of delegation.

**Division 5 — Proceedings of the Council, etc.**

**23. Co-opted members and consultation**

- (1) The Council may appoint, subject to the consent of the Minister, any person having specialized knowledge or experience relevant to the purposes of this Act to be a co-opted member for such period, or in relation to such matters, as the Council may specify in the instrument of appointment.
- (2) A person co-opted under subsection (1) is not eligible to vote but otherwise, for the period and in relation to the matters in respect of which the person is co-opted, may take part in the deliberations of the Council and has all the functions and entitlements of a member.
- (3) Where the Council invites or engages any person, or a representative of any person or organization to participate in meetings of the Council in a consultative capacity in relation to any particular aspect of the functions of the Council that person may be permitted to take part in the deliberations of the Council, but is not eligible to vote.

- (4) Where the Council is to consider the giving of advice to the Minister under section 47 or 49 in relation to a place the Council shall, in writing, notify the local government of the district in which the place is situated and invite it to nominate a person to participate in meetings of the Council at which that advice is formulated.
- (5) A person nominated under subsection (4) may take part in the deliberations of the Council in relation to the formulation of the advice referred to in that subsection, and is eligible to vote on that matter.

*[Section 23 amended by No. 14 of 1996 s. 4.]*

#### **24. Proceedings and meetings of Council**

- (1) Subject to this Act and the *Interpretation Act 1984* the proceedings of the Council may be regulated in such manner as the members think fit.
- (2) A meeting of the Council may be convened by the Minister or by the Chairperson, and where 3 or more members give notice in writing to the Chairperson requiring the Chairperson to convene a meeting in relation to any matter the Chairperson shall at their request convene a meeting of the Council to be held within 14 days thereafter to deal with that matter.
- (3) In the absence or incapacity of the Chairperson and of any person to whom the Chairperson has given a relevant delegation under section 22(2), the members present at a meeting shall select one of their number to preside, and the person so selected has and may exercise all the powers of the Chairperson whilst so presiding.
- (4) A record of the proceedings of every meeting shall be kept in such manner as the Minister may direct or approve, and shall be corrected as necessary and certified by the member presiding at that or the next succeeding meeting, and the Council shall ensure that the Minister is furnished with those minutes and with any further or other information and reports on the

activities or proposed activities of the Council that the Minister may require.

- (5) No act or omission on the part of a person acting in place of another under this Division shall be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.
- (6) A question arising at a meeting of the Council shall be decided by a majority of the votes of the members present and eligible to vote, and the member presiding at that meeting may exercise both a deliberative vote and, in the event of the votes recorded being otherwise equal, a casting vote.
- (7) The Minister shall convene the first meeting of the Council as soon as practicable after the coming into operation of this section, and thereafter the Council shall hold meetings at such times and places as the Minister directs or the Council determines.
- (8) In all cases of dispute, doubt or difficulty respecting or arising out of matters of procedure or order, the decision of the member presiding is final.

**25. Committees**

- (1) The Council may, from time to time, appoint a committee or committees to investigate and advise the Council on any aspect of its functions or to carry out such of the functions and duties, or exercise such of the powers, of the Council as the Council may, subject to subsection (5) determine.
- (2) The carrying out of any duty or the exercise of any power by a committee does not relieve the Council of the responsibility for the decisions of that committee.
- (3) A committee consists of a Chairperson and such other persons as the Council appoints, but so that in every case not less than one of the persons appointed to the committee shall be a person who is a member of the Council.

- (4) Each committee shall report to the Council on its activities at such times as the Council directs.
- (5) Subject to —
  - (a) the directions of the Minister and of the Council;
  - (b) the terms of any delegation under section 22(1) or (3);
  - (c) this Act and the *Interpretation Act 1984*,

each committee may determine its own procedures, but in default of any such determination section 24 shall have effect in relation to the proceedings of a committee as if a reference in that section to the Minister were a reference to the Chairperson, a reference to the Council were a reference to the committee, a reference to the Chairperson were a reference to the Chairperson of the committee, and a reference to a member were a reference to a person appointed to the committee.

## **26. Conflict of interest**

- (1) A person who is a member, or is appointed to a committee of the Council —
  - (a) who has in any way, whether directly or indirectly, a pecuniary interest in any matter before the meeting for consideration or in any other matter that arises or is likely to arise out of a matter before the meeting for consideration, shall, as soon as possible after the relevant facts have come to the knowledge of that person, make a full disclosure of the nature and extent of that interest at the meeting; and
  - (b) on being requested to do so by the person presiding at the meeting, shall make a full disclosure as to whether or not the person has, and the nature and extent of, any pecuniary interest in a matter before the meeting or any other matter arising or likely to arise out of that matter as to which the person presiding may inquire.

(2) Every disclosure made pursuant to subsection (1), and particulars of any request made under subsection (1)(b), shall be recorded in the record of the proceedings of the meeting at which it is made.

(3) Where —

- (a) disclosure is made of a pecuniary interest or likely pecuniary interest; or
- (b) the person presiding at the meeting is of the opinion that a disclosure requested has not been adequately made,

the person presiding at that meeting may put to the meeting the question as to whether or not the member or person appointed to the committee making the disclosure or requested to make the disclosure should be present during the consideration of the matter in relation to which the pecuniary interest exists or may arise.

(4) Where the question is put to the meeting in accordance with subsection (3), the meeting may determine that the member or person appointed to the committee to whom the question relates —

- (a) should not be present during the consideration of the matter in relation to which the pecuniary interest exists or may arise; or
- (b) should be permitted so to be present and —
  - (i) shall be permitted to take part in the consideration and to vote; or
  - (ii) shall be permitted to take part in the consideration, but shall not be eligible to vote,

in relation to the matter, as the case may require, and effect shall be given to the determination.

(5) Where a meeting proposes to deliberate the question of a determination to which subsection (4) refers the member or

person appointed to the committee to whom the question relates shall not —

- (a) unless the meeting otherwise agrees, be present during the deliberation; or
  - (b) be eligible to take part in the making of the determination.
- (6) The requirements of subsection (1) do not apply in any case where the interest of the member or person appointed to the committee consists only of being —
- (a) a member or creditor of a corporation that is interested in a contract or proposed contract with the Council; or
  - (b) a member of a body by which that member or person was nominated for the purposes of this Act,

if the interest of that person may properly be regarded as not being both a material personal and also a pecuniary interest of that member or person.

- (7) For the purposes of subsection (1), a general notice given to the Council or that committee by a person to the effect that the person is an officer of or associated with a specified corporation, firm or body and is to be regarded as having a pecuniary interest in any contract that may, after the date of the notice, be made with that corporation, firm or body shall be deemed to be a sufficient disclosure of that interest if —
- (a) the notice states the nature and extent of the interest of the person in the corporation or firm or body; and
  - (b) the extent of the interest of that person in the corporation, firm or body is not greater than is stated in the notice; and
  - (c) the notice is given at a meeting of the Council or that committee, or the person takes reasonable steps to ensure that it is brought up and read at the next such meeting after it is given.

- (8) For the purposes of determining the existence of a majority or quorum in accordance with section 54 of the *Interpretation Act 1984* a member or person appointed to a committee who is precluded under this section from taking part in any deliberation or decision at a meeting with respect to a matter shall be deemed to be absent from the meeting while that matter is being deliberated or decided.

**Division 6 — Staff, remuneration, etc.**

**27. Staff, consultants etc.**

- (1) Under and subject to Part 3 of the *Public Sector Management Act 1994*, such persons may be appointed as may be expedient for the purposes of this Act.
- (2) The Chairperson on behalf of the Council may engage persons as wages or field staff otherwise than under Part 3 of the *Public Sector Management Act 1994* and persons so engaged shall, subject to any relevant industrial award or agreement, be employed on such terms and conditions as the Minister determines on the recommendation of the Public Sector Commissioner.
- (3) Without prejudice to the generality of section 10, and subject —
- (a) where the officer is a member of the Public Service, to the concurrence of the employing authority, within the meaning of the *Public Sector Management Act 1994*, of that officer; or
  - (b) where the public authority is a local government, to the consent of that local government; or
  - (c) where the public authority is not a local government, to the consent of the Minister of the Crown having responsibility for the administration of the relevant Act relating to that public authority,

the Council may utilise, with the consent of that public authority and only for the purposes of this Act, the services of any officer



of a public authority, or engage any such person on secondment, upon such terms as may be agreed between that public authority or that Minister and the Council.

- (4) Service with the Council under this section shall for the purposes of the *Superannuation and Family Benefits Act 1938*<sup>2</sup> be deemed to be service with a department, but where a person who is a contributor to the superannuation scheme established pursuant to the *Superannuation and Family Benefits Act 1938*<sup>2</sup> is seconded to service with the Council, the Council shall, if so directed by the Treasurer, reimburse the Treasurer on behalf of the Crown in right of the State for payment to the credit of the Consolidated Account the proportion of the State share of the liability in respect of that scheme in relation to the period of secondment.
- (5) The Council may, unless the Minister otherwise directs —
- (a) engage, under contract for services, such consultants and professional or technical or other assistance as may be necessary to enable the purposes of this Act to be carried out; and
  - (b) consult, collaborate with, or enter into arrangements with other persons, in the State or elsewhere, for or in relation to the conduct of any investigation, study, research or other matter that may be necessary or desirable for the purposes of this Act.

*[Section 27 amended by No. 6 of 1993 s. 11; No. 32 of 1994 s. 19; No. 14 of 1996 s. 4; No. 49 of 1996 s. 64; No. 77 of 2006 s. 4; No. 39 of 2010 s. 89.]*

## **28. Remuneration of members etc. of, and service with, Council**

- (1) A member, or a person appointed to a committee of the Council, may be paid such remuneration and allowances as the Minister, on the recommendation of the Public Sector Commissioner, determines.

- (2) If a person who would be eligible to receive remuneration or allowances under this Act is elected to, or becomes a candidate for election to, the Parliament of the State or of another State or of a Territory or of the Commonwealth, the person shall not be paid remuneration or allowances under this section but shall, subject to the approval of the Minister, be reimbursed such expenses as are reasonably incurred by that person by reason of attendance at meetings or of undertaking any business, with the approval of the Council.
- (3) Acceptance of or acting in office as a member under this Act by any person does not of itself render the provisions of Part 3 of the *Public Sector Management Act 1994*, or any other Act applying to persons as officers of the Public Service of the State, applicable to that person, or affect or prejudice the application to that person of those provisions if they applied at the time of the acceptance of or acting in that office.
- (4) Where the services of a member or any other person are for the time being utilised by the Council under this Act, it does not prejudice the existing or accruing rights of that person under the *Public Sector Management Act 1994* or any other written law, and service rendered on behalf of the Council pursuant to this Act shall be regarded as not constituting a break in the service in which the person would otherwise have been employed.

*[Section 28 amended by No. 32 of 1994 s. 19; No. 39 of 2010 s. 89.]*

## **Part 4 — Heritage Agreements and conservation incentives**

### **Division 1 — Heritage Agreements**

#### **29. Heritage Agreements**

(1) A Heritage Agreement may, subject to the approval of the Minister as signified by a certificate under section 32, be entered into on behalf of the Crown by —

- (a) the Council; or
- (b) a public authority; or
- (c) a body corporate,

with an owner or occupier of land or a building, for the purpose of binding the land or affecting the use of the land or building in so far as the interest of that owner or occupier permits, and may be expressed to relate to a specified period or to be of permanent effect, in accordance with the tenor of the Agreement.

(2) A Heritage Agreement may be entered into in respect of any land, or a building on any land, where the land constitutes the whole, or any part of, or is contiguous to or otherwise associated with —

- (a) a registered place; or
- (b) a place that the Council advises should be entered in the Register, the Agreement being conditional upon that registration being effected; or
- (c) a place which the Minister directs should be made the subject of an Agreement by reason of —
  - (i) special interest, not necessarily amounting to significance, relevant to the cultural heritage which that place possesses; or

- (ii) the relationship of that 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, but any contiguous or associated land shall be made subject to the Heritage Agreement only in so far, and to such depth below the natural surface, as may be reasonably necessary for the purposes of conservation.
- (3) For the purposes of this Act land may be taken to be associated with a place where development rights or requirements, or planning considerations, or other interests in or affecting that land or that place will or may be transferred, taken into account, foregone, utilised or altered as an incentive to, or for the purposes of effecting, the conservation of that place in accordance with this Act.
- (4) A Heritage Agreement shall not be entered into, varied or terminated unless or until the Minister —
  - (a) is satisfied that a reasonable opportunity has been afforded to the Council to make inquiries and consider any submissions as to the terms of the proposed Agreement; and
  - (b) has considered any advice given by the Council in relation to the proposed Agreement; and
  - (c) in a case to which subsection (5) applies, has approved the proposed covenant, variation of covenant, or termination of the covenant.
- (5) Where an Agreement is to include a covenant of the kind referred to in subsection (10), the Minister may as a condition of the giving of approval require that the Council —
  - (a) by public advertisement —
    - (i) gives details of the covenant proposed to be entered into, varied or terminated and a

description of the land or building affected  
sufficient to identify it; and

- (ii) invites submissions to be made to the Council within a period and in a manner specified in the advertisement;

and

- (b) after that period has elapsed, furnishes to the Minister its recommendations, and a report on any submissions made to the Council.

- (6) The chief executive officer of the department principally assisting in the administration of the *Land Administration Act 1997*, the Registrar of Titles or the Registrar of Deeds and Transfers (as the case may be) and the Director General of Mines, on being advised by way of memorial lodged by or for the Council on behalf of the Crown that a Heritage Agreement has come into force and on a copy of the Agreement as certified under section 32(1) being deposited for reference by the Council with the memorial so lodged, shall —

- (a) enter a memorial on the title to any land affected, or take such other steps as may be necessary for the purpose of bringing the Agreement to the attention of persons seeking information as to the title to that land or as to any mining tenement granted under the *Mining Act 1978* in respect of that land; and
- (b) advise the Council of the names and any known address of each of the persons appearing (from an inspection of the register books, or a search of memorials registered, under the relevant Acts) to hold an estate or interest in the land or a mining tenement in respect of that land,

whereupon the Council shall take such steps as may be reasonable to ensure that notice has been, or is then, given to all such persons that the Heritage Agreement has come into force and as to its effect.

- (7) A Heritage Agreement is deemed to be a contract binding on the Crown and, subject to section 8(3), enforceable by the Council on behalf of the Crown against any owner or occupier of any land or building affected by the Agreement who was, or is the successor in title to, a party to the Agreement.
- (8) Where a Heritage Agreement comes into force in relation to any land, on a memorial relating to that Agreement being entered on the title or notice pursuant to subsection (6) otherwise having been given, the rights and obligations of the Crown and any persons who entered into the Agreement pass to and are binding on and enforceable against or by their respective successors in title, and all such persons shall be deemed to have notice of the Agreement.
- (9) A reference in this section to a *successor in title* to any person in relation to any land includes a reference to a person who is a mortgagee or the proprietor of an encumbrance in possession of the land pursuant to a mortgage or encumbrance, notwithstanding that the mortgage or encumbrance was entered into before a memorial was entered on the title pursuant to subsection (6) or notice of the Agreement was otherwise given.
- (10) A Heritage Agreement may include a covenant, intended to run with the land, relating to the development or use of the land or any part of the land or the conservation or care of any building, natural feature or other object and any such covenant shall be enforceable by the Council on behalf of the Crown (notwithstanding that the covenant may not be of a negative character or requires the performance of a positive act) in the like manner and to the like extent as if the Crown were possessed of or entitled to or interested in adjacent land and as if the covenant had been, and had been expressed to be, entered into for the benefit of, and did benefit, adjacent land.

- (11) Where any covenant of the kind referred to in subsection (10) is entered into pursuant to a Heritage Agreement —
- (a) in the case of land under the *Transfer of Land Act 1893*, the provisions of Division 3A of Part IV of that Act apply to and in relation to the registration, extinguishment, discharge, modification and dealing with that covenant and any restriction arising therefrom; and
  - (b) in the case of land other than land under the *Transfer of Land Act 1893* —
    - (i) the provisions of sections 129B and 129C of that Act apply to and in relation to the discharge, extinguishment, modification and dealing with that covenant and any restriction arising therefrom as if the land were land under that Act and as if provisions to the like effect with the necessary modifications to apply to the land in question had been enacted in this Act; and
    - (ii) the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856* shall, upon the production of the memorial as to the agreement or judgment in question required under that Act, give due effect to any agreement duly made of the kind referred to in section 129B of the *Transfer of Land Act 1893* or to any order of a judge of the kind referred to in section 129C of that Act as applied by subparagraph (i).
- (12) Unless a contrary intention is expressed in that Agreement sections 47, 48, 50, 51 and 52 of the *Property Law Act 1969* apply to and in relation to the provisions of a Heritage Agreement as they apply to and in relation to a covenant.

- (13) Without prejudice to the generality of this section, a Heritage Agreement may —
- (a) by covenants binding on the owner or occupier of, and any successor in title to, land or a building thereby affected —
    - (i) restrict the use of the land or any building; or
    - (ii) require persons to refrain from any activity that adversely affects the cultural heritage characteristics of any place or building or from any activity of a specified kind that in the opinion of the Council might tend to have that effect, or impose conditions in relation to the carrying on of any such activity; or
    - (iii) provide for the inspection of the land and require that facilities be provided for that inspection; or
    - (iv) require works to be carried out, or that the Council be permitted to carry out works or to cause works to be carried out, for the conservation of cultural heritage characteristics; or
    - (v) require that an indemnity be furnished to the Council in respect of, or that a contribution be made towards, costs incurred by or on behalf of the Council in carrying out any such works; or
    - (vi) stipulate the manner in which moneys provided by or at the behest of the Council shall be applied by the owner or occupier; or
    - (vii) require the repayment of any moneys provided by or at the behest of the Council or which have been remitted pursuant to section 36, if a specified breach of the Agreement occurs;
  - (b) make provision, on behalf of the Crown or otherwise, for financial or other assistance, for professional or technical advice, or for any other matter relevant to the



conservation of the cultural heritage characteristics to which the Agreement relates including —

- (i) the exchange, acceptance, administration, or control pending its transfer to a suitable custodian, of any land, work, building or other thing (whether or not associated with or connected with any particular place) of cultural heritage significance; or
  - (ii) the delivery of any work or other thing into the custody or control of any local government, museum, gallery, library, or other person, for any purpose; or
  - (iii) the management of any business or other property;
- (c) make provision for the making of charges or the imposition of fees in relation to places for the time being maintained or activities promoted, arranged or controlled by or at the behest of the Council, including securing facilities for public access, on payment or otherwise;
- (d) subject to an order being made under section 38, require that any buildings preserved and any alterations or restorations to those buildings shall comply with the provisions of the law as the law existed at the time of the original construction of those buildings, or at some other specified time, rather than such provisions as are for the time being in force;
- (e) prohibit, restrict, or permit the construction or erection of buildings or structures or the execution of other works above or below ground within the area of land to which the Agreement relates, or the alteration or extension of any such buildings, structures or works in such manner as materially to affect their external appearance or their relationship to the place or a building to which the Agreement relates;

- (f) require that any works be executed in accordance with a specified standard or specified requirement, or to the satisfaction of a specified body;
- (g) in conjunction, where necessary, with an order made under section 38 make provision in or by reference to the Agreement, for —
  - (i) the grant, giving up, alteration, exchange, or transfer to other land of rights, consents, facilities, easements, planning ratios, development rights, setback requirements, density scales, vehicle parking, zoning or other matters as may in the public interest be appropriate to the implementation of the objects of the Agreement, including arrangements whereby rights, requirements or obligations may be dealt in or with separately from the land to which they would otherwise relate;
  - (ii) payment of money;
  - (iii) the requirements as to the safety, maintenance, inspection, or licensing of premises to which other written laws would, but for an order under section 38, otherwise apply;
  - (iv) the registration, control or notification of other interests and matters in relation to the title to the land or to development rights or requirements and planning considerations, whether accrued, foregone or transferred,and, where the consent of a planning body or other public authority is required to give effect to any proposal, for that authority to become a party to the Agreement;
- (h) subject to this Act and to the consent of the Minister, generally make whatever provision the Council considers to be necessary or expedient for the purposes of conservation or in order to stimulate interest in places

of cultural heritage significance or to make them accessible to the public.

- (14) The terms on which a Heritage Agreement is entered into may make provision limiting the application of the Agreement to the depth below the natural surface of the land, or by reference to some other measure or constraint, specified in that Agreement.
- (15) A Heritage Agreement —
- (a) comes into force on a day specified, or on the happening of an event specified, in the Agreement; and
  - (b) may, subject to subsection (4), be varied or terminated —
    - (i) where approved by the Minister, by a subsequent agreement entered into between the parties to the Agreement or their successors in title; or
    - (ii) otherwise, in a manner or in circumstances provided for in the Agreement.
- (16) In subsections (10) and (13) a reference to the **Council** may, in relation to any Heritage Agreement to which the Council is not a party, be construed as including a reference to the party which entered into that Agreement on behalf of the Crown.

*[Section 29 amended by No. 14 of 1996 s. 4; No. 60 of 2006 s. 136.]*

**30. Owner etc. of land wanting Heritage Agreement may refer certain question to State Administrative Tribunal**

- (1) Where the owner or occupier of, or of a building on, land described in section 29(2) is willing to enter into a Heritage Agreement but —
- (a) no party willing and able to enter into the Agreement on behalf of the Crown can be found; or
  - (b) negotiations for an Agreement have not resolved all matters of concern to that person,

that person (in this section referred to as the *applicant*) may by notice in writing require the Minister to refer to the State Administrative Tribunal the question of the effect of the operation of this Act upon the estate or interest of that person in the place to which the question relates and in particular as to whether it would be appropriate for a Heritage Agreement to be entered into and, if so, what provisions that Agreement should contain, including provisions that could have effect only if an order were made under section 36, and, if such an order were disallowed, what other provisions would, in the circumstances, be reasonable.

- (2) Where notice is given under subsection (1) the Minister may —
- (a) require the applicant to undertake to execute and give effect to any Heritage Agreement the provisions of which the State Administrative Tribunal may approve, and may require security for that undertaking; and
  - (b) require to be satisfied or give directions to ensure that section 29(4) and (5) are observed in so far as any proposed provisions of an Agreement may then be negotiated,

prior to referring any question to the State Administrative Tribunal.

- (3) The notice to be given under subsection (1) shall state in general terms —
- (a) the nature of any event or decision occurring by reason of this Act and giving rise to the request made in the notice; and
  - (b) the nature of any effect alleged; and
  - (c) the extent, if any, to which any adverse effect has been or could be mitigated, by any public authority or in any other manner; and
  - (d) whether negotiations for a Heritage Agreement have been commenced, the parties to any such negotiations,

- the issues negotiated and the result of those negotiations;  
and
- (e) what matters of concern to the applicant remain unresolved; and
  - (f) what measures the applicant is willing to take to effect the conservation of the cultural heritage which the place possesses.
- (4) The State Administrative Tribunal shall determine a question referred under this section and in so doing —
- (a) may require the Council to represent the Crown, or the Minister to nominate a party to enter into any Agreement to be negotiated on behalf of the Crown; and
  - (b) shall have regard to the provisions of Part 4; and
  - (c) may provide that effect shall not be given to any measure, whether negotiated or determined, unless or until —
    - (i) a Heritage Agreement embodying that measure has come into force; and
    - (ii) if that Agreement requires the making of an order under section 38, that order has been made in terms acceptable to the State Administrative Tribunal and the period during which the order is subject to disallowance has elapsed;
- and
- (d) may initiate or assist in negotiations with persons likely to be affected by the determination of the State Administrative Tribunal, and adjourn the proceedings meanwhile, and shall ensure that all persons likely to be requested to become a party to any proposed Agreement are given a reasonable opportunity of properly considering and replying to any submission made; and
  - (e) shall, in so far as it thinks practicable, proceed by way of review of relevant decisions taking into account —

- (i) community representations as to the heritage significance of the place; and
- (ii) what measures of the kind referred to in section 29(13)(g) have been considered, and if practicable implemented; and
- (iii) any concessions offered by relevant public authorities or other bodies to promote the heritage conservation; and
- (iv) the need to make equitable provision for the applicant; and
- (v) the paramount public interest, so that measures offered as an inducement to conservation shall not be prejudicial to that interest overall;

and

- (f) may seek professional opinions on land valuation and related matters from persons not called as a witness by a party to the proceedings; and
- (g) may require that other avenues of application or appeal appropriate to the circumstances be utilised and determined prior to the intervention of the State Administrative Tribunal, unless all parties to the proceedings otherwise agree; and
- (h) may recommend to the Minister the making of specific provisions to be included in any order to be made under section 38, any such provision being taken for the purposes of that section to have received the recommendation of the Council,

and shall cause to be prepared a Heritage Agreement the provisions of which are approved by the State Administrative Tribunal and embody the findings determined by the State Administrative Tribunal.

- (5) Where the State Administrative Tribunal makes a determination in relation to any question under this section —

- (a) that determination shall be taken also to be the determination and recommendation of the Council; and
- (b) effect shall be given to that determination by —
  - (i) the parties to the proceedings; and
  - (ii) the Council; and
  - (iii) the Treasurer; and
  - (iv) the Minister; and
  - (v) any other decision-making authority;and
- (c) a Heritage Agreement entered into pursuant to that determination the provisions of which are approved by the State Administrative Tribunal shall for the purposes of section 32 be taken to have been —
  - (i) entered into to the satisfaction of the Minister; and
  - (ii) so certified,if endorsed as so approved by the executive officer of the State Administrative Tribunal.

*[Section 30 amended by No. 55 of 2004 s. 501, 507 and 508.]*

**31. Damages in relation to Heritage Agreements**

- (1) Unless that Agreement otherwise provides, entry into a Heritage Agreement does not affect a right of action for damages or payment of money where the right of action arose before a memorial as to the Heritage Agreement was entered on, or notice of the Agreement was otherwise given in relation to, the title to the land.
- (2) Damages for contravention of that Agreement may be awarded to the Council on behalf of the Crown, or a party to the Agreement or other person aggrieved who has thereby suffered loss, against the owner or occupier of land or a place to which a Heritage Agreement relates unless the person shows that the contravention occurred without the consent or connivance of

that person and that the person exercised all reasonable care to prevent it.

- (3) In assessing damages for contravention of a Heritage Agreement by an owner or occupier of land or a place to which the Agreement relates, a court may, in addition to any actual loss suffered, take into account —
- (a) any detriment to the public interest resulting from the contravention; and
  - (b) any financial or other benefit that the person sought to gain by the contravention,

to the intent that the damages awarded shall not only compensate for any loss but also be such as to ensure that no person derives benefit from the contravention, that the land or building is restored to the extent that the contravention occasioned deterioration, and that subsequent or similar contraventions are deterred.

**32. Evidence of Heritage Agreements and variations to them**

- (1) Where a Heritage Agreement is entered into or varied and the Minister is satisfied that the Agreement, as so entered into or varied, is necessary for the purposes of, and complies with, this Act the Minister shall certify that fact on each executed copy of the Agreement or document evidencing the variation.
- (2) In any legal proceedings, an apparently genuine document purporting to be a copy of a Heritage Agreement certified in the manner referred to in subsection (1) shall, in the absence of proof to the contrary, be proof of the Agreement and its provisions.
- (3) The Minister shall cause a record to be maintained of the text of every Heritage Agreement that is entered into or varied under this Act, and where any place affected is a registered place a sufficient description to identify the land affected by, the parties



to, and the date and text of, the Agreement shall be shown in the Register in the entry relating to that place.

- (4) Any person may, without charge, inspect and copy extracts from the record kept pursuant to subsection (3).

### **Division 2 — Conservation incentives**

#### **33. Conservation assistance, Council may provide**

- (1) The Council may provide, or arrange for, financial, technical or other assistance to help in, or as an incentive for, the recording, conservation or presentation of a place that contributes to an overall sense of the history of its area if the area has cultural heritage significance, whether or not that place is itself of such significance as to be entered in the Register or made the subject of a Heritage Agreement.
- (2) Where —
- (a) any place is the subject of a proposal for registration; or
  - (b) any land or building is the subject of negotiations for a Heritage Agreement; or
  - (c) works or procedures are required to be undertaken urgently to ensure the recording, conservation or presentation of any place,

the Council may provide or arrange for immediate assistance or incentives towards conservation, including recommendation for the remission of rates and taxes, on the application of the owner or of the occupier with the consent of the owner, but shall impose conditions requiring repayment within a specified period unless within that period an agreement is entered into pursuant to subsection (3).

- (3) In relation to any place which is entered in the Register or a place which is the subject of a Heritage Agreement the Council may with the approval of the Minister enter into a written agreement to make grants, pay subsidies, lend moneys or

otherwise provide or arrange for assistance or incentives to any person for any purpose that will facilitate the recording, conservation or presentation of that place.

- (4) The Council may make use of, and seek contributions to, the Account for the purposes of this section.

*[Section 33 amended by No. 77 of 2006 Sch. 1 cl. 83(5).]*

**34. Certain decisions by decision-making authorities, Council may waive etc.**

- (1) Where an owner of any place that is recorded in the data base established under section 44 or a local government inventory under section 45 has made application to a decision-making authority and such authority has —
- (a) required any work that would detract from the heritage character of the place, or imposed as a condition to any necessary approval or consent to any work or development that it be carried out in a manner or to a standard that would detract from the heritage character of that place; or
  - (b) refused approval or consent for any work where such work would contribute to the enhancement of the heritage character of that place,

the owner may make application to the Council under this section for an order.

- (2) Where an application has been made to the Council for an order and the Council is of the opinion —
- (a) that —
    - (i) it would detract from the heritage character of the place if such works were required or if such conditions were imposed; or
    - (ii) such approval or consent for work were refused, as the case may be; and

- (b) such requirement, condition or refusal is made pursuant to the *Local Government (Miscellaneous Provisions) Act 1960* or any other prescribed Act; and
- (c) it is in the interests of the purposes of this Act that an order be made,

the Council may make an order waiving or varying such requirement, condition, or refusal and notwithstanding the provisions of the *Local Government (Miscellaneous Provisions) Act 1960* or any other prescribed Act, it shall be lawful to act or to carry out any work or development in accordance with the order.

- (3) The Council shall consult with the relevant decision-making authority before making any order under this section.

*[Section 34 amended by No. 14 of 1996 s. 4.]*

**35. Revaluations of places subject to Heritage Agreements etc.**

- (1) The owner or occupier of any place that is the subject of, or is the subject of negotiations for, a Heritage Agreement may apply to the Valuer General for a revaluation to take into account the effect of that Agreement, and the Valuer General shall regard that Agreement or those negotiations as rendering revaluation expedient pursuant to section 23 of the *Valuation of Land Act 1978* and value or cause to be valued any land or building thereby affected or proposed to be affected in such a manner as to reflect what is, or what would become, the then current value subject to the provisions of the Agreement or proposed Agreement, as the case may require, but shall not give effect to any revaluation arising by reason of negotiations for a Heritage Agreement unless or until that Agreement has been concluded.
- (2) Where a Heritage Agreement appears to the Council to be likely to be entered into, or to be varied or terminated, the Council —
  - (a) shall cause particulars to be furnished to the Valuer General; and

- (b) shall inform the Valuer General where any land or estate or interest in land appears likely to be thereby affected; and
- (c) shall not conclude the negotiations in respect of the Agreement without consultation with the Valuer General.

**36. Remission of certain taxes and rates for places subject to Heritage Agreements etc.**

- (1) Where it appears to the Council in relation to any place that is entered in the Register or is the subject of, or is the subject of negotiations for, a Heritage Agreement —
  - (a) (i) that the use or continued use of that place is not economically feasible; and
  - (ii) its conservation is thereby endangered;or
  - (b) in special cases where in the opinion of the Council the conservation of the place will be secured,

the Council may make a report to the Minister recommending that one or more of the powers conferred by subsection (2) be exercised.
- (2) Where, after the consultation referred to in this section, the Minister approves a recommendation made under subsection (1) the Minister may forward that recommendation to the Governor who may, by order —
  - (a) on being satisfied that there has been consultation by the Council with the Commissioner of State Revenue — remit the whole or any part of the tax payable by the owner under the *Land Tax Assessment Act 2002* that is attributable to that place; and
  - (b) on being satisfied that there has been consultation by the Council with the Western Australian Planning Commission established by the *Planning and*

*Development Act 2005* — remit the whole or any part of the Metropolitan Region Improvement Tax payable by the owner in respect of that place under section 200 of the *Planning and Development Act 2005*; and

- (c) on being satisfied that there has been consultation by the Council with the Minister for Local Government and with any relevant local government, and subject to the consent of that council — remit the whole or any part of any relevant rates or charges in lieu of rates or charges for services payable in respect to the place; and
- (d) on being satisfied that there has been consultation by the Council with the Minister to whom the administration of the *Water Agencies (Powers) Act 1984* is for the time being committed by the Governor — remit the whole or any part of any relevant rates or charges in lieu of rates or charges for services payable in respect to that place,

and where the Governor remits any moneys under this section they shall cease to be payable, unless section 37(1) applies.

- (3) The Commissioner of State Revenue, and any local government concerned, shall comply with and give effect to any order made by the Governor under this section according to its tenor, notwithstanding the provisions of any other Act, and no interest shall accrue under section 6.51 of the *Local Government Act 1995* in relation to the amount of any rate which by the operation of such an order has ceased to be payable.
- (4) Any order made by the Governor under subsection (2) may, subject to the like requirements for consultation or consent, be varied or revoked by a further order.
- (5) An order made by the Governor under this section shall be published in the *Gazette*.

*[Section 36 amended by No. 84 of 1994 s. 46; No. 73 of 1995 s. 188; No. 14 of 1996 s. 4; No. 45 of 2002 s. 15; No. 38 of 2005 s. 15.]*

**37. Tax or rate remitted may be recovered in certain circumstances**

(1) Subject to subsection (2), where —

(a) an order made under section 36 is varied or revoked; or

(b) a place, or a portion of a place, is removed from the Register, or ceases to be the subject of a Heritage Agreement, as a consequence of an application by the owner; or

(c) at a place which is entered in the Register or is the subject of a Heritage Agreement —

(i) demolition of a building occurs; or

(ii) an alteration is made to a building; or

(iii) any other development occurs,

resulting in a person being convicted of a contravention of this Act, or in a person committing a contravention of a provision of a relevant Heritage Agreement, from which contravention the Minister alleges that a person liable to have paid such moneys has benefited unjustly,

any land tax, Metropolitan Region Improvement Tax, rates or charges in respect of the land or other property affected for which a person would have been liable during a preceding period not exceeding 7 years had that liability not been remitted or reduced by the operation of this Division shall, where the Governor on the recommendation of the Minister after consultation with the Council by order so requires, become payable by the person in whose favour the liability was so remitted or reduced, or the successor in title of that person, in accordance with the provisions of that order.

(2) Before recommending the making of an order under subsection (1) the Minister, by notice in writing, shall —

(a) advise the person against whom the order is to be made of any grounds upon which it is alleged that the person has benefited unjustly by —

- (i) any contravention; or
    - (ii) the remission or reduction,  
to which the proposed order is to relate; and
  - (b) invite that person to show cause why the provisions of the order should not have effect.
- (3) A person aggrieved by a notice under subsection (2), may, within 30 days of the receipt of that notice, require the Minister to refer to the State Administrative Tribunal any question as to —
- (a) whether the variation or revocation of an order made under section 36 has occasioned injustice; and
  - (b) whether a contravention of the Act or of a provision of a relevant Heritage Agreement occurred and whether any person liable to have paid such moneys, or a successor in title of that person, thereby benefited; and
  - (c) whether, and to what extent, any person has benefited, or would be likely to benefit, unjustly by reason of any such contravention or of the remittance or reduction,
- and the State Administrative Tribunal may determine any such question.
- (4) A recommendation for the making of an order under subsection (2) shall not be inconsistent with any finding made by the State Administrative Tribunal on a reference in relation to the same or a related matter under subsection (3).
- (5) The State Administrative Tribunal may for the purposes of this section —
- (a) in the case of a contravention of this Act, take judicial notice of the conviction of a person in respect of that contravention; and
  - (b) determine on the balance of probabilities —

- (i) in the case of an alleged contravention of a provision of a Heritage Agreement, whether the contravention occurred; and
    - (ii) whether or not a person committed, or benefited from, any contravention;
  - and
  - (c) apportion liability, where land has ceased to be held or occupied by the person in whose favour the moneys due were reduced or remitted; and
  - (d) make such other order in the matter as the State Administrative Tribunal thinks fit.
- (6) Where any of the things mentioned in subsection (1)(a), (b) or (c) occurs, the Valuer General may revalue, or cause to be revalued, any land or building to which the finding relates having regard to the tenor of that finding.
- (7) Moneys payable by the operation of this section may be recovered, by the public authority to which they are owing or by the Council on behalf of that authority, as a debt due from the person in whose favour they were remitted or reduced, or from the successor in title to that person, in any court having jurisdiction in relation to a debt of that amount.
- (8) Where —
- (a) moneys that would otherwise be payable to a public authority by a person other than the Council in respect of any place become, by reason of the operation of this Act, not so payable; and
  - (b) subsequently those moneys become payable by reason of this section and are thereafter received by the public authority from or on behalf of any person other than the Council,
- any moneys paid to the public authority by the Council in respect of a like liability shall be refunded by the public authority to the Council.



*[Section 37 amended by No. 55 of 2004 s. 502, 507 and 508.]*

**Division 3 — Amendment of written laws, etc.**

**38. Minister may disapply etc. written laws affecting conservation of registered place**

- (1) Where any aspect of measures proposed in relation to the conservation of a registered place is prohibited or impeded by, or by reason of the operation of, a written law, the Minister on the recommendation of the Council may, by order published in the *Gazette*, declare that —
- (a) that written law, or specified provisions of that written law; or
  - (b) any Code of practice, standard, or other legislative requirement arising from the operation of, or any method of implementation of, that written law,

shall not apply to, or have effect in relation to that place or to any land which is for the purposes of this Act associated with that place, or shall apply or have effect subject to specified amendments, in such circumstances or subject to such conditions, if any, as are specified, and the written law in respect of that place or such land shall be thereupon deemed to have been amended and effect shall be given to the order according to its tenor.

- (2) In subsection (1), *specified* means specified in the order.
- (3) Where the Council is of the opinion —
- (a) that the measures proposed as an incentive to, or as needed to effect, the proposed conservation of a place constitute a workable arrangement; and
  - (b) that the conservation of that place pursuant to those measures and the making of an order to give effect to legislative amendments needed to implement those measures is so necessary as to warrant it,

notwithstanding that the interests of persons may be affected in a way that is not acceptable to those persons,

the Council may recommend to the Minister that an order be made under subsection (1) accordingly, but shall not do so otherwise.

- (4) An order under subsection (1) shall not be made unless —
- (a) where a Minister of the Crown, other than the Minister administering this Act, is responsible for the administration of a written law to which the proposed order applies, the Minister has obtained the prior concurrence in writing of that other Minister of the Crown or a determination has been made under section 12; and
  - (b) the Minister is satisfied that, after consultations by the Council with public authorities and persons likely to be affected, due consideration has been given to the public interest, health and safety.
- (5) Subject to section 39, an order made under this section takes effect —
- (a) on the day of publication in the *Gazette*; or
  - (b) where another day is provided for in the order, on that day.
- (6) An order made under this section may be amended or revoked by another order so made.

**39. Orders made under s. 38 subject to disallowance**

An order made under section 38 shall be laid before each House of Parliament, and section 42 of the *Interpretation Act 1984* shall apply to the order, as though it were a regulation.

**40. Prospective measures requiring legislative amendment where interests affected**

- (1) Where measures proposed in relation to the conservation of any place are likely to require the making of an order under section 38, the Council shall —
  - (a) formulate the legislative amendments and other measures that would be needed to effect the conservation; and
  - (b) thereafter publish by public advertisement a notice of the measures proposed and a draft order under section 38.
- (2) The notice to be published pursuant to subsection (1) shall —
  - (a) indicate the objective of the Council in formulating the measures proposed; and
  - (b) give a sufficient description of any land likely to be affected by the proposed order; and
  - (c) state where, and at what times, a copy of a plan showing the land likely to be affected may be inspected; and
  - (d) state the general nature as then formulated of the legislative amendments and other measures needed for the purpose of effecting the proposed conservation, how the draft order meets that need, and where and in what manner further particulars may be obtained; and
  - (e) invite persons generally to make submissions in relation to the proposed conservation and any legislative amendments or other measures that may be proposed, affording a reasonable opportunity for that purpose and specifying the time within which, the manner in which and the address to which the submissions should be forwarded.
- (3) A copy of the notice and draft order published under subsection (1) shall be served on any local government likely to be concerned and to every other person who would have been

required to have been given notice had any land or building to which the proposed conservation measures relate been a place sought to be entered in the Register.

- (4) The Council shall have regard to any submissions duly forwarded pursuant to this section, and may change the method of proposed conservation and the draft order accordingly, but is not required to publish either the changed intentions or the final draft of the order unless section 41 so requires.

*[Section 40 amended by No. 14 of 1996 s. 4.]*

**41. Council to advise Minister as to matters for order under s. 38**

- (1) The Council shall advise the Minister of its recommendations as to the legislative amendments or other measures proposed to be included in an order under section 38 but in so doing shall make known to the Minister —
- (a) in general terms the purport of any submissions which were forwarded and the advice of the Council thereon, furnishing the Minister with all such information as the Minister may require in relation to any submission or any matter arising therefrom; and
  - (b) any change in the method of proposed conservation or the draft order made by the Council, where publication of a notice pursuant to section 40(1) was made prior to that change,

and, if so directed by the Minister, shall publish particulars of any changes in the manner directed.

- (2) The Minister may afford to any person by whom or which an objection to the method of proposed conservation or any legislative amendment has been submitted and not withdrawn, and to any other person to whom it appears to the Minister expedient to do so, an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

- (3) After considering the recommendations of the Council and the findings of any inquiry held under subsection (2), the Minister may modify the proposed method of conservation or the proposed measures or draft order.

**42. State Administrative Tribunal may set aside or amend order made under s. 38**

- (1) If any person aggrieved by an order under section 38 desires to question the validity of that order on the ground that any requirement of this Act has not been complied with in relation to the order the person may, within the period of 28 days after the date on which the order was published in the *Gazette*, make an application to the State Administrative Tribunal to set aside the order for irregularity, and on any such application the State Administrative Tribunal, if satisfied that the interests of the applicant have been substantially prejudiced by a failure to comply with any such requirement, may set aside or amend the order or any provision contained therein or may make such other order in the matter as the State Administrative Tribunal thinks fit and effect shall be given thereto.
- (2) Where, on an application to the State Administrative Tribunal made pursuant to subsection (1), the State Administrative Tribunal considers that any person has been unreasonably subjected to expense, or has been subjected to an unreasonable amount of expense, by any person in relation to the making or contents of an order under section 38 the State Administrative Tribunal may make such order in the matter as it thinks just.
- (3) Where an order under section 38 is amended by the State Administrative Tribunal, section 39 applies in relation to that order as amended.

*[Section 42 amended by No. 55 of 2004 s. 503.]*

## **Part 5 — Registered places**

### **Division 1 — Existing lists, survey and records**

#### **43. Information held by heritage bodies, Council to have regard to**

The Council shall ascertain and have regard to the recommendations of, and information compiled by, the Australian Heritage Commission, the National Trust of Australia (W.A.) Inc., local governments, and other persons that have made available publicly research and texts relating to places which are, or may be, significant for the purposes of this Act.

*[Section 43 amended by No. 14 of 1996 s. 4.]*

#### **44. Council's duties as to places with cultural heritage**

- (1) For the purposes of this Act, in consultation with any person known by the Council to have shown a relevant interest, and with a view to providing a comprehensive data base for the guidance of the Minister and the community in general, the Council is charged with the duty of —
  - (a) compiling, maintaining and from time to time revising a survey and record of the places which in the view of the Council might relate to or be associated with the cultural heritage in the State; and
  - (b) assessing the condition and the cultural heritage significance of each such place.
- (2) As soon as may be after the Council has compiled or revised a record of any place the Council shall —
  - (a) cause a copy or extract of so much of that record as relates to each place within the local government district, together with a diagram or plan showing the boundaries of each of the places or portions of a place affected and such other information as will enable the

place to be identified, to be deposited with the chief executive officer of the local government concerned; and

- (b) lodge with the chief executive officer of the department principally assisting in the administration of the *Land Administration Act 1997*, the Registrar of Titles or the Registrar of Deeds and Transfers (as the case may require) a memorial of the record relating to each such place; and
  - (c) where practicable, so advise the owner.
- (3) On receipt of the memorial lodged under subsection (2)(b), such steps shall be taken by the officer receiving that memorial as may be necessary or appropriate to bring the relevant particulars furnished in that memorial to the attention of persons seeking information as to the title to the land affected.

*[Section 44 amended by No. 14 of 1996 s. 4; No. 60 of 2006 s. 136.]*

**45. Local government to compile etc. inventory of buildings with cultural heritage significance**

- (1) A local government shall compile and maintain an inventory of buildings within its district which in its opinion are, or may become, of cultural heritage significance.
- (2) The inventory required by subsection (1) shall be compiled no later than 4 years from the commencement of this Act and shall be —
  - (a) updated annually; and
  - (b) reviewed every 4 years after compilation.
- (3) A local government shall provide the Council with a copy of the inventory compiled pursuant to this section.
- (4) A local government shall ensure that the inventory required by this section is compiled with proper public consultation.

*[Section 45 amended by No. 14 of 1996 s. 4.]*

## **Division 2 — The Register**

### **46. The Register**

- (1) There shall be established a Register, to be known as the Register of Heritage Places, in a prescribed form.
- (2) The Council shall compile and maintain the Register.
- (3) A place shall not be entered in the Register, and an entry made in the Register shall not be amended or removed, otherwise than in accordance with this Part.
- (4) Where the Minister —
  - (a) in the case of a place vested in the Crown, or in a person on behalf of the Crown, in right of the State — after consultation with the Minister of the Crown responsible for the maintenance of that place; or
  - (b) in the case of any other place — at the request of, or with the consent of, the owner,

approves of a proposed amendment being made to the description of, or other particulars relating to, a place entered in the Register (being an amendment not resulting in a reduction in the area of the land affected) the Council shall cause that amendment to be made to the Register.

### **47. Criteria for entering place in Register**

- (1) Subject to this Part, where the Minister is of the opinion, having regard to any advice given by the Council in relation to that place and to any report of the Council as to submissions made to the Council under subsection (3) —
  - (a) that a place —
    - (i) is of cultural heritage significance; or
    - (ii) possesses special interest related to or associated with the cultural heritage,



and is of value for the present community and future generations; and

- (b) that the protection afforded by this Act is appropriate notwithstanding that the place may be afforded protection by the operation of any other written law or law of the Commonwealth,

the Minister may direct the Council to enter that place in the Register, either as an interim registration or on a permanent basis, and effect shall be given to the direction in accordance with section 50 or 51 as may be specified.

- (2) Without prejudice to the generality of subsection (1) and with the intent that there should be compiled a comprehensive register of the heritage rather than merely an index of examples, in considering the significance which any place may have to the cultural heritage of the State regard may be had to —

- (a) any distinctive features or scarcity value, the character of the environs of the place, its landscape or townscape value and, in the case of a building, its beauty and proportions, the degree of unity of its materials, design and scale, and any contribution it makes to the significance of any area, precinct, group of buildings, or amenity of which it forms part, or to its setting or the setting of any other place or feature; and
- (b) any strong association which the place has with any historic personage or significant event or discovery or any development or cultural phase, or whether or not the place provides a notable example of a particular period or type important for general educational, architectural or archaeological reasons that distinguish it from other such examples, or has intrinsic merit and is commonly agreed to be —
  - (i) a work of art in itself that enriches the environment; or
  - (ii) held in high public esteem or sentiment;

and

- (c) in the case of places of particular scientific or other special interest, the extent to which the place has contributed, or may be likely to contribute, to knowledge or research,

but a place shall not be excluded from the Register on the ground only that like examples are already included.

- (3) In advising the Minister as to the significance of any place the Council shall consider any submissions which may be made —
  - (a) as to such places generally, by the Australian Heritage Commission, the National Trust of Australia (W.A.) Inc., local governments and community organizations concerned with the cultural heritage generally; and
  - (b) in relation to any particular place, by —
    - (i) the owner; and
    - (ii) any occupier; and
    - (iii) the local government of the district in which the place is situate; and
    - (iv) any other person having a special knowledge of, or interest in, that particular place,as to its relevance to the cultural heritage in the State.
- (4) On a request being made by the Council to any public authority the recommendations of that authority in relation to the conservation or presentation of any place shall be made known by that authority to the Council.
- (5) The Council shall publish by public advertisement any advice given by it to the Minister under this section or sections 49, 52 or 53 in relation to the entry in the Register of a place vested in the Crown, or in a person on behalf of the Crown, in right of the State.

*[Section 47 amended by No. 14 of 1996 s. 4.]*

**48. Historic precincts**

Where the Minister is of the opinion that a group of places together form a precinct which is of cultural heritage significance notwithstanding that each place within the precinct does not itself have cultural heritage significance, he may, in accordance with section 47, direct the Council to enter that group of places in the Register as an historic precinct.

**49. Procedure before entering place in Register under s. 51**

- (1) A place shall not be entered in the Register under section 51, except pursuant to an interim registration under section 50 or where subsection (2) applies, unless —
- (a) the Council pursuant to a direction given by the Minister has, by public advertisement —
    - (i) given notice that it is proposed that the place be entered in the Register; and
    - (ii) set out a sufficient description to identify the place; and
    - (iii) invited persons generally to make submissions in relation to the proposed entry in the Register, specifying the manner in which and the address to which the submissions should be forwarded; and
    - (iv) specified the date, being not earlier than 6 weeks after the publication of the advertisement in the *Gazette*, by which the submissions are to be made,and the date so specified has passed; and
  - (b) the Council has —
    - (i) considered any submissions forwarded pursuant to the advertisement referred to in paragraph (a); and

- (ii) sought from the local government for the district in which the place is situate and from the owner and any person who appears to the Council likely to be affected or interested, their representations on any aspect of those submissions or as to any other matter relevant to any proposal relating to that place on which the Council desires their view; and
    - (iii) considered and advised the Minister on those representations and submissions and as to the recommendation of the Council,
- and the Minister has directed that the entry shall be made.
- (2) Where the advice referred to in subsection (1)(b)(iii) is not received by the Minister within a period of 9 months following the date specified for the purposes of subsection (1)(a)(iv) in the advertisement published pursuant to that subsection the Minister may direct that the place be entered in the Register forthwith.
  - (3) Where a public advertisement pursuant to subsection (1) is made in relation to any place, the Council shall, as soon as is practicable thereafter, also cause to be served on the owner and, so far as is practicable, on each occupier of that place an explanatory memorandum informing that person of the particulars to be contained in the proposed entry in the Register, drawing attention to and containing a copy of the public advertisement and stating, so far as the Council can, the manner in which such an entry in the Register may affect that person.
  - (4) Where a proposed entry relates to a place that comprises land in the ownership of or occupied by a number of persons and it is not reasonably practicable for the Council to serve a separate explanatory memorandum on every such owner and occupier of land comprised within that place, in addition to complying so far as is practicable with the requirements of subsection (3) the

Council shall cause a general explanatory memorandum to be served —

- (a) by way of a notice contained in the advertisement referred to in subsection (1), ensuring that the advertisement —
  - (i) appears in a newspaper circulating particularly in that locality; or
  - (ii) is posted up for public information in a number of reasonably prominent locations on or near that land;

and

- (b) upon the local government of the district in which the land is situated, with such extra copies as that local government may request.

*[Section 49 amended by No. 14 of 1996 s. 4.]*

**50. Interim registration of places**

- (1) Where —
  - (a) an advertisement is published pursuant to section 49(1) in relation to a place; or
  - (b) the Council publishes its advice pursuant to section 47(5); or
  - (c) the Minister directs the Council that it is necessary to provide immediate protection in respect of a place —
    - (i) that is not the subject of an advertisement published under section 49(1); and
    - (ii) in respect of which a Conservation Order is made,

the Council shall forthwith cause an entry relating to the place to be made in the Register as an interim registration.

- (2) Where an interim registration is made under subsection (1)(c) in relation to a place the Council shall forthwith take such steps in

accordance with the procedures required by section 49 as may be necessary to determine whether or not that entry should remain in the Register on a permanent basis, save that —

- (a) the date by which submissions are to be made by persons generally shall be specified in the public advertisement required by section 49(1) as a date fixed having regard to the urgency required but not earlier than 14 days after publication of the advertisement in the *Gazette*; and
- (b) the advice of the Council shall be furnished to the Minister within a further 14 days, or such other period as the Minister may allow, in default of which the Minister may direct that the entry in the Register shall be made forthwith,

and, unless the Minister directs that the interim registration should not be made permanent or section 52 otherwise applies, the procedures required by section 49 shall be implemented notwithstanding that any Conservation Order the making of which occasioned the interim registration ceases to apply in relation to that place, or a portion of that place.

- (3) An entry in the Register under this section ceases to have effect —
  - (a) where an entry in relation to a place of the like description is made in the Register under section 51; or
  - (b) in accordance with section 52 or 53.

**51. Permanent registrations in Register, making of**

- (1) Subject to this Part, where the Minister directs that an entry in the Register on a permanent basis is to be made in relation to any place, the Council shall cause to be entered in the Register —
  - (a) a sufficient description of the location to identify the place to which the entry refers; and

- (b) the date on which the place was entered in the Register;  
and
  - (c) a statement —
    - (i) outlining how the place relates to or is associated with the cultural heritage in the State; and
    - (ii) identifying particular features of significance or of special interest or value; and
    - (iii) giving reasons why any particular significance, special interest or value to the community is attributed;and
  - (d) if that particular significance, interest or value relates to any building situated at that place, a statement making clear whether it attaches —
    - (i) to the whole of the building and any appurtenances; or
    - (ii) to any particular part of the building or its appurtenances;and
  - (e) particulars of —
    - (i) any order made under section 38 in relation to the place; and
    - (ii) any Heritage Agreement by which the place is affected;and
  - (f) such other information as may be prescribed.
- (2) Where a place is entered in the Register pursuant to this section, the Council shall forthwith cause a notice setting out the particulars registered in respect of the entry to be published by way of public advertisement.

**52. Minister may direct that place not be registered permanently**

- (1) Where, after the publication of a public advertisement under section 49(1) in relation to a place but before the place has been entered in the Register under section 51, the Minister directs that the place or any portion of the place should not be entered permanently in the Register, the Council shall by a notice by way of public advertisement published in manner similar, where practicable, to that in which the advertisement under section 49(1) was published —
  - (a) give notice that a permanent entry in relation to it will not be made, setting out a sufficient description to identify the place or portion of the place affected; and
  - (b) notify persons generally of their right to make submissions relating to that decision; and
  - (c) specify the date, being not earlier than 3 weeks after the publication of the advertisement in the *Gazette*, by which, the manner in which and the address to which the submissions are to be made.
- (2) Where a submission is made in accordance with subsection (1) the Council shall again advise the Minister, after giving due consideration to that submission, but subject to any direction then given by the Minister the Council shall cause any existing entry to be removed as soon as is practicable after the date referred to in subsection (1)(c).
- (3) Where the Minister is of the opinion that a notice given under subsection (1) should be withdrawn and so directs, the Council shall give notice of that decision in a manner similar, where practicable, to that in which the notice given under subsection (1) was given.
- (4) Where the Minister is of the opinion that a place vested in the Crown, or in a person on behalf of the Crown, in right of the State, should not be entered in the Register on a permanent



basis, the Minister shall cause the opinion to be tabled in both Houses of Parliament within 6 sitting days.

- (5) Such a place remains in the Register unless both Houses of Parliament pass motions permitting such removal.

**53. Time limit on registration procedures**

- (1) Subject to subsection (2), where —
- (a) a period of 12 months has elapsed since the date of publication in the *Gazette* of the advertisement required under section 49(1); and
  - (b) subsection (2) or (3) does not apply; and
  - (c) the place referred to in that advertisement, or a specified portion of that place, has not been entered in the Register (except as an interim registration),

the Council shall, by a notice by way of public advertisement published in manner similar, where practicable, to that in which the advertisement under section 49(1) was published, give notice that the proposed entry has not been, and will not be, made in relation to that place or that specific portion of that place, setting out sufficient particulars to identify the land, and shall cause the entry made at the time of interim registration to be removed.

- (2) Where —
- (a) a place is vested in the Crown, or in a person on behalf of the Crown, in right of the State; or
  - (b) the persons required by section 46(4)(b) to give consent to the amendment of an entry relating to the place have each given written notice to the Council consenting to the continuance of the interim registration and that consent has not been withdrawn,

an entry in the Register made at the time of interim registration continues to have effect until the Minister, by notice in writing to the persons then required pursuant to section 46(4) to be

consulted or to give consent to an amendment, gives notice that the entry will be removed on the expiry of a period of not less than 12 months after the giving of that notice and that period has elapsed.

- (3) Where the Minister recommends that the consideration of a matter to which subsection (2) does not apply but which is the subject of an advertisement under section 49(1) should be permitted to continue beyond the period referred to in subsection (1)(a), the Governor may by regulation extend that period from time to time for such further period as the Governor thinks fit and make such further provision as may be necessary or desirable to enable the consideration of the matter to be concluded.

**54. Amending and removing entries in Register**

- (1) Where the Minister is of the opinion, having regard to any advice given by the Council, that an entry in the Register should be —
- (a) amended, otherwise than pursuant to section 46(4); or
  - (b) removed from the Register,

the Minister may, subject to this section, so direct, and the Council shall give effect to that direction.

- (2) Subject to subsection (3) and subsection (4), an entry in the Register, otherwise than an entry made at the time of interim registration, shall not be amended or be removed pursuant to subsection (1) unless —
- (a) the Council has, by public advertisement —
    - (i) stated the reasons for the proposed amendment or removal; and
    - (ii) set out a sufficient description to identify the place, or specific portion of a place, affected; and
    - (iii) invited persons generally to make submissions to the Council in relation to the proposed

amendment or removal, specifying the manner in which and the address to which the submissions should be forwarded; and

- (iv) specified the date, being not earlier than 6 weeks after the publication of the advertisement in the *Gazette*, by which the submissions are to be made,

and the date so specified has passed; and

- (b) the Council has considered any submissions forwarded and advised the Minister as to the recommendation of the Council.
- (3) Where the advice referred to in subsection (2)(b) is not received by the Minister within a period of 9 months following the publication pursuant to subsection (2)(a) of the advertisement in the *Gazette* the Minister may direct that the entry be so amended or removed from the Register forthwith.
  - (4) Where by reason of any demolition or other sufficient cause the Minister is satisfied that no practical purpose would be served by publishing an advertisement under subsection (2) in respect of a proposal to remove an entry from the Register, the Minister may direct the Council that compliance with subsection (2) shall be dispensed with, and the Council shall thereupon cause a notice for public information to be published in the *Gazette*.
  - (5) Where any entry in the Register is amended or is removed (whether pursuant to this section or otherwise), the Council shall —
    - (a) cause to be entered in the Register, against the description of that place, a statement that the entry has been amended or removed from the Register, as the case may require, and as to the authorisation pursuant to which that was done and the date on which the statement was entered; and

- (b) by public advertisement, state the nature of the amendment or that the entry has been removed, sufficiently identifying the place affected; and
  - (c) comply with section 56(2).
- (6) The Council shall publish by public advertisement any advice given by it to the Minister under this section in relation to the removal from the Register of an entry relating to a place vested in the Crown, or in a person on behalf of the Crown, in right of the State.
- (7) The place shall not be removed from the Register until a resolution of both Houses of Parliament to that effect is passed.

**55. Certain land not entered in Register not to be proposed for registration for 5 years**

Where —

- (a) notice is given under section 52(1) and is not withdrawn; or
- (b) notice is given under section 53(1), or a period specified under section 53(2) or prescribed under section 53(3) has elapsed; or
- (c) an entry relating to a place or a portion of a place is removed from the Register,

no further advertisement under section 49(1) shall be published in respect of the same land for a period of 5 years thereafter, except with leave of the Supreme Court and in accordance with such order as the Court thinks fit.

**Division 3 — Information**

**56. Memorials on land titles and notifying people affected**

- (1) On the making of an entry in the Register, and on the amendment or removal of such an entry, a memorial shall be lodged by or for the Council on behalf of the Crown with the chief executive officer of the department principally assisting in

the administration of the *Land Administration Act 1997*, the Registrar of Titles or the Registrar of Deeds and Transfers (as the case may require) and with the Director General of Mines showing the particulars registered in respect of that entry, or the details of that amendment or removal.

- (2) As soon as may be practicable, the Council shall cause a copy of any advertisement published under section 49(1), section 51(2), section 52, section 53(1) or section 54, the particulars registered in respect of an entry in the Register, and the particulars in respect of any amendment or removal of such an entry, to be furnished —
- (a) to the local government of the district in which the place affected is situated; and
  - (b) to the owner, and, so far as is practicable, each occupier, of the place affected; and
  - (c) to any other person that the Council considers to have a continuing interest, so far as it is in the opinion of the Council practicable so to do.
- (3) Where in relation to an entry it is not practicable for the Council to give notice to every owner or occupier of land within the place to which the entry refers, the Council shall, in addition to complying so far as is practicable with the requirements of this section, cause a general notice to be given —
- (a) by way of public advertisement, ensuring that the advertisement —
    - (i) appears in a newspaper particularly circulating in that locality; or
    - (ii) is posted up for public information in a number of reasonably prominent locations on or near that land;
- and

- (b) to the local government of the district in which the land is situated, with such extra copies as that local government may request.
- (4) On receipt of the memorial lodged under subsection (1), such steps shall be taken by the officer receiving that memorial as may be necessary or appropriate to bring the relevant particulars furnished in that memorial to the attention of persons seeking information as to the title to the land affected.

*[Section 56 amended by No. 14 of 1996 s. 4; No. 60 of 2006 s. 136.]*

**57. Register etc. to be available for public inspection**

- (1) The Council shall keep available for public inspection, during normal office hours and at a convenient place or places, copies of the Register, and also copies of all records compiled under section 44.
- (2) A public authority furnished by the Council with particulars or copies or extracts of the Register or of any record compiled under section 44 shall, if so required by the Council, make that information available for public inspection on request during normal office hours.

**58. Duty to inform authorities responsible for planning etc.**

The Council shall in so far as is practicable ensure that all public authorities responsible for planning matters, and in relation to any proposal known to the Council all decision-making authorities empowered in respect to that proposal, are made aware of the provisions of this Act as they apply in relation to any place thereby affected and of the information available to the Council that relates to that place.

## Part 6 — Enforcement

### Division 1 — Conservation Orders

#### 59. Conservation Orders

- (1) Where, in the opinion of the Minister, it is necessary or desirable to provide special protection in respect of any place, whether or not entered in the Register, the Minister may, subject to this section, make a Conservation Order in relation to that place.
- (2) Where, by reason of the likelihood of imminent damage to a place, a specific prohibition is urgently necessary the Minister may make a Conservation Order forthwith —
  - (a) with the consent of the owner of that place as to the terms to be specified in that order — in this Division referred to as a **Consent Order**; or
  - (b) otherwise, in such terms as the Minister specifies in the order — in this Division referred to as a **Stop Work Order**,

and in either such case the prerequisites to the making of a Conservation Order which would otherwise be required by subsection (4) need not be complied with prior to the order taking effect.

- (3) On the making of an order under subsection (2)(a), the Council shall cause inquiries to be made and shall make a recommendation to the Minister as to the term for which any Consent Order should remain in effect or as to whether or not it should be revoked or replaced by an order made pursuant to subsection (4).
- (4) A Conservation Order, not being of the nature of a Consent Order or a Stop Work Order, shall not be made by the Minister unless the Council has —

- (a) given notice in writing to the owner of the land which is likely to be directly affected, explaining the nature of the special protection proposed and the reason for it; and
  - (b) by public advertisement —
    - (i) given notice that it is proposed to make a Conservation Order in relation to the place; and
    - (ii) set out a sufficient description to identify the place; and
    - (iii) invited persons generally to make submissions relating to the proposed Conservation Order, specifying the manner in which and the address to which the submissions should be forwarded; and
    - (iv) specified the date, being not earlier than 7 days after the publication of the advertisement in the *Gazette*, by which the submissions are to be made;and
  - (c) when the date by which the submissions were to be made has passed —
    - (i) considered any submissions forwarded pursuant to any notice given to an owner of land which is likely to be directly affected or to the advertisement referred to in paragraph (b); and
    - (ii) considered and advised the Minister on those submissions and as to the recommendation of the Council.
- (5) A prohibition contained in a Conservation Order may relate to —
- (a) the entry of persons on to the place, other than entry by an owner or authorised occupier; or



- (b) the bringing of vehicles, machinery or equipment, or materials or substances of any kind or of a specified kind on to the place; or
- (c) any activity of a kind which, in the opinion of the Minister, is likely to affect detrimentally the cultural heritage characteristics or conservation of the place; or
- (d) the demolition, damage or alteration of the place or any portion of the place, or any building or structure; or
- (e) any thing which, in the opinion of the Minister, is likely to cause disturbance to the land or any plant or species of animal at the place; or
- (f) any development proposal or other matter in respect to which the Minister is satisfied a prohibition is needed for the purposes of this Act,

and any such prohibition may be expressed to be absolute, or to be subject to a specified exemption or to the exercise of a discretionary authority vested by the order in a specified person, or to have effect unless conditions specified are not contravened, and effect shall be given to the prohibition in accordance with the tenor of the order.

- (6) In subsection (5) *specified* means specified in the Conservation Order.
- (7) A Conservation Order shall cease to have effect —
  - (a) where the place, or the portion of the place, concerned is removed from the Register; or
  - (b) when the Minister has, after consultation with the Council, by notice in the *Gazette* revoked the order; or
  - (c) in the case of a Consent Order, in accordance with the tenor of the order if the order is expressed to be of limited duration; or
  - (d) in the case of a Stop Work Order, except where the order is continued in force by the State Administrative Tribunal under section 60(2)(b) or (c) and any other

expiry date is fixed by the State Administrative Tribunal, on the expiry of 42 days from the making of the order.

- (8) Where a person notifies the Council in writing that the person has a material interest in any land or building which may be affected by a Stop Work Order and that person has not previously been notified pursuant to this section, the Council shall forthwith cause that person to be supplied with a copy of the order.
- (9) Where, and for so long as, a Conservation Order has effect in relation to any land or building, the Minister shall be taken to be a person having an interest in that land or building on behalf of the Crown.
- (10) A Stop Work Order shall not be made in relation to any place —
- (a) in relation to which a Stop Work Order in respect of a like proposal or matter has been revoked or has expired within the preceding 12 months; or
  - (b) which is land to which section 55 applies for the time being,
- except with leave of the State Administrative Tribunal and in accordance with such order as the State Administrative Tribunal thinks fit.
- (11) Subject to subsection (12), a Conservation Order takes effect on publication of a notice in the *Gazette* setting out its terms, and effect shall be given to any prohibition contained in the order in accordance with the tenor of the order.
- (12) A Stop Work Order which —
- (a) is affixed in a prominent position on the place to which it relates; or
  - (b) is served on a person carrying out, or causing to be carried out, at that place any works or other activity to

which the order refers, whether or not served at that place,

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

(13) Where a Conservation Order is made in relation to any land, the Council —

- (a) shall cause the chief executive officer of the department principally assisting in the administration of the *Land Administration Act 1997*, the Registrar of Titles or the Registrar of Deeds and Transfers, as the case may require and the Director General of Mines, to be advised by way of memorial of the effect of that order; and
- (b) may thereupon lodge such caveat or cause such other steps to be taken as may be necessary or proper to give effect to the terms of that order; and
- (c) except in the case of a Stop Work Order —
  - (i) shall publish notice by way of public advertisement for general information of a summary of the terms of the order, setting out a sufficient description to identify the place to which it refers; and
  - (ii) shall cause a copy of the order to be served, where practicable, on the owner and each occupier of the place concerned.

(14) Where a Conservation Order ceases to have effect —

- (a) the advice given in accordance with subsection (13)(a) shall be revised by the Council; and
- (b) the Council shall take such steps as may be reasonable to ensure that notice has been, or is then, given to interested persons that the order has ceased to have effect.

- (15) Where a Conservation Order has effect in relation to any place —
- (a) regulations made under this Act may make provision for the conservation of that place and its use and enjoyment by the public, including the authorisation of activities that when carried out otherwise than in compliance with the regulations would constitute a contravention of the order, and for penalties for contravention of the regulations; and
  - (b) signs desirable for the purpose of providing public notice of prohibitions or regulations applying under this Act may be erected by the Council on, or near, the place concerned.
- (16) Within 14 days after the making of a Conservation Order, not being a Consent Order, a person aggrieved by the order, may apply to the Minister, in writing, for a review of the order.
- (17) On receipt of an application for review the Minister shall review the Conservation Order and confirm, vary or revoke it.
- (18) The Minister shall cause notice of the decision on the review to be served on the applicant and, if no notice is served within 14 days after the application was made, the Minister shall be taken to have confirmed the Conservation Order.
- (19) An application under section 60(1)(a) for a review in relation to a Conservation Order shall not be made while —
- (a) an application for review of the order can still be made under subsection (16); or
  - (b) the order is being reviewed under subsection (17).

*[Section 59 amended by No. 55 of 2004 s. 504 and 507; No. 60 of 2006 s. 136.]*

**60. State Administrative Tribunal's powers as to Conservation Orders**

- (1) The State Administrative Tribunal may determine —
- (a) an application made by a person aggrieved by a Conservation Order, not being a Consent Order, made under section 59 for a review of the order; and
  - (b) any referral by the Minister of a Stop Work Order seeking a determination that the order continue to have effect for a period greater than 42 days from the making of the order,

and the provisions of Part 14 of the *Planning and Development Act 2005* apply to any such referral under this Act, with any modification that may be necessary, as they apply to applications for review under that Act, and any proceedings before the State Administrative Tribunal under this Act may be commenced as of right, under paragraph (a) by the person aggrieved or under paragraph (b) by the Minister.

- (2) On an application or referral under subsection (1) the State Administrative Tribunal may —
- (a) determine that a Conservation Order should —
    - (i) be revoked; or
    - (ii) be confirmed; or
    - (iii) subject to consultation with the Minister, be varied,and the Minister shall cause effect to be given to the determination; or
  - (b) order that such of the terms of the prohibitions contained in the Stop Work Order as the State Administrative Tribunal may determine continue in force —
    - (i) for a specified period; or
    - (ii) unless and until a notice is published pursuant to section 53 notifying persons that the place, or

any portion of the place, concerned will not be entered in the Register;

or

- (c) after taking into account any submissions made, and in consultation with the parties to the application or referral and any decision-making authority or other person appearing to the State Administrative Tribunal to have an interest, order that a Stop Work Order continue in force permanently on such terms as the Tribunal determines.

- (3) Notwithstanding that an application or reference in respect of a Stop Work Order is made to the State Administrative Tribunal, the order shall continue to have effect until the State Administrative Tribunal determines otherwise.

*[Section 60 amended by No. 24 of 2002 s. 24; No. 55 of 2004 s. 505, 507 and 508; No. 38 of 2005 s. 15.]*

**61. Contravention of Conservation Orders**

- (1) Where a copy of a Stop Work Order —
  - (a) is affixed in a prominent position on the place to which it relates; or
  - (b) is served on a person carrying out, or causing to be carried out, at that place any works or other activity,

a person who carries out, or authorises, causes or permits to be carried out, in relation to that place any works or activity of a kind prohibited by that order commits an offence.

Penalty: a fine of \$1 000 000 and imprisonment for 2 years.

Daily penalty: a fine of \$50 000.

- (2) A person who in, or in relation to, a place to which a Conservation Order applies —
  - (a) damages or despoils that place or any part of, or thing in, that place; or

- (b) removes any thing; or
- (c) contravenes any prohibition contained in the order,

whereby the cultural heritage characteristics of that place are detrimentally affected, or who authorises, causes or permits any other person to do any of those things, commits an offence.

Penalty: a fine of \$1 000 000 and imprisonment for 2 years.

Daily penalty: a fine of \$50 000.

- (3) Where an act or omission is an offence against subsection (1) or subsection (2) and also an offence against the other of those subsections or some other provision of this Act, a person convicted under that subsection is not liable to be proceeded against under this Act by virtue of 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.

*[Section 61 amended by No. 4 of 2011 s. 4.]*

## **Division 2 — Restoration Orders**

### **62. Restoration Orders**

- (1) Where a person is convicted of an offence that constitutes a contravention of a Conservation Order, or is convicted of an offence under section 79(1), a court of competent jurisdiction may, instead of or in addition to any other penalty imposed, order that person, within the time specified in the order —
  - (a) to take such measures as are specified in the order to restore the place, or any land, feature, building or structure specified in the order, to the same state in which it was before the offence occurred or to a condition specified in the order; or
  - (b) to pay to a person specified in the order an amount so specified, being an amount which the Court determines

as appropriate to enable measures that are required to be carried out; or

- (c) to make such other restitution as the Court may determine.
- (2) Before making an order under subsection (1) the court shall obtain the advice of the Council as to —
- (a) whether such an order should be made; and
  - (b) if so, the contents of the order,
- and shall have regard to that advice.
- (3) Where a person fails to comply with an order under subsection (1) within the time specified in that order —
- (a) that person commits an offence; and
  - (b) the Council, whether on behalf of the Crown or at the behest of another person entitled to enforce the order, may enter upon the land with such other persons and things as may be necessary and cause the measures required to comply with the order to be carried out and may, in a court of competent jurisdiction, recover the expense of so doing from the person who failed to comply with the order or any successor in title as if it were a debt.

Penalty: a fine of \$1 000 000.

Daily penalty: a fine of \$50 000.

*[Section 62 amended by No. 4 of 2011 s. 5.]*

### **Division 3 — Permitted works**

#### **63. Conservation Orders not to affect certain works**

It shall be a defence in proceedings for a contravention of a provision of a Conservation Order to show that any works, being works appropriate to the purpose —

- (a) were urgently necessary —



- (i) to avoid an imminent danger to life or health; or
- (ii) for the immediate preservation of a building or the prevention of immediately impending damage to neighbouring property,

whether or not those works were the subject of a specific prohibition contained in a Stop Work Order, where notice in writing of the proposed carrying out of the works was given, as soon as practicable after the necessity for the works arose, to the Council and no written objection was served by the Council on the person so giving notice prior to the carrying out of the work; or

- (b) were authorised, and carried out in all respects in compliance with, a permit issued under section 64; or
- (c) were required by an Act or law, and were of such a degree of urgency that prior reference to the Council and the negotiation of an order under section 38 would not have been practicable.

**64. Minister may permit certain works etc. on places subject to Conservation Orders**

- (1) Where a Conservation Order has effect in relation to any place, and a person desires to implement any proposal, or to cause or permit to be carried out any works —
  - (a) which may involve disturbance to vegetation or of the surface of the land; or
  - (b) for the construction, renovation, alteration or extension of, or which may cause damage to, any building; or
  - (c) of demolition or other development,

that would not be works to which section 79(2) applies and might contravene the terms of the order or of any regulations made under section 59(15) or otherwise be detrimental to the cultural heritage characteristics of that place, the person may, on payment of the prescribed fee, make application to the Council

in writing for a permit to be granted by the Minister under this section authorising the implementation of the proposal or the carrying out of those works.

- (2) Where an application is made under subsection (1), and such information as is required by the Council is made available, the Council shall within a period not exceeding 14 days from the making of the application, or such other period as may be agreed upon in writing between the applicant and the Council, make known its recommendation on the application to the Minister.
- (3) Having regard to, but not being bound by, any recommendations made by the Council the Minister shall determine any application made under subsection (1) and shall —
  - (a) declare that the proposal or works would be detrimental, either wholly or in any specified respect, and refuse the application; or
  - (b) authorise the implementation of the proposal or the carrying out of the works, unconditionally or subject to specified conditions, and grant the permit.
- (4) The conditions imposed in relation to the authorisation of any proposal or works shall be referred to or set out in the permit and may include conditions with respect to —
  - (a) the preservation of particular features of the place or materials of any building, either as part of it or after severance therefrom; and
  - (b) the making good, after any proposal is implemented or works are completed, of any damage caused including the restoration of any part of the place or the reconstruction of any building, or any part of it, with the use of original materials so far as practicable or with such alterations as may be specified in the conditions; and
  - (c) the giving of a bond or other security for the due observance of the conditions imposed; and

- (d) the provision prior to the commencement of any works of reasonable access to members and officers of the Council and persons authorised by the Council for the purpose of recording the then existing characteristics of the place.
- (5) Where a permit under this section in relation to any place is expressed to be subject to conditions, any act or thing done in contravention of such a condition shall be deemed to have been done in contravention of the Conservation Order relating to that place.
- (6) Where an application under subsection (1) is determined by a person in the exercise of a power delegated by the Minister, or any condition imposed in relation thereto on the recommendation of the Council is not acceptable, the applicant may refer the matter in writing to the Minister and the Minister shall determine the matter and give directions accordingly.

**65. Continuing effect of orders**

- (1) The carrying out of any works authorised or required pursuant to this Act does not affect the operation of an order under this Part made prior thereto.
- (2) Where any works are carried out on land to which an order under this Part applies and as a consequence the terms of such an order cease to be precisely apt the general tenor of that order is to be deemed to continue to apply in relation to the land.

**Division 4 — Contraventions, defences, injunctions, etc.**

**66. Proceedings in respect of contraventions**

- (1) A reference in this Part —
  - (a) to a person involved in a contravention shall be read as a reference to a person who —
    - (i) has aided, abetted, counselled or procured the contravention; or

- (ii) has induced, whether by threats or promises or otherwise, the contravention; or
    - (iii) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
    - (iv) has conspired with others to effect the contravention;
  - and
  - (b) to a contravention of this Act, includes a reference to a contravention of a provision of a Heritage Agreement or an order made under Part 6, a permit under section 64, or an Order in Council made under section 80.
- (2) Where a court of summary jurisdiction hearing a charge of an offence against this Act is, for any reason, of the opinion that the charge is a fit subject for prosecution by indictment, the court may abstain from dealing with the charge summarily and commit the accused to trial on indictment.
- (3) Proceedings in respect of a contravention may —
- (a) in the case of a prosecution for an offence, be commenced within 3 years after the date when the alleged offence was committed; and
  - (b) be instituted by any person, whether or not any right of that person has been or may be infringed by or as a consequence of a contravention; and
  - (c) if instituted in the name of the Council, be conducted by any officer of the Council authorised in that behalf by the Council.
- (4) 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 any person convicted of or involved in the contravention commenced within 3 years after the date on which the cause of action accrued.

- (5) Where in proceedings taken in the Supreme Court or the District Court against a person contravening or involved in the contravention of this Act 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, whether or not an injunction or any other relief is granted, may make such order as the Court thinks appropriate against that person 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.
- (6) In proceedings under this Division, a finding of fact by a court made in proceedings against that 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 and the finding may be proved by production of a document under the seal of the court from which the finding appears.
- (7) Where a person is, by any conviction or order of a court, adjudged to pay a fine, or costs or other sum of money in respect of a contravention of this Act, the court by which the conviction or order was effected or made may —
- (a) exercise any power that the court has apart from this section; or
  - (b) 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 Crown under a judgment entered up in the court.

*[Section 66 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 80 and 82.]*

## **67. Continuing offences**

- (1) Where 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 by the provision of this Act contravened; 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 by the provision of this Act contravened; or
    - (ii) where no such daily penalty is specified, \$50.
- (2) Where a person is convicted of an offence under this Act causing damage to any property and after the conviction fails to take such reasonable steps as may be necessary to prevent any further damage resulting from that offence, the person shall be guilty of a further offence and liable on conviction to a fine not exceeding \$50 000 for each day on which the failure continues.

*[Section 67 amended by No. 4 of 2011 s. 6.]*

**68. Liability of successors in title, bodies corporate and their officers, defences etc.**

- (1) Where under this Act any notice or order is served upon a person, or a person is authorised to execute any works subject to conditions imposed, who at the time that notice or order was served or authorisation was given was the owner of the land to which it relates and that person ceases to be the owner of the land and proves that any contravention of this Act was attributable, in whole or in part, to the act or default of a subsequent owner having knowledge of that notice, order or authorisation —
- (a) the subsequent owner may be brought before the court in the proceedings 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, order or other requirement, shall be acquitted of the contravention,

but in any other case the original owner remains liable.

- (2) Where a contravention of this Act which has been committed by a body corporate is proved —
- (a) to have been committed with the consent or connivance of; or
  - (b) to be attributable to any failure to take all reasonable precautions to secure that this Act should not be contravened by the body corporate on the part of,  
any director, manager, executive officer, secretary or other person concerned in the management of the body corporate, or any person purporting to act in that capacity, that person as well as the body corporate is guilty of the contravention.
- (3) Where the affairs of a body corporate are managed by its members, subsection (2) applies in relation to the acts and defaults of a member in connection with the functions of management of that member as if the member were a director of the body corporate.
- (4) Where 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 any other person; or
  - (b) that the person was acting in pursuance of an order or direction given by any other person,  
unless the court is satisfied that the person had acted without the knowledge, and could not reasonably be expected to have known, that this Act would be contravened.
- (5) Where the employee or agent of a person is found liable in respect of a contravention of this Act, each person who, at the time of the commission of the contravention, was the employer of that employee or the principal of that agent is also liable in respect of the contravention, unless that employer or principal proves that he or she could not by the exercise of reasonable diligence have prevented the commission of the contravention by the employee or agent.

- (6) Subject to this section, it shall be a defence for any person who would otherwise be liable under this Act to prove that —
- (a) the contravention occurred without the consent or connivance of that person; and
  - (b) the person had taken all reasonable precautions to secure that this Act should not be contravened; and
  - (c) that the person could not by the exercise of reasonable diligence have prevented the contravention.
- (7) Where, in proceedings under this Act, it is necessary to establish the state of mind of a body corporate, it is sufficient to show that a director, employee or agent of the body corporate, being a director, employee or agent by whom the conduct was engaged in within the scope of the person's actual or apparent authority, had that state of mind.
- (8) Any conduct engaged in on behalf of a body corporate —
- (a) by a director, employee or agent of the body corporate within the scope of the person's actual or apparent authority; or
  - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent,
- shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.
- (9) Where, in proceedings under this Act, it is necessary to establish the state of mind of a person other than a body corporate, it is sufficient to show that an employee or agent of the person, being an employee or agent by whom the conduct was engaged in within the scope of the employee's or agent's actual or apparent authority, had that state of mind.



- (10) Conduct engaged in on behalf of a person other than a body corporate —
- (a) by an employee or agent of the person, within the scope of the actual or apparent authority of the employee or agent; or
  - (b) by any other person, at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

shall be deemed, for the purposes of this Act, to have been engaged in also by the first-mentioned person.

- (11) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for that intention, opinion, belief or purpose.
- (12) If a defence to proceedings 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, without leave of the court, entitled to rely on that defence unless the accused has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person by whom the proceeding was instituted a notice in writing giving such information that would identify or assist in the identification of the other person as was then in the accused's possession.

*[Section 68 amended by No. 84 of 2004 s. 82.]*

**69. Injunctions etc.**

- (1) The Supreme Court or the District Court, on the application of the Minister, the Council or any other person, where the Court is satisfied that a person —

- (a) has engaged, or is proposing to engage, in conduct that constitutes or would constitute; or
- (b) is involved in,

a contravention of this Act or under any other written law by reason of the operation of this Act (whether or not there is an imminent danger of substantial damage to any person), may make such order or orders as the Court thinks fit for the purpose of securing compliance with this Act or that written law and giving effect to the objects of this Act, including an injunction or other order directing a person to do or refrain from doing a specified act, and any ancillary order deemed to be desirable in consequence.

- (2) An interim injunction may be granted *ex parte* under this section pending final determination of the application.
- (3) Where the Minister or the Council makes an application to the Court for the grant of an injunction under this section, the Court shall not require the applicant or any other person, as a condition of granting an interim injunction, to give any undertaking as to damages or costs.
- (4) If —
  - (a) in a case to which subsection (3) does not apply, the Court would, but for this subsection, require a person to give an undertaking as to damages or costs; and
  - (b) the Minister gives the undertaking,

the Court shall accept the undertaking by the Minister and shall not require a further undertaking from any other person.

- (5) A final injunction may, by consent of the parties, be granted under this section without proof that proper grounds for the injunction exist.
- (6) The Court may rescind or discharge, or vary or suspend the operation of, an order made under this section at any time.

**70. Infringement notices**

- (1) Payment of the amount of a penalty pursuant to this section shall not be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (2) The regulations may prescribe an offence for the purposes of this section by setting out the offence or by a reference to the provision of this Act or the regulations creating the offence.
- (3) A person authorised under subsection (10) who has reason to believe that a person who —
  - (a) has committed an offence prescribed by the regulations for the purposes of this section; or
  - (b) is guilty of an offence by virtue of section 68 in relation to any offence of the kind referred to in paragraph (a),may give to that person an infringement notice in the prescribed form informing the person that if the person does not wish to be prosecuted for the alleged offence in a court the person may, within a period of 21 days after the giving of the notice, pay to a person designated under subsection (10), the amount of money specified in the notice as being the modified penalty for that offence.
- (4) In an infringement notice the amount specified as being the modified penalty for the offence referred to in the notice shall not exceed 10% of the maximum penalty for that offence under this Act at the time the alleged offence is believed to have been committed.
- (5) An infringement notice may be given to an alleged offender within 21 days of the alleged offence —
  - (a) personally; or
  - (b) by posting it to the alleged offender by certified post,and where service is effected under paragraph (b), an official postal receipt held by the person who posted the notice is

conclusive evidence of the giving of the notice to the address there certified.

- (6) A person to whom an infringement notice is given may decline to be dealt with under this section and is deemed to have so declined if the modified penalty is not paid within 21 days or such further time as may, whether before or after the expiry of that period, be allowed by the Council or a person authorised in writing by the Council for this purpose.
- (7) The Council may, whether or not the modified penalty has been paid, withdraw an infringement notice within 28 days after it was given by sending to the alleged offender a signed notice in the prescribed form, and where a notice is withdrawn after the modified penalty has been paid, the amount paid shall be refunded.
- (8) Where the modified penalty payable under an infringement notice has been paid within 21 days or such further time as is allowed and it has not been withdrawn, no proceedings shall be brought or other penalty imposed on that person under this Act.
- (9) The amount of any modified penalty paid pursuant to an infringement notice shall, subject to subsection (7), be dealt with as if it were a fine imposed by a court as a penalty for an offence.
- (10) The Council may —
  - (a) in writing, authorise persons or classes of persons who are officers of a public authority therein specified to give infringement notices; and
  - (b) by notice published in the *Gazette*, designate the persons or classes of persons to whom payment of a modified penalty may be made,

and may in like manner revoke an authorisation or notice.

- (11) The Council shall issue to each person authorised under subsection (10) a certificate in the prescribed form which that

person shall produce whenever required to do so by another person to whom the person authorised has given or is about to give an infringement notice.

*[Section 70 amended by No. 78 of 1995 s. 52; No. 84 of 2004 s. 80.]*

### **Division 6 — Inspection and information**

#### **71. Inspectors and powers of entry etc.**

- (1) The Chairperson —
  - (a) shall be; and
  - (b) may appoint —
    - (i) any person appointed to the Council or a committee of the Council, or a person appointed or engaged under section 27; or
    - (ii) a person or class of persons holding office under any other written law,to hold office as,  
an inspector under this Act.
- (2) A person who holds office as an inspector under this Act, whether or not a member of a class of persons appointed pursuant to subsection (1)(b)(ii), shall be furnished by the Chairperson with a certificate in a prescribed form evidencing that appointment.
- (3) Whenever required to do so —
  - (a) by another person in respect of whom that person has exercised, is exercising or is about to exercise any of the powers —
    - (i) which are conferred on that person by or under this Act; and
    - (ii) which that person is entitled to exercise;or

- (b) on applying for admission to any premises or place which that person is empowered by this Act to enter,

any person who is appointed as an inspector under this Act shall produce the certificate furnished under subsection (2), and a person to whom subsection (1)(b)(ii) applies shall also produce written evidence of the office held under the written law pursuant to which that person was appointed.

- (4) The Chairperson may, when furnishing a certificate under subsection (2), limit the powers conferred on a person by or under this Act by specifying in the certificate furnished which of those powers the person is entitled to exercise, and that limitation shall have effect according to its tenor.
- (5) The appointment of a person under subsection (1) does not —
- (a) render Part 3 of the *Public Sector Management Act 1994*, or any other Act applying to persons as officers of the Public Service of the State, applicable to the person; or
- (b) affect or prejudice the application to the person of any Act referred to in paragraph (a) if it applied to the person at the time of the appointment.
- (6) Subject to subsection (4) any inspector may, together with any person the inspector may think competent to assist in making any inspection or examination, enter any land with the consent of the occupier and make such investigation and inquiry and ask such questions, and request such information, as the inspector considers necessary or desirable to the extent required to ascertain whether the provisions of this Act or any order or requirement made pursuant thereto, or any conditions applicable, are being or have been observed.
- (7) In the exercise of powers under this section a person shall conform so far as is practicable to such reasonable requirements of the person owning or using the land as are necessary to prevent the working of the business or the conduct of operations on or in the land or in any building being obstructed.

- (8) Where it is shown to the satisfaction of a justice that admission to any land or building has been refused following a request by a person authorised under this section for entry thereto, or that it is unoccupied, the justice may, by warrant under his or her hand, authorise that person or any other person named in the warrant to enter thereon or therein for the purposes of this Act, and a warrant granted under this subsection continues in force until the purpose for which it was granted has been satisfied.

*[Section 71 amended by No. 32 of 1994 s. 19.]*

**72. Powers to obtain information**

- (1) A person who is an owner, occupier, or person in charge or apparently in charge of any land or building shall furnish to any other person carrying out a function under this Act all reasonable facilities and all such information that the person is capable of furnishing as may be required by that other person with respect to the exercise of the powers and the discharge of the duties of that other person under this Act.
- (2) The Council, by notice in writing served on a person who is the owner or occupier of any land or building, may require that person to furnish to the Council within 7 days or such longer period as may be specified in the notice, such information relating thereto as the Council requires by the notice for the purposes of this Act.
- (3) An inspector may, by notice in writing, require any person who appears to the inspector to be carrying out, or proposing to carry out, works that might result in a contravention of this Act to furnish orally or, if so requested in that notice, in writing the name and address of the person who on the date specified in the notice was —
- (a) the owner of; or
  - (b) the occupier of; or
  - (c) in control of any equipment, works or activity appearing to relate to,

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

- (4) An inspector may require a person who the inspector believes has committed, or is about to commit, an offence under this Act —
- (a) to state that person's full name and usual place of residence; and
  - (b) to leave any land to which this Act applies immediately.
- (5) A person who —
- (a) wilfully delays or obstructs; or
  - (b) does not comply with any reasonable requirement made by,

a person acting in the execution of this Act commits an offence.

Penalty: \$2 000.

- (6) A person who, when required to give any information under this Act, knowingly gives or causes to be given information that to the knowledge of that person is false or misleading in a material particular, commits an offence.

Penalty: \$5 000.



## **Part 7 — Acquisitions and compensation**

### **73. Compulsory acquisition of land**

- (1) Where it appears to the Minister, in relation to a place having cultural heritage significance, that the continued existence of that place in a condition suitable to effect conservation of its heritage value is in jeopardy —
  - (a) the Council may, by public advertisement, describe the location of that place and declare that conservation works described in the advertisement are public works for the protection and preservation of a place of scientific or historical interest which the Council proposes to undertake for reasons described in the advertisement; and
  - (b) on publication of that advertisement, the land on which the place described is situated and any land to which subsection (5) applies shall be taken to be land to which Part 9 of the *Land Administration Act 1997* applies and liable to be taken under that Part; and
  - (c) on the issue of a notice of intention under section 171 of the *Land Administration Act 1997*, proceedings under that Act for the taking of the land may be commenced.
- (2) For the purposes of this Act, in the assessment of the compensation payable under Part 10 of the *Land Administration Act 1997* in relation to any land which is or forms part of a registered place, or is the subject of a Heritage Agreement, if —
  - (a) the Minister has reasonable cause to believe —
    - (i) that a building has been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and redevelopment or the redevelopment of the site together with any adjoining land; or

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(ii) that the land, having been acquired by the claimant within the preceding period of 3 years (being a period commencing after the coming into operation of this section), was acquired with the intention of demolishing a building;

and

(b) that the land or any such building is of cultural heritage significance,

the value to be attributed to the land may be assessed having regard to the actual state of the place and of any such building, any compensation that would otherwise be payable being reduced accordingly and no account being taken of the potential use of the land or of any adjacent land, it being assumed that consent would not be granted under any written law for the demolition of the building or for any development other than its restoration and conservation, and any amount which a particular purchaser might be prepared to offer by reason of the special needs of that purchaser shall be disregarded.

- (3) Nothing in this section precludes the Minister or the Council from taking any land under Part 9 of the *Land Administration Act 1997* for the purposes of this Act but for reasons other than those described in the public advertisement published pursuant to subsection (1).
- (4) A person aggrieved by a decision of the Minister under this section may, subject to subsection (7), require the Minister to refer to the State Administrative Tribunal the question as to whether that decision should be confirmed or revoked, the State Administrative Tribunal may determine any such question, and the Minister and the Minister administering Part 9 of the *Land Administration Act 1997* shall cause effect to be given to any such determination.
- (5) Subject to any finding by the State Administrative Tribunal made under subsection (4), where it appears to the Minister on the advice of the Council that any land or any interest in land is

associated with, or is contiguous or adjacent to, or is land the use of which is likely to be prejudicially affected by the acquisition of, land to which this section applies, being land or an interest —

- (a) required for conserving or presenting the place of cultural heritage significance proposed to be acquired or its amenities or for affording access to it; or
- (b) appropriate and desirable for its proper control or management; or
- (c) which for the purposes of this Act otherwise ought to be acquired,

and the Minister agrees to that acquisition under this subsection, that land or interest may be compulsorily acquired by the Council under Part 9 of the *Land Administration Act 1997* as being land or an interest in land required for, or in connection with, the acquisition of a place to be acquired pursuant to this section.

- (6) Any land, building or other thing compulsorily acquired, whether by the Minister or by the Council, on behalf of the Crown pursuant to this Act may be disposed of on such terms and conditions as the Governor may approve.
- (7) For the purposes of subsection (4) the questions that may be referred to the State Administrative Tribunal shall be taken to be —
  - (a) under subsection (1) —
    - (i) as to whether the land described in the advertisement, and any land to which subsection (5) applies, is necessarily required to be acquired for purposes referred to in this section by reason that the continued existence of the place in question in a condition suitable to effect conservation of its heritage value would otherwise be in jeopardy; and

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(ii) as to whether the conservation works described in the advertisement are necessary for the reasons described in the advertisement and are in the public interest;

and

- (b) under subsection (2), as to the reasonableness of the cause of the belief held by the Minister and the effect that belief should have on the assessment of the value to be attributed to the land; and
- (c) under subsection (5), as to whether the acquisition of the land or interest should have been agreed to by the Minister having regard to the advice, and the appropriateness of the advice, given by the Council and the public interest,

but the nature or degree of cultural heritage significance that should have been attributed in relation to any place by the Council or the Minister shall not be a question to be determined by the State Administrative Tribunal although regard may be had to community representations as to that significance.

*[Section 73 amended by No. 31 of 1997 s. 33(2)-(5) and 142; No. 55 of 2004 s. 507 and 508.]*

**74. Acquisition by consent**

- (1) Subject to this Act —
- (a) the Council; or
- (b) a public authority; or
- (c) a body corporate approved for the specific purpose by the Minister,

may on behalf of the Crown purchase or otherwise acquire by consent any property or interest in property, and deal with that property or interest, where in the opinion of the Minister that is necessary or desirable for the proper discharge of the duties imposed by this Act.

- (2) Any property or interest to which subsection (1) applies which is to be held otherwise than by a temporary custodian shall be made the subject of a Heritage Agreement, if that is practicable.

**75. Assessment of compensation**

- (1) Where compensation is sought under subsection (2) —
- (a) the monetary value of that compensation shall be assessed having regard to any measures of the kind referred to in section 29(13)(g) which are agreed and are to be taken into account; and
  - (b) it need not be a condition of the payment of compensation that a Heritage Agreement be entered into by the parties.
- (2) Where the operation of section 78, or the making of a Stop Work Order in respect of a place whether or not entered in the Register, has as a consequence the revocation, modification, or suspension of, or a delay in the implementation of, a permission or authorisation granted under any relevant Act and a person interested in the land to which the order relates has reasonably incurred expenditure in carrying out work rendered abortive and thereby sustained loss directly attributable to the revocation, modification, suspension or delay, being a loss which —
- (a) is capable of being assessed by way of a liquidated amount; and
  - (b) arises out of a contractual or statutory obligation incurred prior to the making of the order; and
  - (c) except in so far as subsection (3) 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,

the person may, within the time and in the manner prescribed, make a claim for compensation in respect of that loss, and the Minister shall thereupon cause inquiry to be made and make recommendations to the Treasurer as to whether any, or what amount of, compensation should be payable to that person by the Treasurer.

- (3) For the purposes of subsection (2) —

- (a) **relevant Act** means —

- (i) the *Local Government (Miscellaneous Provisions) Act 1960*; or
- (ii) the *Planning and Development Act 2005*; or
- [(iii) deleted]*
- (iv) the *Strata Titles Act 1985*; or
- (v) any other Act relating to planning or the development of land which is prescribed for the purposes of this section;

and

- (b) any expenditure incurred in the preparation of plans for the purposes of any work, or upon other necessary matters preparatory to the work, shall be taken to be included in the expenditure incurred in carrying out that work; and
- (c) the assessment may take into account the cost of, and the circumstances relating to, the acquisition of the land by the claimant; and
- (d) loss or damage in respect of which compensation is payable may include a sum payable in respect of a breach of contract caused by the necessity of discontinuing or countermanding any works on account of the revocation, modification or delay; and

- (e) no account shall be taken of any prospective use of the land, other than the restoration and conservation of a place of cultural heritage significance; and
  - (f) where permission or authorisation for the development of some other land is made possible or is beneficially affected by a Heritage Agreement, an order under section 38, or otherwise by the operation of, or in consideration of the attainment of the objects of, this Act and the claimant benefits thereby, account shall be taken of that benefit in mitigation of the loss or damage sustained; and
  - (g) in considering whether any expenditure was or was not reasonably incurred, where —
    - (i) any land affected was included in a publicly available list of places that for historic or other reasons should be protected; or
    - (ii) the person concerned had received, or ought to have taken, notice of the cultural heritage significance attributable to the place,regard shall be had to that fact and to the consequential possibility that legislation was likely to be enacted to effect that protection or to conserve that heritage, whereby a reasonable person intending to incur expenditure would have been likely to proceed with caution and in consultation with relevant authorities and interested bodies.
- (4) The Minister shall make known to the Treasurer any recommendations required by subsection (2) within 60 days of receipt by the Minister of any claim, and in default the claimant may require that the Treasurer determine the matter forthwith, and the claim may be thereupon refused by the Treasurer but if it is not so refused the Treasurer shall be liable to pay to that person such amount as —
- (a) is agreed between the Treasurer and that person; or

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- (b) in default of agreement, is determined by —
  - (i) a valuer appointed by agreement between the Treasurer and that person; or
  - (ii) in default of agreement on that appointment, under and in accordance with the *Commercial Arbitration Act 1985*,unless the parties agree on some other method of determination,

taking into account the factors referred to in subsection (3) and otherwise required under this Act.

*[Section 75 amended by No. 14 of 1996 s. 4; No. 38 of 2005 s. 15.]*

**76. Requests for acquisition**

- (1) An owner of any estate or interest in land who claims that by reason of the operation of this Act the land has become incapable of reasonably beneficial use, and that the carrying out of any reasonable development could not render the land capable of reasonably beneficial use, may by notice in writing request the Council to acquire that estate or interest, or cause it to be acquired, on behalf of the Crown under section 74, but if the Council refuses or the owner is not satisfied that such an acquisition will take place on terms which are acceptable the owner may request the Minister to refer to the State Administrative Tribunal the question of the effect of the operation of this Act upon that estate or interest, and in particular as to whether it would be appropriate for the land to be acquired by the Council as though for conservation works to conserve its heritage value, and the State Administrative Tribunal may determine that question and in so doing —
  - (a) shall have the powers and give effect to the requirements referred to in section 30; and



- (b) if the State Administrative Tribunal finds the claim to be proved, may require the Council so to take the land under section 73 as though directed by the Minister,

and effect shall then be given to that requirement by the public advertisement of the determination of the State Administrative Tribunal by the Council with the approval of the executive officer of the State Administrative Tribunal as though it were an advertisement of the kind referred to in section 73(1)(a).

- (2) No compensation shall be payable in respect of a claim made under section 75(2) where the land to which the claim relates is also the subject of a claim made under subsection (1) which takes effect.
- (3) No claim shall be made under subsection (1) in respect of any estate or interest where the question of the determination of the compensation payable in respect of a loss arising by reason of the operation of this Act in respect of that land has been referred under section 75(4) to arbitration under the *Commercial Arbitration Act 1985*, without leave of the Treasurer.

*[Section 76 amended by No. 55 of 2004 s. 506 and 507.]*

**77. Claims, and compensation for unreasonable delay, arising from administration of Act**

- (1) Without prejudice to the operation of Part 4, no action lies, and no claim for compensation other than such as is provided in this Part arises, by reason only of —
- (a) the entry of a place in the Register; or
- (b) the operation of this Act, otherwise.
- (2) Where in proceedings in the Supreme Court the Court determines that a person (being a person who or which would have been entitled to make a claim under section 203 of the *Land Administration Act 1997* had the land concerned been lawfully entered upon with a view to acquisition pursuant to Division 4 of Part 9 of that Act) has as a result of unreasonable

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delay in the administration of this Act occasioned by a public authority been subjected to loss and no compensation is otherwise afforded by this Act, the Court may thereupon order that compensation be payable under subsection (4) to that person, as though section 203 of the *Land Administration Act 1997* applied to and in relation to the land affected by reason of the land having been notionally entered upon under Division 4 of Part 9 of that Act as at a date determined by the Court, but any compensation payable shall be limited to such actual loss as may have been so occasioned and may be limited in such other manner as the Court thinks fit.

- (3) For the purposes of subsection (2), a reference in Division 4 of Part 9 of the *Land Administration Act 1997* to “the Minister” shall be construed as a reference to the Minister of the Crown to whom the administration of this Act is committed.
- (4) Where the Supreme Court attributes responsibility for loss to a public authority, the compensation payable under subsection (2) shall be paid by that public authority.

*[Section 77 amended by No. 31 of 1997 s. 33(6) and (7).]*

## **Part 8 — Effect on development proposals**

### **78. Entry of land in Register, effect of on certain applications etc.**

- (1) Where any land is entered in the Register all —
- (a) applications for approval of development in a planning control area made under Part 7 of the *Planning and Development Act 2005*; and
  - (b) applications for approval under section 135, 136 or 162, or approvals for the purposes of section 147, of the *Planning and Development Act 2005*; and
  - (c) licence applications under section 374 or 374A of the *Local Government (Miscellaneous Provisions) Act 1960*; and
  - (d) applications for a certificate of approval under section 25 of the *Strata Titles Act 1985*; and
  - (e) other prescribed applications,

then before a decision-making authority in respect of that land shall, except in so far as the Council may otherwise in writing agree with the decision-making authority, not be further proceeded with until the application in question has been referred by the decision-making authority to the Council and the advice of the Council received.

- (2) Upon any land being entered in the Register as an interim registration, if an approval or licence in respect of that land is of a kind in respect of which a pending application would have been referred to the Council under subsection (1) or is an instrument of a prescribed kind which is in force, the operation of that approval, licence or instrument —
- (a) shall be taken to be thereby suspended but may, if the Council gives notice in writing of its consent to the holder, be acted upon in such manner as the Council may authorise in that notice; and

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- (b) shall not be given effect to, except in so far as paragraph (a) may authorise, until the interim registration ceases; and
  - (c) is subject thereafter to any condition imposed by the Council when giving its consent.
- (3) Upon any place being entered in the Register on a permanent basis, all applications, approvals, licences and instruments of a kind referred to in subsection (1) or subsection (2) are deemed to be thereby revoked and shall not be given effect to, but the operation of this subsection does not prejudice the right of a person in whose name such an application had been made or who was the holder of such an approval, licence or instrument to make a fresh application.
- (4) Where a decision-making authority grants an application under any written law in relation to any land, or any works or thing, to which a permit granted subject to conditions imposed by the Minister or the Council under this Act applies, any conditions imposed by the decision-making authority in relation to a like matter shall not be inconsistent with the conditions imposed under this Act.
- (5) Nothing in this Act shall be construed as requiring an application to be made for approval to any alteration to a registered place (being a church or land within the precinct of a church) for purposes which are of a liturgical nature where the Council has been given 28 days notice of the proposed alterations by the owner and the notice includes a declaration by an officer of the church authorised by the church for that purpose that the alteration is required for liturgical purposes.

*[Section 78 amended by No. 14 of 1996 s. 4; No. 38 of 2005 s. 15.]*

**79. Land entered in Register, offences as to etc.**

- (1) Subject to subsection (2), where any place is entered in the Register, a person who —
- (a) damages or despoils that place or any part of, or thing in, that place; or
  - (b) removes any thing from that place,

or who authorises, causes or permits any other person to do any of those things, otherwise than in the course of works of the kind referred to in section 63 or which are authorised by a decision-making authority pursuant to this Act, commits an offence.

Penalty: a fine of \$1 000 000.

Daily penalty: a fine of \$50 000.

- (2) A person may, on payment of the prescribed fee, make application to the Council in writing for a permit authorising the doing of any thing that might otherwise contravene subsection (1) but would not contravene any applicable Conservation Order.
- (3) The Council shall within 60 days of the receipt of the application, or such longer period as the Minister may authorise, grant the permit, either unconditionally or subject to specified conditions, or, after giving the applicant reasonable opportunity to show cause to the contrary, refuse the application.
- (4) Without prejudice to the generality of subsection (3), the conditions imposed shall be referred to or set out in the permit and may include conditions of the kind referred to in section 64(4) or may require that prior to the carrying out of any works or the doing of any thing to which the application relates the applicant shall —
- (a) cause a notice setting out details of the proposal to be —
    - (i) served on the local government of the district in which the land is situate; or

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- (ii) continuously displayed in a conspicuous position on the land or building concerned; or
    - (iii) given to any person; or
    - (iv) published in a newspaper, or otherwise as the Council may determine;
  - and
  - (b) invite persons by that notice to lodge submissions with the Council or with a person approved by the Council; and
  - (c) furnish a report by a person approved by the Council on any such proposal and submissions, and as to the extent to which the application, if refused, would affect the reasonable or economic use of the land or any building, or any other land, or would cause undue financial hardship to the owner, or any other person, or as to any of those or other matters.
- (5) Where the Council does not notify the applicant within 60 days of the receipt of the application —
- (a) of its decision; or
  - (b) of the longer period authorised by the Minister as that within which the decision is to be made,
- or does not notify the applicant of its decision prior to the expiry of that longer period, the applicant may warn the Council that the applicant is being adversely affected by the delay and if the Council does not then notify the applicant of its decision within 14 days of that warning the Council shall be deemed to have granted a permit in respect of the application.
- (6) Where any condition imposed is not acceptable to the applicant, the applicant may refer the matter to the Minister who shall determine the matter and give directions accordingly.

*[Section 79 amended by No. 14 of 1996 s. 4; No. 4 of 2011 s. 7.]*

**80. Governor may prohibit etc. development of place following offence under Part 6 or s. 79**

(1) Where a person is convicted of an offence which constitutes a contravention of an order under Part 6, or is convicted of an offence under section 79(1), in relation to any place then, unless the court before which that person is so convicted recommends otherwise, the Governor on the advice of the Minister may by Order in Council published in the *Gazette* declare that —

- (a) that place or a particular portion of the land comprising that place; or
- (b) any building on the land; or
- (c) both that land and any such building,

shall not be developed, or used, or shall be neither developed nor used, or shall be developed or used only in accordance with conditions specified in the order, during such period not exceeding 10 years as is specified in the order.

(2) An Order in Council made under subsection (1) may be revoked or varied by a subsequent such order.

(3) Where an order under subsection (1) is in force in relation to any land or building —

- (a) a person who carries out works on, or any development of, the land or building, or who uses any land or building, contrary to the provisions of the order, or who causes or permits any other person so to do, commits an offence; and
- (b) any permit, authorisation, licence or other instrument under any written law purporting to relate to any development or use of the land or building contrary to the terms of the order —
  - (i) has no force and shall not be given effect; and

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- (ii) does not provide a defence to any person contravening paragraph (a).

Penalty: a fine of \$1 000 000 and imprisonment for 2 years.

Daily penalty: a fine of \$50 000.

- (4) Where an order under subsection (1) is made in relation to any place, the Council —
- (a) shall cause the chief executive officer of the department principally assisting in the administration of the *Land Administration Act 1997*, the Registrar of Titles or the Registrar of Deeds and Transfers, as the case may require, to be advised by way of memorial of the effect of that order; and
  - (b) may thereupon lodge such caveat or cause such other steps to be taken as may be necessary or proper to give effect to the terms of that order; and
  - (c) publish notice by way of public advertisement for general information of a summary of the terms of the order, setting out a sufficient description to identify the place to which it refers; and
  - (d) shall cause a copy of the order to be served, where practicable, on the owner and each occupier of the place concerned.

*[Section 80 amended by No. 60 of 2006 s. 136; No. 4 of 2011 s. 8.]*

**81. Owners of land in Register or subject to Heritage Agreement to notify Council of intention to sell**

Where a person who is the owner of any place which is entered in the Register or is the subject of a Heritage Agreement enters into —

- (a) a contract for the sale of the land or any portion of the land comprising that place; or



- (b) any agreement whereby the person ceases to be responsible for the day to day maintenance of the cultural heritage characteristics of that place,

the person shall, within 28 days thereafter, notify the Council in writing of the parties to that contract or agreement and furnish to the Council such other information relating to the transaction as the Council may require.

Penalty: \$200.

## Part 9 — General provisions

### 82. Service of notices and evidentiary matters

- (1) Notwithstanding any requirement of this Act as to the service of notice or other document on any person, where it appears to a Judge in Chambers, on an application made by the Council, that —
  - (a) it is impracticable to serve the document in any manner permitted by section 76 of the *Interpretation Act 1984*; and
  - (b) the Council has endeavoured to effect service in such a manner as would be likely to ensure that the requirement for the giving of notification has been met, but has been unable so to do,

the Judge may by order provide for service by a substituted means or may dispense with the requirement for service.

- (2) Where by this Act any notice or other document is required to be served on a mortgagee (including the holder of any charge) and, after diligent inquiry, the address for service of that mortgagee can not be ascertained, such service may in lieu be effected by serving a copy of that notice or other document addressed to the mortgagee upon an owner of the interest in the land affected by that mortgage.
- (3) The validity of any notice or other document or of its service is not affected by any error, misdescription, or irregularity which is not calculated to mislead, or which in fact does not mislead.
- (4) In all proceedings in which the giving of any notice or other document required or authorised under this Act to a party to the proceedings has to be proved, the party is deemed to have received notice to produce that document, and, until the contrary is shown, the giving of the notice or the due service of the document may be sufficiently proved by the production of what purports to be a copy, bearing what purports to be a certificate

under the hand of the person giving that notice or authorised to issue the original document, or the Chairperson, as the case may be, that the copy is a true copy of the original and that the original notice was given or document served on the date specified in the certificate.

- (5) In all courts and before all persons authorised to receive evidence —
- (a) a signature purporting to be that of the Minister, the Chairperson, or other authorised officer of the Council shall be taken to be the signature of the person whose signature it purports to be until the contrary is proved; and
  - (b) a statement signed by the Chairperson that a notice or other document of the description mentioned in the statement has or has not been given to or served on a person by the Council under this Act or as to the date of and the particulars contained in any notice so given or any document so served is evidence of the matter specified in the statement; and
  - (c) a notification in the *Gazette* as to the exercise by the Council of any power conferred under this Act, or as to any order made under this Act, is evidence of the facts therein stated.
- (6) Where proceedings are taken in the name of the Council by an authorised officer no proof shall be required of the appointment of that officer as an officer of the Council or of the authority of that officer to take those proceedings, and the averment on the process that the officer is so authorised shall be deemed to be proof of the fact, in the absence of evidence to the contrary.

*[Section 82 amended by No. 84 of 2004 s. 80.]*

**83. Regulations**

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are

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necessary or convenient to be prescribed for giving effect to the purposes of this Act.

**84. Review of Act**

- (1) The Minister shall carry out, or cause to be carried out, a review of the operation of this Act as soon as is practicable after the expiration of 3 years from the coming into operation of this Act, and in the course or as a consequence of such review the Minister shall consider and have regard to —
  - (a) the effectiveness of the operations of the Council; and
  - (b) the need for the continuation of the functions of the Council; and
  - (c) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (2) The Minister shall prepare a report based on the review of this Act and shall, as soon as practicable after the preparation thereof, cause the report to be laid before each House of Parliament.

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## Notes

- <sup>1</sup> This is a compilation of the *Heritage of Western Australia Act 1990* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

## Compilation table

Short title	Number and year	Assent	Commencement
<i>Heritage of Western Australia Act 1990</i>	103 of 1990	22 Dec 1990	s. 1 and 2: 22 Dec 1990; Act other than s. 1 and 2: 25 Feb 1991 (see s. 2 and <i>Gazette</i> 22 Feb 1991 p. 868)
<i>Financial Administration Legislation Amendment Act 1993 s. 11 and 15</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Public Sector Management) Act 1994 s. 19</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Planning Legislation Amendment Act (No. 2) 1994 s. 46(1)-(3)</i>	84 of 1994	13 Jan 1995	1 Mar 1995 (see s. 2 and <i>Gazette</i> 21 Feb 1995 p. 567)
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995 s. 188</i>	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2(2) and <i>Gazette</i> 29 Dec 1995 p. 6291)
<i>Sentencing (Consequential Provisions) Act 1995 Pt. 39</i>	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Acts Amendment (Land Administration) Act 1997 Pt. 31 and s. 142</i>	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 71</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<b>Reprint of the <i>Heritage of Western Australia Act 1990</i> as at 1 Jun 2001</b> (includes amendments listed above)			

## Heritage of Western Australia Act 1990

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Short title	Number and year	Assent	Commencement
<i>Planning Appeals Amendment Act 2002 s. 24</i>	24 of 2002	24 Sep 2002	18 Apr 2003 (see s. 2 and <i>Gazette</i> 17 Apr 2003 p. 1243)
<i>Taxation Administration (Consequential Provisions) Act 2002 s. 15</i> <sup>3</sup>	45 of 2002	20 Mar 2003	1 Jul 2003 (see s. 2(1) and <i>Gazette</i> 27 Jun 2003 p. 2383)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 60</i> <sup>4</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80 and 82</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15</i>	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)
<b>Reprint 2: The Heritage of Western Australia Act 1990 as at 9 Jun 2006</b> (includes amendments listed above)			
<i>Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 10 Div. 3</i>	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<i>Land Information Authority Act 2006 s. 136</i>	60 of 2006	16 Nov 2006	1 Jan 2007 (see s. 2(1) and <i>Gazette</i> 8 Dec 2006 p. 5369)
<i>Financial Legislation Amendment and Repeal Act 2006 s. 4 and Sch. 1 cl. 83</i>	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Petroleum Amendment Act 2007 s. 96</i>	35 of 2007	21 Dec 2007	19 Jan 2008 (see s. 2(b) and <i>Gazette</i> 18 Jan 2008 p. 147)
<b>Reprint 3: The Heritage of Western Australia Act 1990 as at 18 Apr 2008</b> (includes amendments listed above)			

Short title	Number and year	Assent	Commencement
<i>Duties Legislation Amendment Act 2008</i> Sch. 1 cl. 14	12 of 2008	14 Apr 2008	1 Jul 2008 (see s. 2(d))
<i>Acts Amendment (Bankruptcy) Act 2009</i> s. 41	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
<i>Public Sector Reform Act 2010</i> s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Heritage and Planning Legislation Amendment Act 2011</i> Pt. 2	4 of 2011	2 Mar 2011	3 Mar 2011 (see s. 2(b))

**Reprint 4: The *Heritage of Western Australia Act 1990* as at 17 Jun 2011** (includes amendments listed above)

<sup>1a</sup> On the date as at which this reprint was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compiling the reprint. For the text of the provisions see the endnotes referred to in the table.

#### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 75 <sup>5</sup>	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))
<i>Building Act 2011</i> s. 162 <sup>5</sup>	24 of 2011	11 Jul 2011	<del>To be proclaimed</del> <a href="#">2 Apr 2012</a> (see s. 2(b)) and <i>Gazette</i> <a href="#">13 Mar 2012 p. 1033</a>

<sup>2</sup> The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39, but its provisions continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26. See also note 5.

<sup>3</sup> The *Taxation Administration (Consequential Provisions) Act 2002* contains transitional provisions that may be relevant to this Act.

<sup>4</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169,

and the *State Administrative Tribunal Regulations 2004* r. 28, 42 and 53 deal with certain transitional issues some of which may be relevant for this Act.

Regulation 53 reads as follows:

- 53. Heritage of Western Australia Act 1990**
- (1) In this regulation —  
*commencement day* means the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 60 comes into operation;  
*the HWA Act* means the *Heritage of Western Australia Act 1990*.
  - (2) If, before the commencement day, the Minister receives a notice in accordance with the HWA Act section 30(1) (as in force when the notice was received by the Minister) but does not before the commencement day refer to the Town Planning Appeal Tribunal the question the Minister is requested to so refer in the notice, on and after the commencement day —
    - (a) the notice is to be taken to refer to the State Administrative Tribunal and not to the Town Planning Appeal Tribunal; and
    - (b) section 30(2)(a) of the HWA Act applies as if any requirement made or undertaking given under that paragraph referred to the State Administrative Tribunal and not to the Town Planning Appeal Tribunal.
  - (3) If a Heritage Agreement is entered into pursuant to a determination the provisions of which have been approved by the Town Planning Appeal Tribunal but has not been endorsed as so approved by the Registrar of that Tribunal before the commencement day, on and after the commencement day, the HWA Act section 30(5) applies to that Agreement as if a reference in that subsection to the Registrar were a reference to the executive officer of the State Administrative Tribunal.
  - (4) If, before the commencement day, the Minister is required in accordance with the HWA Act section 37(3) (as in force when the requirement was received by the Minister) to refer a question to the Town Planning Appeal Tribunal but does not do so before the commencement day, on and after the commencement day the Minister must refer the question to the State Administrative Tribunal as if the requirement had referred to the State Administrative Tribunal and not to the Town Planning Appeal Tribunal.
  - (5) On and after the commencement day, a reference in the HWA Act section 37(4) to a finding made by the State Administrative



Tribunal on a reference in relation to the same or a related matter under the HWA Act section 37(3) is to be taken to include a reference to such a finding lawfully made by the Town Planning Appeal Tribunal before the commencement day.

- (6) If, before the commencement day, the Minister is required in accordance with the HWA Act section 73(4) (as in force when the requirement was received by the Minister) to refer a question to the Town Planning Appeal Tribunal but does not do so before the commencement day, on and after the commencement day the Minister must refer the question to the State Administrative Tribunal as if the requirement had referred to the State Administrative Tribunal and not to the Town Planning Appeal Tribunal.
- (7) If, before the commencement day, the Minister is requested in accordance with the HWA Act section 76(1) (as in force when the requirement was received by the Minister) to refer a question to the Town Planning Appeal Tribunal but does not do so before the commencement day, on and after the commencement day the Minister must refer the question to the State Administrative Tribunal as if the request had referred to the State Administrative Tribunal and not to the Town Planning Appeal Tribunal.

<sup>5</sup> On the date as at which this reprint was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 75 had not come into operation. It reads as follows:

**75. Various provisions repealed**

The provisions listed in the Table to this section are repealed.

**Table of provisions repealed**

<b>Act</b>	<b>Provision</b>
.....	.....
<i>Heritage of Western Australia Act 1990</i>	s. 27(4)
.....	.....

<sup>5</sup> On the date as at which this compilation was prepared, the *Building Act 2011* s. 162 had not come into operation. It reads as follows:

**162. Heritage of Western Australia Act 1990 amended**

- (1) This section amends the *Heritage of Western Australia Act 1990*.
- (2) After section 11(3) insert:

(4A) Subsections (2) and (3)(a) and (b) do not apply to an application for a building permit or demolition permit under the *Building Act 2011* if it appears from the application that that applicant has already referred the proposal to the Council and the Council has given its advice in relation to the proposal.

- (3) In section 11(4)(b) delete “permission,” and insert:

permission (including a building permit or demolition permit under the *Building Act 2011*),

- (4) In section 34(2) delete “*Local Government (Miscellaneous Provisions) Act 1960*” (each occurrence) and insert:

*Building Act 2011*

- (5) In section 75(2) after “permission” insert:

(including a building permit or demolition permit under the *Building Act 2011*)

- (6) In section 75(3)(a)(i) delete “*Local Government (Miscellaneous Provisions) Act 1960*,” and insert:

*Building Act 2011*;

- (7) Delete section 78(1)(c) and insert:

(c) applications under the *Building Act 2011* for a building permit or demolition permit;

- (8) In section 78(2):

- (a) delete “approval or licence” and insert:  
approval, building permit or demolition permit
  - (b) delete “licence or” and insert:  
permit or
- (9) In section 78(3):
- (a) delete “licences” and insert:  
permits
  - (b) delete “licence” and insert:  
permit