

Queensland



**CULTURAL RECORD
(LANDSCAPES QUEENSLAND
AND QUEENSLAND ESTATE)
ACT 1987**

**Reprinted as in force on 30 March 2000
(includes amendments up to Act No. 5 of 2000)**

Reprint No. 1A *

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the Office of the Queensland Parliamentary Counsel
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NOT FURTHER AMENDED
LAST REPRINT BEFORE REPEAL
See 2003 Act No. 79 s 160

* Minor differences in style between this reprint and another reprint with the same number are due to the conversion to another software program. The content has not changed.

Information about this reprint

This Act is reprinted as at 30 March 2000. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have been made to use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Queensland



CULTURAL RECORD (LANDSCAPES QUEENSLAND AND QUEENSLAND ESTATE) ACT 1987

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	5
5	Interpretation	5
PART 2—ADMINISTRATION		
9	Landscapes Queensland protectors	7
10	Landscapes Queensland advisers	7
11	Identity cards	8
12	Advisory committees	9
13	Functions of advisory committees	9
14	Regional Landscapes Queensland committees	9
15	Functions of regional Landscapes Queensland committees	10
16	Delegation by Minister	11
PART 3—PRESERVATION OF LANDSCAPES QUEENSLAND AND THE QUEENSLAND ESTATE		
17	Designated landscape areas	11
18	Consents required for declaration under s 17	12
19	Temporary designated landscape areas	12
20	Recording and marking of designated landscape areas	13
21	Surveillance of designated landscape areas	13
22	Termination of designated landscape area	14
23	Offence to interfere with designated landscape areas	14
24	Offence to trespass on designated landscape area	15

*Cultural Record (Landscapes Queensland and
Queensland Estate) Act 1987*

25	Incidents of permissions granted	15
26	Acquisition of land by State	16
27	Exploration etc. of Queensland Estate	16
28	Permit to explore etc. Landscapes Queensland and Queensland Estate	17
29	Renewal of permit	18
30	Revocation of permit	19
31	Duties of permit holder	19
PART 4—OWNERSHIP AND HANDLING OF QUEENSLAND ESTATE		
32	Indigenous rights unaffected by Act	20
33	Ownership of Queensland Estate generally.	20
34	Ownership of certain burial remains	21
35	Duties respecting burial remains	22
36	Duty respecting Queensland Estate taken under permit	22
37	Disposal of Queensland Estate submitted to Minister.	22
38	Particular steps to preserve Queensland Estate	23
39	Loan of Queensland Estate	23
40	Continued use of surface	24
PART 5—REGISTER OF QUEENSLAND ESTATE		
41	Maintenance of register.	24
42	Nominations for entry in register	24
43	Removal from register.	25
44	Owner's initiative re items in register	26
PART 6—MISCELLANEOUS PROVISIONS		
<i>Division 1—Government concern for preservation of Landscapes Queensland and Queensland Estate</i>		
45	Function of local government	26
47	Acquisition of land	27
<i>Division 2—Aids in administration</i>		
48	Power of entry	27
49	Entry under warrant.	27
50	Power of search	28

*Cultural Record (Landscapes Queensland and
Queensland Estate) Act 1987*

52	Power to protect Queensland Estate	28
53	Recognition of skills related to Queensland Estate	29
55	Evidentiary provision	29

Division 3—Offence provisions

56	Offences concerning Queensland Estate	30
57	Order to make good damage	31
58	Forfeiture of State property	31
59	Offences touching administration	32
60	General offence	32
61	Prosecution proceedings	32
62	Liability of corporate persons	33

Division 4—General provisions

63	Museum Board’s possession of items of Queensland Estate	33
64	This Act additional to all other laws	33
65	Act not applicable to Queensland Museum collections	34
66	Regulation making power	34

PART 7—TRANSITIONAL REFERENCES

67	Aboriginal Relics Preservation Act 1967 references	35
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ENDNOTES

1	Index to endnotes	36
2	Date to which amendments incorporated	36
3	Key	36
4	Table of earlier reprints	37
5	Tables in earlier reprints	37
6	List of legislation	37
7	List of annotations	38

CULTURAL RECORD (LANDSCAPES QUEENSLAND AND QUEENSLAND ESTATE) ACT 1987

[as amended by all amendments that commenced on or before 30 March 2000]

An Act to provide for the preservation and management of all components of Landscapes Queensland and the Queensland Estate; to foster dissemination of knowledge of Landscapes Queensland and the Queensland Estate; to promote understanding of the historic continuum evidenced within Queensland and for related purposes

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*.

5 Interpretation

In this Act—

“**adviser**” means a person authorised to assume the role of Landscapes Queensland adviser.

“**burial remains**” does not include—

- (a) human remains buried under the authority of the law of Queensland or other State or of a Territory; or
- (b) human remains in or from a place recognised as a burial ground for interment of remains buried as referred to in paragraph (a).

“**designated landscape area**” includes an area that is declared to be a temporary designated landscape area.

*Cultural Record (Landscapes Queensland and
Queensland Estate) Act 1987*

“indigenous” means pertaining to any people who inhabited any part of Australia before colonisation of Australia.

“item of the Queensland Estate” includes, in relation to any structure or object in, on or under land, the surrounds of the structure or object from which it cannot be separated without destroying or diminishing its value or significance.

“Landscapes Queensland” means areas or features within Queensland that—

- (a) have been or are being used, altered or affected in some way by humans; and
- (b) are of significance to humans for any anthropological, cultural, historic, prehistoric or societal reason;

and includes any item of the Queensland Estate found therein.

“private land” means land that is not State land.

“protector” means a person holding a position as Landscapes Queensland protector.

“publish” means in relation to a writing to circulate or disseminate among or to present to the public at large or to any section of the community the writing or substantial portions thereof.

“Queensland Estate” means evidence of human occupation of the areas comprising Queensland at any time that is at least 30 years in the past but does not include anything—

- (a) made or constructed as a facsimile; or
- (b) made or constructed at or after the commencement of this Act for the purpose of sale; or
- (c) that is not of prehistoric or historic significance.

“register” means the register of the Queensland Estate maintained under this Act.

“State land” means all land that is not freehold land, or land contracted to be granted in fee-simple by the State.

PART 2—ADMINISTRATION

9 Landscapes Queensland protectors

(1) The Minister may appoint a person to be a Landscapes Queensland protector.

(2) The appointment is for a term of not more than 3 years, and is an honorary appointment.

(3) A Landscapes Queensland protector may resign by written notice of resignation given to the Minister.

(4) The Minister may terminate the appointment of a Landscapes Queensland protector by written notice given to the person.

10 Landscapes Queensland advisers

(1) The Minister may, by notice in writing, authorise any person to assume the role of Landscapes Queensland adviser.

(1A) A person shall serve in the role of Landscapes Queensland adviser in an honorary capacity.

(2) The Minister may from time to time require a person who is authorised to assume the role of Landscapes Queensland adviser to undergo and to complete to the Minister's satisfaction training courses if that person is to continue in that role.

(3) A person authorised to assume the role of Landscapes Queensland adviser shall cease to be so authorised if—

- (a) the person surrenders the authority in writing furnished to the chief executive; or
- (b) the person's authorisation is terminated by notice of the Minister given to the person; or
- (c) where the person is also a Landscapes Queensland protector—the person ceases to hold the position of a protector.

(4) The role of Landscapes Queensland adviser is—

- (a) to assist in the manner specified in the Landscapes Queensland protector's certificate of authority officers appointed for the purposes of this Act;

*Cultural Record (Landscapes Queensland and
Queensland Estate) Act 1987*

- (b) to recommend to officers appointed for the purposes of this Act concerning matters affecting Landscapes Queensland;
- (c) to establish and maintain within the area assigned to the Landscapes Queensland protector by his or her certificate of authority liaison between officers appointed for the purposes of this Act and, persons and associations concerned with matters affecting Landscapes Queensland.

(5) The Minister shall cause to be issued to every person authorised to assume the role of Landscapes Queensland adviser a certificate of authority, wherein shall be specified—

- (a) the area of the State assigned to that person for service in that role;
- (b) the type of activity that person is expected to perform in that role and the conditions under which such activity is to be performed.

11 Identity cards

(1) Upon the appointment or continuance of a person to or in a position as a Landscapes Queensland protector or the authorisation of a person to assume the role of Landscapes Queensland adviser the Minister shall cause to be issued to the person an identity card wherein shall be specified—

- (a) the full name of the person and that the person is a protector or, as the case may be an adviser for the purposes of this Act; and
- (b) in the case of a protector—the expiry date of the period for which the person is appointed to or continued in position.

(2) In discharge of the position of protector and in service in the role of adviser a protector or, as the case may be, an adviser shall carry the identity card and produce it upon demand as a means of his or her identification.

(3) Upon a person ceasing to hold the position of protector or ceasing to be authorised as an adviser the person or some person acting on the person's behalf shall surrender to the chief executive the identity card issued to the person and, in the case of an adviser, the certificate of authority issued to the person.

12 Advisory committees

(1) To assist the Minister in the administration of this Act the Minister may establish and maintain such advisory committees as the Minister thinks fit comprised of persons having, in the Minister's opinion, such expertise as the Minister considers appropriate to the preservation of Landscapes Queensland and the Queensland Estate.

(2) A person appointed as a member of such a committee—

- (a) shall serve on the committee in an honorary capacity; and
- (b) shall hold appointment as a member or as chairperson or other officer of the committee at the pleasure of the Minister.

(3) An advisory committee shall meet at such times and places within Queensland as it determines to be required for the proper discharge of its functions under this Act.

13 Functions of advisory committees

The functions of an advisory committee established under section 12 shall be—

- (a) to tender advice and recommendations to the Minister upon matters pertinent to the preservation of Landscapes Queensland or the Queensland Estate, being matters within the expertise of the committee, that—
 - (i) are referred to the committee by the Minister; or
 - (ii) are, in the committee's opinion, matters that require attention for the preservation of Landscapes Queensland or the Queensland Estate; and
- (b) to inform the Minister of its view with respect to the ownership of any item of the Queensland Estate that may be in dispute, if it is a matter within the expertise of the committee.

14 Regional Landscapes Queensland committees

(1) A local government may make application to the Minister for the establishment for its area of a regional Landscapes Queensland committee.

*Cultural Record (Landscapes Queensland and
Queensland Estate) Act 1987*

(1A) Any person or association of persons may make application to the Minister for the establishment for an area described in the application of a regional Landscapes Queensland committee.

(2) Upon an application referred to in subsection (1) or (1A) the Minister may cause to be established and maintained a regional Landscapes Queensland committee if the Minister is satisfied that there is a sufficient number of persons resident in the local government area or described area to which the application relates to ensure the proper functioning of the committee.

(3) A person appointed as a member of a regional Landscapes Queensland committee—

- (a) shall serve on the committee in an honorary capacity; and
- (b) shall hold appointment as a member or as chairperson or other officer of the committee at the pleasure of the Minister.

(4) A regional Landscapes Queensland committee shall meet at such times within its area as the Minister or the Minister's delegate determines to be required for the proper discharge of its functions under this Act.

15 Functions of regional Landscapes Queensland committees

The functions of a regional Landscapes Queensland committee shall be to tender advice and recommendations to the Minister or to an advisory committee established under section 12 as the Minister may from time to time instruct, with respect to—

- (a) the desirability of declaring an area within the committee's area to be a designated landscapes area;
- (b) the management and use of designated landscapes areas within the committee's area for cultural, development, education or tourist purposes;
- (c) the inclusion in the register of nominated items of the Queensland Estate within the committee's area;
- (d) such other matters pertinent to this Act and relevant to the committee's area as are referred to it by the Minister.

16 Delegation by Minister

The Minister may delegate the Minister's powers under this Act to an officer or employee of the public service.

PART 3—PRESERVATION OF LANDSCAPES QUEENSLAND AND THE QUEENSLAND ESTATE

17 Designated landscape areas

(1) If in relation to any area of Queensland the Governor in Council is satisfied that—

- (a) it is necessary or desirable for the preservation of Landscapes Queensland or the Queensland Estate that entry of persons into the area be prevented or regulated; and
- (b) it is expedient to declare the area under this section; and
- (d) the appropriate consents required by section 18 to be obtained before the area is declared under this section have been obtained; and
- (e) satisfactory arrangements have been or will be made for maintenance of the area as a designated landscape area and for preventing or, as the case may be, regulating the entry of persons into the area;

the Governor in Council may, by regulation, declare the area to be a designated landscape area.

(1A) In considering the expediency of declaring an area under this section the Governor in Council shall have regard to any prejudice that might be caused thereby to existing lawful use of the area.

(2) The Governor in Council may, by regulation—

- (a) enlarge the size of an area declared under subsection (1), if the Governor in Council is satisfied of the matters referred to in subsections (1) and (1A) in relation to the enlarged area; or
- (b) reduce the size of an area declared under subsection (1); or

- (c) correct any defect in the description or boundaries of an area declared under subsection (1), including the case where such correction would result in an insubstantial enlargement of the area.

18 Consents required for declaration under s 17

If an area or part of an area proposed to be declared as a designated landscape area consists of private land, the consent of the occupier and, if the occupier is not the owner, the owner must be obtained before the area is declared.

19 Temporary designated landscape areas

(1) If the Governor in Council is satisfied that it may become necessary or desirable, and expedient to declare an area to be a designated landscape area and that it is necessary to prevent or regulate the entry of persons into the area in the meantime, the Governor in Council may, by regulation, declare the area to be a temporary designated landscape area.

(2) An area declared to be a temporary designated landscape area shall cease to be such—

- (a) upon its declaration as a designated landscape area under section 17; or
- (b) upon its acquisition or resumption by the State for the preservation of Landscapes Queensland or the Queensland Estate; or
- (c) upon the expiry of 3 months after its being declared to be a temporary designated landscape area;

whichever event first occurs.

(3) An area that has ceased to be a temporary designated landscape area as referred to in subsection (2)(c) shall not be further declared to be a temporary designated landscape area.

(4) Section 17(1) does not apply in relation to the declaration of an area to be a temporary designated landscape area.

20 Recording and marking of designated landscape areas

(1) The Minister shall cause to be kept a register of all areas declared for the time being to be designated landscape areas in which register shall be recorded—

- (a) such particulars of the area as will enable it to be identified and its boundaries located; and
- (b) the date when the area was declared to be a designated landscape area.

(2) Particulars entered in the register of and in relation to an area that has ceased to be a designated landscape area shall be removed from the register.

(3) Upon any area becoming a designated landscape area the Minister—

- (a) may cause the boundaries of the area to be delineated by the erection thereon of suitable notices or boundary marks; and
- (b) may cause to be erected such other structures as the Minister deems necessary to protect the area or the Queensland Estate therein.

(4) For as long as an area continues as a designated landscape area or a structure erected under subsection (3) continues to be necessary, in the Minister's opinion, the Minister shall cause all notices, marks or structures erected under subsection (3) to be maintained in a reasonable state of repair.

21 Surveillance of designated landscape areas

(1) The Minister may assign to a person holding the position of Landscapes Queensland protector 1 or more designated landscape areas, as the Minister thinks fit.

(1A) A designated landscape area may be assigned to 2 or more protectors.

(2) It is the function of a protector to whom is assigned for the time being a designated landscaped area—

- (a) to prevent, as far as is possible, the entry of unauthorised persons into the area in accordance with this Act; and

- (b) to protect all items of the Queensland Estate contained in the area.

22 Termination of designated landscape area

(1) Upon a request in writing of the owner of private land that is a designated landscape area that the land cease to be such an area, if the Minister is satisfied—

- (a) that any loss of the Queensland Estate will not be substantial; and
(b) that loss of the land as such an area will not be significant to the interests of the State or of the public;

the Minister may cause all or a part of the Queensland Estate thereon or therein to be removed to the Queensland Museum.

(2) When all the Queensland Estate that the Minister desires to be removed from the land in question has been removed the Governor in Council may, by regulation, declare that the land in question has ceased to be a designated landscape area whereupon that land shall cease to be such an area.

23 Offence to interfere with designated landscape areas

(1) A person shall not destroy, damage, move or interfere with any notice, structure or boundary mark in or on the boundary of a designated landscape area, unless the person does so under the authority of the Minister.

Maximum penalty—40 penalty units.

(2) Where a person has been found or has pleaded guilty of an offence defined in subsection (1), whether or not it imposes any penalty in respect thereof, the court may order that person to pay to a person specified by the court a sum assessed by the court on account of expenses shown to it to have been incurred in connection with repairing, restoring or re-erecting the notice, structure or boundary mark as a consequence of the offence.

(3) An order made under subsection (2)—

- (a) shall be deemed to be an order for the payment of money made under the *Magistrates Courts Act 1921* and shall be enforceable as such an order under that Act; and

*Cultural Record (Landscapes Queensland and
Queensland Estate) Act 1987*

- (b) shall not prejudice the right of the State, the Minister or any other person to recover in full expenses to which the order relates by any other process of law, except that the same amount of such expenses shall not be recoverable more than once.

24 Offence to trespass on designated landscape area

(1) A person shall not be in a designated landscape area except with and in accordance with the subsisting permission of an authorised person.

Maximum penalty—20 penalty units.

(2) In subsection (1) and section 25—

“**authorised person**” means—

- (a) for State land—the Minister; or
(b) for private land—the Minister and the owner or occupier of the land or the owner or occupier’s agent.

25 Incidents of permissions granted

(1) A permission of an authorised person referred to in section 24 to be upon a designated landscape area—

- (a) may be granted in respect of a particular person or members of a class of person; and
(b) may be revoked by an authorised person; and
(c) shall not be construed to authorise any person to take, deface, damage, excavate, conceal, expose or interfere with any part of the Queensland Estate; and
(d) shall be subject to such conditions as are specified in the instrument of permission.

(2) Subject to subsection (3), revocation of such a permission may be effected by notice in writing—

- (a) given, in the case of permission granted in respect of a particular person in connection with the person’s conduct of a business, to the proprietor for the time being of that business; or
(b) given, in the case of permission granted in respect of a particular person otherwise than as referred to in paragraph (a), to that

*Cultural Record (Landscapes Queensland and
Queensland Estate) Act 1987*

person or if that be impracticable published as prescribed by paragraph (c); or

- (c) published twice, in any other case, in a newspaper circulating in the area in which the designated landscape area is situated.

(3) Where revocation of such a permission is to be in accordance with subsection (2)(c) the revocation shall become effectual upon the expiry of 28 days after the second publication of the notice of revocation.

26 Acquisition of land by State

(1) If the Minister is satisfied, in relation to a particular area that consists of private land, that Landscapes Queensland or any item of the Queensland Estate can not be properly preserved or managed by the maintenance of the area as a designated landscape area the Minister may issue a certificate to that effect.

(2) Where a certificate has been issued under subsection (1) in relation to private land, the State is authorised to take or acquire by purchase that land for the purpose of the preservation of Landscapes Queensland or, as the case may be, the Queensland Estate.

27 Exploration etc. of Queensland Estate

(1) The Minister may—

- (a) cause to be performed surveys, excavation, examination or research of or upon designated landscape areas or in respect of any part of Landscapes Queensland or the Queensland Estate; and
- (b) authorise the removal of any part of the Queensland Estate from its location in the field to the Queensland Museum.

(2) A person who desires to perform systematic field exploration to establish the existence of the Queensland Estate shall make application in writing to the Minister for a permit that authorises the person to perform the exploration and shall in connection with the application furnish to the Minister such information as is prescribed or as the Minister requires.

(3) A person who desires to perform any systematic survey or any excavation, examination or research of or upon any designated landscape area or in respect of Landscapes Queensland or the Queensland Estate shall

*Cultural Record (Landscapes Queensland and
Queensland Estate) Act 1987*

make application in writing to the Minister for a permit that authorises the person to perform the work and shall in connection with the application furnish to the Minister such information as is prescribed or as the Minister requires.

(4) To determine whether an application made under subsection (2) or (3) should be granted regard shall be had to—

- (a) the qualifications of the applicant to effectively attain the purpose to which the application relates; and
- (b) the financial resources of or available to the applicant for use in attaining the purpose to which the application relates and the applicant's ability to effectively attain that purpose; and
- (c) the desirability of performing the work to which the application relates; and
- (d) whether consultation, sufficient in the Minister's opinion, has been undertaken with all persons who might be affected by the performance of the work to which the application relates; and
- (e) all other matters that appear to the Minister to be relevant to the application.

28 Permit to explore etc. Landscapes Queensland and Queensland Estate

(1) If an application under section 27(2) or (3) is granted, the Minister shall cause to be issued to the applicant a permit that authorises the applicant to pursue the purpose to which the application relates.

(1A) A permit shall specify—

- (a) the full name of the person to whom it is issued; and
- (b) the location of the area, place or object in respect of which is to be performed the work for which the permit is issued.

(2) Subject to subsection (3), while a permit remains in force the person to whom it is issued and all persons acting in aid of the person in performing the work for which it is issued are authorised—

- (a) to enter upon and to be in the area in which that work is to be performed together with such vehicles and equipment as are needed for the purpose that the holder of the permit is thereby authorised to pursue; and

*Cultural Record (Landscapes Queensland and
Queensland Estate) Act 1987*

- (b) to pass through (together with such vehicles and equipment as are referred to in paragraph (a)) at reasonable times and in a reasonable manner other land as may be necessary to gain entry upon the area referred to in paragraph (a); and
- (c) in the area referred to in paragraph (a)—to pursue in a proper manner the purpose that the holder of the permit is thereby authorised to pursue and, subject to this Act, to interfere with and remove any part of the Queensland Estate found therein, as may be necessary to attain that purpose.

(3) A permit—

- (a) shall not be in force for any period in excess of 12 months from the date of its first issue, or from the date of any renewal thereof;
- (b) shall be of no force or effect in respect of the area of land in which is to be performed the work for which the permit is issued unless, before the permit was issued in the first instance—
 - (i) in the case of State land that is in the occupation of any person—the consent of the occupier thereof was obtained to the issue of the permit; or
 - (ii) in the case of private land—the consent of the occupier thereof was obtained to the issue of the permit and, where the occupier is not the owner of the land, the consent of the owner thereof was also obtained to the issue of the permit;
- (c) does not authorise any person to wilfully or negligently destroy or damage any property except where such destruction or damage is necessarily incidental to the work for which the permit is issued;
- (d) does not render unnecessary compliance with the provisions of any other Act that regulates entry upon land of any particular description.

29 Renewal of permit

(1) The person to whom a permit is issued under section 28(1) may, from time to time, make application to the Minister for renewal of the permit.

(1A) Every such application shall be made before the expiry of the permit sought to be renewed.

(2) Every application for renewal of a permit shall be dealt with as if it were an application for a permit in the first instance, except that the appropriate consents referred to in section 28(3) need not be obtained.

30 Revocation of permit

By notice in writing given to a person to whom a permit is issued under section 28(1) the Minister may—

- (a) revoke the permit, which shall thereupon cease to be in force; and
- (b) require the person to surrender the issued permit to the Minister or as the Minister directs; and
- (c) require the person to restore any area or place to which the permit relates to a condition nominated by the Minister or to replace any object of a kind to which the permit relates in a location specified by the Minister and to restore the location to a condition nominated by the Minister.

31 Duties of permit holder

(1) A person to whom is issued a permit under section 28(1) shall furnish to the Minister, within the time or times specified in the permit, progress reports of the work performed under the authority of the permit in such form and detail as the Minister requires.

(1A) A person may not disclose in a progress report furnished by the person or otherwise, except where subsection (3) applies, any information given to the person or knowledge acquired by the person concerning any anthropological or archaeological matter that is of a sacred or secret nature in the understanding of indigenous people.

(2) A person who has completed work under the authority of a permit issued to the person under section 28(1) shall restore the area to which the permit relates to a condition nominated by the Minister within a time specified by the Minister.

(3) A person who has performed work under the authority of a permit issued to the person or to another under section 28(1) and who publishes a writing in relation to that work shall, as soon as is practicable thereafter, furnish to the Minister, free of charge, a copy of the writing.

(4) A person who has collected any item of the Queensland Estate under the authority of a permit issued to the person or to another under section 28(1) shall submit it to the director of the Queensland Museum at a place and in a manner required by the Minister.

PART 4—OWNERSHIP AND HANDLING OF QUEENSLAND ESTATE

32 Indigenous rights unaffected by Act

No provision of this Act shall be construed to prejudice—

- (a) rights of ownership had by a traditional group of indigenous people or by a member of such a group in a part of the Queensland Estate that is used or held for traditional purposes; or
- (b) free access to and enjoyment and use of a part of the Queensland Estate, where such access, enjoyment or use is sanctioned by traditional custom relating to that part, by a person who usually lives subject to the traditional custom of a group of indigenous people.

33 Ownership of Queensland Estate generally

(1) All parts of the Queensland Estate—

- (a) that constitute evidence of occupation of any part of Queensland by indigenous persons; or
- (b) in respect of which there is no identifiable legal owner;

are and shall be deemed to have always been the property of the State.

(2) Subsection (1) applies in respect of all evidence of occupation by indigenous persons notwithstanding that it was found or is to be found in, on or under private land.

(3) Movable items, being part of the Queensland Estate, shall not be taken to have an identifiable legal owner for the purposes of subsection (1) by reason only that they were found or are to be found in, on or under land owned or occupied by any person.

*Cultural Record (Landscapes Queensland and
Queensland Estate) Act 1987*

(4) Subsection (1) does not apply in relation to indigenous burial remains to which section 34 applies or in relation to an object evidencing occupation of any part of Queensland by indigenous persons that has been removed from its location in, on or under land and which—

- (a) being one found within Queensland, was at the commencement of the *Aboriginal Relics Preservation Act 1967* in the possession of some person or association and has not been abandoned in Queensland since that time; or
- (b) being one found outside Queensland, has not been abandoned in Queensland since it was found; or
- (c) has been returned to a person under the *Aboriginal Relics Preservation Act 1967*, section 22(1) or under this Act, section 37 or in lieu of being returned has been disposed of under the relevant section as directed by the Minister so as to pass ownership thereof; or
- (d) has been at some time the subject of a transaction in accordance with the law applicable at that time as an object and has thereby become the property of some person and has not been abandoned in Queensland since that time.

(5) Subsection (1) does not apply in relation to an item, being part of the Queensland Estate, that does not evidence occupation of any part of Queensland by indigenous persons and which has been removed from its location in, on or under land at some time before the commencement of this Act.

34 Ownership of certain burial remains

(1) This section applies to burial remains in respect of which it is shown to the Minister's satisfaction that there exists familial or traditional links between the remains and a traditional group of indigenous people or any indigenous person or persons, being a group existing or a person or persons living at the time ownership of the remains is in question.

(2) Burial remains to which this section applies are the property of the traditional group or the person or persons with whom the links referred to in subsection (1) are shown to exist, notwithstanding in whose possession they may be.

(3) The Minister shall not be satisfied of the existence of links referred to in subsection (1) unless the Minister is satisfied that full and sufficient

*Cultural Record (Landscapes Queensland and
Queensland Estate) Act 1987*

consultation concerning the matter has occurred between the group or the person or persons claiming ownership of the burial remains and appropriate officers appointed or deemed to be appointed under section 8 and, if there is an advisory committee under this Act whose expertise relates to the matter, that committee.

(4) Subsection (2) applies in respect of burial remains notwithstanding that they were found or are to be found in, on or under private land.

35 Duties respecting burial remains

(1) A person who has in his or her control Queensland Estate that consists of indigenous burial remains shall submit them to the Minister or as the Minister directs, regardless of whose property the remains are, for examination and classification.

(2) A person who or whose employee uncovers any indigenous burial remains shall forthwith notify the Minister or a protector of the occurrence.

(3) It is a defence to a charge of a failure to comply with subsection (2) to show that the person charged did not know and could not be reasonably expected to know that the objects uncovered were such burial remains.

36 Duty respecting Queensland Estate taken under permit

A person who, under the authority of a permit issued to the person under section 28(1), removes any Queensland Estate from the location where the person finds it shall, as soon as is practicable, submit it to the Minister or as the Minister directs, for examination and classification.

37 Disposal of Queensland Estate submitted to Minister

(1) When an item of the Queensland Estate submitted to the Minister or as the Minister directs for examination and classification has been examined and classified, the Minister shall determine whether it is the property of the State in accordance with this Act and—

- (a) if the Minister determines that it is the property of the State—the Minister shall further determine whether it should be retained by the State; or
- (b) if the Minister determines that it is not the property of the State—it shall be returned—

*Cultural Record (Landscapes Queensland and
Queensland Estate) Act 1987*

- (i) to the owner of the item of Queensland Estate if that owner has been established to the Minister's satisfaction and the owner wants the item; or
- (ii) to the person who submitted the item for examination and classification, if subparagraph (i) is not applicable, and if the person wants the item.

(2) An item of the Queensland Estate that is to be retained by the State shall be kept and preserved, as far as circumstances permit, in the Queensland Museum.

(3) If an item of Queensland Estate is not returnable in accordance with subsection (1)(b) the item may be disposed of as the Minister directs.

38 Particular steps to preserve Queensland Estate

The Minister may—

- (a) on behalf of the State, acquire by purchase or gift any item of the Queensland Estate for the purpose of its preservation; and
- (b) cause such structures to be erected and such other steps to be taken as are necessary or desirable to preserve any item of the Queensland Estate acquired by the Minister.

39 Loan of Queensland Estate

(1) Notwithstanding that a particular item of the Queensland Estate is to be retained by the State, if an advisory committee established under this Act whose expertise relates to that item so recommends, the Minister may permit any person to take possession of that item for such time and for such purpose as the Minister approves and, if necessary, to remove that item from Queensland.

(1A) The Minister may attach conditions to any permission the Minister gives under subsection (1).

(2) A person to whom permission is given under subsection (1)—

- (a) is authorised to deal with the item of the Queensland Estate in accordance with the permission; and
- (b) shall comply in all respects with the conditions (if any) attached to the permission.

40 Continued use of surface

Where any item of the Queensland Estate is situated on the surface of—

- (a) land held on any tenure that entitles the holder thereof to use and enjoy the surface thereof; or
- (b) land in respect of which a person is entitled to use and enjoy the surface thereof;

the entitlement to use and enjoy the surface shall not be prejudiced by the existence of the item of the Queensland Estate in so far as the use and enjoyment can be had without damaging, concealing or interfering with the item of the Queensland Estate.

PART 5—REGISTER OF QUEENSLAND ESTATE

41 Maintenance of register

There shall be maintained a register of the Queensland Estate in which shall be entered particulars of items of the Queensland Estate approved by the Governor in Council as items of great significance to Queensland's history and as items that should be preserved.

42 Nominations for entry in register

(1) Nominations for entry of particulars of items of the Queensland Estate in the register may be initiated by any person or association of persons.

(2) Every nomination—

- (a) shall be made in writing to the Minister; and
- (b) shall be accompanied by data in support of it; and
- (c) shall be entered in a list, which the Minister shall cause to be maintained.

(2A) The Minister may require such further data to be provided as the Minister thinks necessary.

*Cultural Record (Landscapes Queensland and
Queensland Estate) Act 1987*

(3) If the owner of the item is not the State, the nomination may be approved by the Governor in Council only if the owner has consented, in writing, to the nomination.

43 Removal from register

(1) Particulars of an item of the Queensland Estate that are entered in the register shall not be removed therefrom except with the approval of the Governor in Council first had and obtained.

(2) The Minister must arrange for a review to be made of the entries in the register at least once every 6 years.

(2A) If a review discloses that any entry should be removed from the register the Minister may submit the Minister's recommendation thereon to the Governor in Council.

(3) Where the owner or prospective owner of an item of which particulars are entered in the register is a person other than the State, that person may make application in writing to the Minister that those particulars be removed from the register, whereupon, if the item is located in, on or under land the Minister shall cause to be published in a newspaper circulating throughout Queensland and in another newspaper circulating in the area in which the land is situated notification of the application and therein invite any objections to the removal to be made to the Minister or as the Minister therein directs within 1 month of a date therein nominated.

(5) Where particulars of an item of the Queensland Estate have been removed from the register and the item is located in, on or under land, the Minister shall cause notification of the removal—

- (a) to be published in a newspaper circulating in the area in which the land is situated; and
- (b) to be given to the local government for the area that includes that land.

(6) For the purposes of subsection (3) a person shall not be taken to be a prospective owner of an item of the Queensland Estate unless the person satisfies the Minister that the person is bound by a contract to acquire the item or, if the item is one of which ownership would pass with ownership of land in, on or under which the item is located, that the person is bound by a contract to acquire that land.

44 Owner's initiative re items in register

(1) If the owner of an item of which particulars are entered in the register proposes to do an act that might destroy, damage, deface, excavate, expose, conceal or interfere with the item, the owner shall first present the owner's proposals in writing to the Minister who shall refer the proposals to the relevant advisory committee for its recommendations thereon.

(2) If in the opinion of the Governor in Council the act proposed to be done is likely to result in—

- (a) destruction of the item; or
- (b) interference with the item to such an extent that it would lose its historical significance to Queensland's history;

the Governor in Council shall approve its removal from the register.

(3) If the Governor in Council approves the doing of the act proposed but does not approve the removal of the item from the register, the Minister, in accordance with recommendations of the relevant advisory committee, shall set such standards and guidelines by which the act is to be done as the Minister thinks necessary to protect the item.

PART 6—MISCELLANEOUS PROVISIONS

Division 1—Government concern for preservation of Landscapes Queensland and Queensland Estate

45 Function of local government

(1) The preservation of Landscapes Queensland or the Queensland Estate is a function of local government in relation to which a local government has and may exercise the powers and authorities had by it for the purposes of local government of its area in accordance with the Minister's request.

(2) The performance of the function of local government referred to in subsection (1) shall be in accordance with—

*Cultural Record (Landscapes Queensland and
Queensland Estate) Act 1987*

- (a) any agreement made by the local government with the owner of the item of Landscapes Queensland or of the Queensland Estate for preservation of the item; and
- (b) any agreement made by the local government with the Minister for preservation of such item that is not inconsistent with an agreement referred to in paragraph (a); and
- (c) any request of the Minister that is not inconsistent with an agreement referred to in paragraph (a) or (b).

47 Acquisition of land

The preservation of Landscapes Queensland or the Queensland Estate shall be deemed to be a purpose for which land may be taken under and subject to the *Acquisition of Land Act 1967*.

Division 2—Aids in administration

48 Power of entry

(1) If in the discharge of a duty or the exercise of a power under this Act it becomes necessary that a person engaged therein should enter upon any land or into any place then, subject to subsection (2), that person is authorised, without further authority than this subsection to enter and be upon that land or in that place as often and for as long as is necessary for the purpose.

(2) The authority conferred by subsection (1) does not extend to authorising entry or presence in any dwelling house without the authority of a warrant under section 49.

(3) In subsection (2)—

“**dwelling house**” includes a part of any building, which part is used for residential purposes but does not include the curtilage of any dwelling house.

49 Entry under warrant

(1) Any justice who is satisfied, upon the complaint of a person holding the position of Landscapes Queensland protector or of an officer appointed

*Cultural Record (Landscapes Queensland and
Queensland Estate) Act 1987*

or deemed to be appointed under section 8, that the protector or officer suspects on reasonable grounds that in any dwelling house there is an item of the Queensland Estate had in possession in contravention of this Act may issue the justice's warrant directed to the protector or officer to enter the place specified in the warrant for the purpose of exercising therein the powers conferred by this Act on a protector or officer.

(2) A warrant issued under subsection (1) shall be, for a period of 1 month from the date of its issue, sufficient authority for the protector or officer and all persons acting in aid of the protector—

- (a) to enter the place specified in the warrant; and
- (b) to exercise therein the powers conferred by this Act on a protector or officer.

50 Power of search

A person holding the position of Landscapes Queensland protector or an officer appointed or deemed to be appointed under section 8 and all persons acting in aid of either of them may search any place lawfully entered by the protector or officer for the purposes of this Act and the baggage and effects of any person that are found thereon or therein.

52 Power to protect Queensland Estate

A person holding the position of Landscapes Queensland protector and an officer appointed or deemed to be appointed under section 8—

- (a) may require any person found by the protector or officer committing an offence against this Act or whom the protector or officer suspects on reasonable grounds to have committed or to be about to commit an offence against this Act to state and adduce evidence of the person's full and correct name and usual place of residence; or
- (b) may require any person whom the protector or officer suspects on reasonable grounds to have damaged or to be likely to damage the Queensland Estate to leave a designated landscape area; or
- (c) may seize any item of the Queensland Estate that the protector or officer suspects on reasonable grounds to have been obtained or to be held in contravention of this Act and may retain the item for the purposes of an investigation into the legality of the possession

of the item by the person or association from whom the protector or officer has seized it.

53 Recognition of skills related to Queensland Estate

(1) The Minister may, from time to time, call for nominations to be submitted to the Minister of persons possessing skills related to the preservation or appreciation of the Queensland Estate.

(1A) All nominations submitted shall be accompanied by such data as the Minister requires.

(2) Where in the Minister's opinion a person (whether one nominated under subsection (1) or not) possesses skills that are applied by the person to a sufficiently high level of competence in some activity of significance to the preservation or appreciation of the Queensland Estate the Minister may confer on that person an award called a Queensland Estate award.

(3) Subject to the approval of the Minister, there may be granted to a recipient of a Queensland Estate award such assistance as the Minister thinks appropriate to the circumstances to enable the recipient to apply, enhance or propagate the skills in respect of which the award was conferred on the recipient.

55 Evidentiary provision

(1) A certificate purporting to be made by the Minister or by some person on the Minister's behalf to the effect that anything therein specified is an item of the Queensland Estate or that particulars of anything therein specified are entered in the register shall be admitted in any proceedings as evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

(2) A certificate purporting to be made by the Minister or by some person on the Minister's behalf or a statement in a complaint that charges the commission of an offence against this Act to the effect that—

- (a) an area therein described is or was at a material time a designated landscape area; or
- (b) a place therein referred to is or was at a material time in a designated landscape area; or
- (c) a person therein named is or was at a material time a protector;

shall be admitted in any proceedings as evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

Division 3—Offence provisions

56 Offences concerning Queensland Estate

(1) A person shall not be in possession of an item of the Queensland Estate of which the State is the owner except under the authority of the State or of this Act.

(2) A person shall not take, destroy, damage, deface, excavate, expose, conceal or interfere with an item of the Queensland Estate unless—

- (a) if the item is one of which particulars are not entered in the register—
 - (i) the person does so under the authority of this Act; or
 - (ii) the person is the owner of the item or does so under the owner's authority;
- (b) if the item is one of which particulars are entered in the register—
 - (i) the person does so under the authority of this Act; or
 - (ii) being the owner of the item the person does so in accordance with standards and guidelines set by the Minister under section 44; or
 - (iii) the person does so under the authority of an owner who has lawful authority such as is referred to in subparagraph (ii) so to do.

(3) A person shall not do an act in a designated landscape area that is likely to endanger an item of the Queensland Estate in, on or under the area unless, if the act had affected the item, that person would not thereby be liable to punishment pursuant to subsection (2).

(4) It is a defence to a charge of an offence defined in subsection (1), (2) or (3) to prove that at the time of the alleged offence the defendant did not suspect and could not be reasonably expected to suspect that the thing to which the charge relates was an item of the Queensland Estate.

(5) A person who contravenes subsection (1), (2) or (3) commits an offence against this Act and is liable to a penalty of 100 penalty units.

57 Order to make good damage

(1) Where a person has been found or has pleaded guilty of an offence defined in section 56, the court, whether or not it imposes any penalty, may order that person to pay to a person specified by the court a sum assessed by it by way of restitution or on account of expenses shown to it to have been incurred in connection with repairing, restoring or re-erecting the item of the Queensland Estate in question or any other thing destroyed or damaged in the course of or for the purpose of committing the offence.

(2) An order made under subsection (1)—

- (a) shall be deemed to be an order for the payment of money made under the *Magistrates Courts Act 1921* and shall be enforceable as such an order under that Act; and
- (b) shall not prejudice the right of the State, the Minister or any other person to recover in full expenses to which the order relates by any other process of law, except that the same amount of such expenses shall not be recoverable more than once.

(3) Liability to a penalty under subsection (1) is in addition to and not in substitution for any other liability at law that the offender may incur by reason of the offender's act in question but the offender shall not be twice punished in respect of the one act.

58 Forfeiture of State property

(1) Where a person has been found or has pleaded guilty of an offence that consists wholly or partly in taking or being in possession of an item of the Queensland Estate, the property of the State, and the item has been recovered, the court shall order that the item be delivered to the chief executive.

(2) Subsection (1) applies and shall be given effect whether the offence is one against this Act or under any other Act or law.

59 Offences touching administration

(1) A person shall not assault a person holding the position of Landscapes Queensland protector or an officer appointed or deemed to be appointed under section 8 who is discharging his or her duty or exercising a power for the purposes of this Act or attempting so to do or a person acting in aid of either of them.

Maximum penalty—40 penalty units or 6 months imprisonment.

(2) A person shall not—

- (a) fail to comply with a requisition directed to the person for the purposes of this Act by a person holding the position of Landscapes Queensland protector or having the powers of a protector or by an officer appointed or deemed to be appointed under section 8; or
- (b) in response to a requisition such as is referred to in paragraph (a)— give information that is false or misleading; or
- (c) obstruct or hinder a protector or officer, such as is referred to in paragraph (a) in the discharge of his or her duty or exercise of his or her powers for the purposes of this Act.

Maximum penalty—10 penalty units or 3 months imprisonment.

60 General offence

A person who contravenes or fails to comply with a provision of this Act commits an offence against this Act and, subject to section 62, is liable, if no other penalty is prescribed for the offence, to a penalty of 20 penalty units.

61 Prosecution proceedings

Proceedings by way of prosecution for an offence against this Act shall be taken in a summary way under the *Justices Act 1886* upon a complaint laid within 1 year after the commission of the offence or within 6 months after commission of the offence comes to the complainant's knowledge, whichever period is the later to expire.

62 Liability of corporate persons

Notwithstanding any other provision of law, if a body corporate commits an offence against this Act, it is liable to a penalty of 1 000 penalty units in lieu of the penalty prescribed for that offence by any other provision of this Act.

Division 4—General provisions

63 Museum Board's possession of items of Queensland Estate

(1) Where pursuant to this Act any item of the Queensland Estate—

- (a) has been removed to the Queensland Museum; or
- (b) has been submitted to the director of the Queensland Museum; or
- (c) is to be kept and preserved in the Queensland Museum;

the item shall be taken to be in the possession of the board of the Queensland Museum which, in respect of the item, shall have the functions and may exercise the powers conferred on the board by the *Queensland Museum Act 1970*, by its by-laws or by this Act.

(2) The provisions of the *Queensland Museum Act 1970* and the by-laws of the Board of the Queensland Museum apply in relation to any item of the Queensland Estate in possession of the board pursuant to this Act.

(3) Notwithstanding subsections (1) and (2) the board of the Queensland Museum shall not permit the destruction of any item such as is referred to in subsection (1) without the consent of the Minister first had and obtained.

64 This Act additional to all other laws

(1) This Act is in addition to and not in substitution for or in diminution of the operation of the provisions of any other law.

(2) However, if a provision of a local law of a local government is inconsistent with a provision of this Act, the latter shall prevail and the former shall, to the extent of the inconsistency, be of no force and effect.

65 Act not applicable to Queensland Museum collections

No provision of this Act shall be construed to operate in relation to any item of the Queensland Estate—

- (a) in the possession of the Board of the Queensland Museum at the commencement of this Act; or
- (b) received by the Board of the Queensland Museum at any time after the commencement of this Act, independently of this Act;

or to affect the ownership of any such item.

66 Regulation making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made about—

- (a) the functions and authorities of Landscapes Queensland protectors, Landscapes Queensland advisers or of members of advisory committees established under this Act, and the manner of discharging those functions and authorities;
- (b) recoupment of out-of-pocket expenses to Landscapes Queensland advisers and to members of advisory committees and regional landscapes committees established under this Act;
- (c) maintenance of the register;
- (d) maintenance of a record of persons qualified to carry out tasks for the purposes of this Act;
- (e) permits referred to in section 27 and applications for such permits;
- (f) guidelines for the proper management and preservation of the Queensland Estate;
- (g) steps to be taken and standards to be met in conserving, handling, identifying, recording and assessing items of the Queensland Estate, whether in the field or following collection thereof;
- (h) requirements for submitting or delivering items of the Queensland Estate for the purposes of this Act and for the provision of photographs and other supporting material;

*Cultural Record (Landscapes Queensland and
Queensland Estate) Act 1987*

- (i) disposal of items of the Queensland Estate collected under this Act or submitted for the purposes of this Act and the expenses of such disposal;
- (j) access to and disclosure of unpublished material relating to Landscapes Queensland or the Queensland Estate;
- (l) charges to be paid for the purposes of this Act.

PART 7—TRANSITIONAL REFERENCES

67 Aboriginal Relics Preservation Act 1967 references

In an Act or document, a reference to the *Aboriginal Relics Preservation Act 1967* may, if the context permits, be taken to be a reference to this Act.

ENDNOTES

1 Index to endnotes

		Page
2	Date to which amendments incorporated	36
3	Key	36
4	Table of earlier reprints	37
5	Tables in earlier reprints	37
6	List of legislation	37
7	List of annotations	38

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 30 March 2000. Future amendments of the Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation

*Cultural Record (Landscapes Queensland and
Queensland Estate) Act 1987*

Key	Explanation	Key	Explanation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 58 of 1995	18 January 1996

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed names and titles	1
Corrected minor errors	1
Obsolete and redundant provisions	1
Renumbered provisions	1

6 List of legislation

Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987 No. 90

date of assent 3 December 1987

ss 1–2 commenced on date of assent (see s 2(1))

remaining provisions commenced 21 December 1987 (see s 2(2) and proc pubd gaz
2 January 1988 p 15)

as amended by—

Public Service (Administrative Arrangements) Act 1990 (No. 2) No. 80 s 3 sch 2

date of assent 14 November 1990

commenced 7 December 1989 (see s 2(4)(b))

Statute Law (Miscellaneous Provisions) Act 1990 No. 88 s 3 sch

date of assent 6 December 1990

commenced on date of assent (see s 2(2))

Statute Law (Miscellaneous Provisions) Act 1991 No. 97 s 3 sch 2

date of assent 17 December 1991

commenced on date of assent (see s 2)

Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1

date of assent 28 November 1995
commenced on date of assent

Statute Law Revision Act 1995 (No. 2) No. 58 ss 1–2, 4 sch 2

date of assent 28 November 1995
commenced on date of assent

Police Powers and Responsibilities Act 2000 No. 5 ss 1–2(1)–(2), 373 sch 2

date of assent 23 March 2000
commenced on date of assent (see s 2(1)–(2))

7 List of annotations

Note—Reference to Crown is now reference to State and reference to Crown land is now reference to State land (see s 68(1) (ins 1995 No. 57 s 4 sch 1))

Commencement

s 2 om 1995 No. 57 s 4 sch 1

Arrangement

s 3 om 1991 No. 97 s 3 sch 2

Repeals and amendment

s 4 amd 1990 No. 88 s 3 sch 2
om 1991 No. 97 s 3 sch 2

Interpretation

s 5 **amd 1995 No. 57 s 4 sch 1**
def “**Area**” om 1995 No. 57 s 4 sch 1
def “**Crown**” om 1995 No. 57 s 4 sch 1
def “**Crown land**” om 1995 No. 57 s 4 sch 1
def “**department**” ins 1990 No. 80 s 3 sch 2
om 1991 No. 97 s 3 sch 2
def “**Deputy Director-General**” ins 1990 No. 80 s 3 sch 2
om 1995 No. 57 s 4 sch 1
def “**Deputy Under Secretary**” om 1990 No. 80 s 3 sch 2
def “**designated landscape area**” sub 1995 No. 57 s 4 sch 1
def “**Director-General**” ins 1990 No. 80 s 3 sch 2
om 1995 No. 57 s 4 sch 1
def “**local government authority**” om 1995 No. 57 s 4 sch 1
def “**Minister**” om 1991 No. 97 s 3 sch 2
def “**Register**” amd 1990 No. 80 s 3 sch 2
def “**State land**” ins 1995 No. 57 s 4 sch 1
def “**Under Secretary**” om 1990 No. 80 s 3 sch 2

Transition provision

s 6 amd 1991 No. 97 s 3 sch 2
om 1995 No. 57 s 4 sch 1
AIA s 20 applies (see 1995 No. 57 s 5(3) sch 9)

Persons administering Act

s 7 amd 1990 No. 80 s 3 sch 2
 om 1995 No. 57 s 4 sch 1

Appointment of officers

s 8 om 1995 No. 57 s 4 sch 1

Landscapes Queensland protectors

s 9 amd 1990 No. 80 s 3 sch 2
 sub 1995 No. 57 s 4 sch 1

Landscapes Queensland advisers

s 10 amd 1990 No. 80 s 3 sch 2; 1995 No. 57 s 4 sch 1

Identity cards

s 11 amd 1990 No. 80 s 3 sch 2

Regional Landscapes Queensland committees

s 14 amd 1995 No. 57 s 4 sch 1; 1995 No. 58 s 4 sch 2

Delegation by Minister

s 16 amd 1990 No. 80 s 3 sch 2
 sub 1995 No. 57 s 4 sch 1

Designated landscape areas

s 17 amd 1995 No. 57 s 4 sch 1

Consents required for declaration under s 17

s 18 sub 1995 No. 57 s 4 sch 1

Temporary designated landscape areas

s 19 amd 1995 No. 57 s 4 sch 1

Termination of designated landscape area

s 22 amd 1995 No. 57 s 4 sch 1

Offence to trespass on designated landscape area

s 24 amd 1995 No. 57 s 4 sch 1

Incidents of permissions granted

s 25 amd 1990 No. 80 s 3 sch 2; 1995 No. 57 s 4 sch 1

Nominations for entry in register

s 42 amd 1995 No. 57 s 4 sch 1

Removal from register

s 43 amd 1995 No. 57 s 4 sch 1

Owner's initiative re items in register

s 44 amd 1995 No. 57 s 4 sch 1

Function of local government

s 45 amd 1995 No. 57 s 4 sch 1

Public purposes

s 46 om 1995 No. 57 s 4 sch 1

*Cultural Record (Landscapes Queensland and
Queensland Estate) Act 1987*

Entry under warrant

s 49 amd 1995 No. 57 s 4 sch 1

Assistance by police

s 51 om 2000 No. 5 s 373 sch 2

Power to protect Queensland Estate

s 52 amd 1995 No. 57 s 4 sch 1

Modes of service

s 54 om 1995 No. 57 s 4 sch 1

Forfeiture of State property

s 58 amd 1990 No. 80 s 3 sch 2; 1995 No. 57 s 4 sch 1

Liability of corporate persons

s 62 amd 1991 No. 97 s 3 sch 2

This Act additional to all other laws

s 64 amd 1995 No. 57 s 4 sch 1

Regulation making power

prov hdg amd 1995 No. 57 s 4 sch 1

s 66 amd 1995 No. 57 s 4 sch 1

PART 7—TRANSITIONAL REFERENCES

pt hdg ins 1995 No. 57 s 4 sch 1

Aboriginal Relics Preservation Act 1967 references

s 67 ins 1995 No. 57 s 4 sch 1

Updating of certain references

s 68 ins 1995 No. 57 s 4 sch 1

exp 18 January 1996 (see s 68(2))