

Queensland Heritage and Other Legislation Amendment Bill 2007

Explanatory Notes

Short Title

The short title of the Bill is the *Queensland Heritage and Other Legislation Amendment Bill 2007*.

Objectives of the Bill

The policy objectives of the Bill are to amend the *Queensland Heritage Act 1992* to:

- (1) enable the Queensland Heritage Council to perform a more strategic role in conserving Queensland's cultural heritage
- (2) introduce more accountable, transparent and efficient administrative processes for entering places in, and removing places from, the Queensland Heritage Register and for regulating the development of registered places
- (3) integrate the identification and protection of historical archaeological places into the management framework of the Queensland Heritage Register
- (4) introduce improved protection for local heritage places.

Reasons for the Bill

The *Queensland Heritage Act 1992* was developed over 15 years ago. A recent review has identified that the Act is out of step with best-practice legislative standards and community needs. Fundamentally, the *Queensland Heritage Act 1992* was criticised for the reactive nature of its processes and the consequent lack of certainty it provided to both the community and proponents of development.

The recommended amendments are necessary to:

- (1) clearly set out the roles and responsibilities of the Queensland Heritage Council and the Chief Executive of the Environmental Protection Agency. The amendments enable the Queensland Heritage Council to focus on strategic and high priority issues—as a number of day-to-day regulatory processes for State heritage places, including development assessment, will be transferred to the Environmental Protection Agency
- (2) improve the accountability and timeliness of processes for entering places in the Queensland Heritage Register. This includes introducing timeframes in which decisions must be made, providing for early engagement with owners and the community, and improving access to decision-makers for all affected parties
- (3) integrate the regulation of archaeological sites into the *Integrated Planning Act 1997* framework
- (4) introduce a process for keeping local heritage registers to ensure that all local governments have a workable system in place for the identification and protection of local heritage places.

Achieving the objectives

A more strategic role for the Queensland Heritage Council

The amendments to the functions of the Queensland Heritage Council strengthen the policy objective of refocussing the Queensland Heritage Council's role as the key advisor to the Government on matters relating to Queensland's cultural heritage. The Queensland Heritage Council currently has extensive decision-making and administrative responsibilities. This heavy involvement in the detail limits the Queensland Heritage Council's ability to develop a strategic approach and concentrate on higher order issues.

The Queensland Heritage Council's day to day responsibilities for the administration of the Heritage Register, along with its role as a referral agency for development applications under the *Integrated Planning Act 1997*, has been transferred to the Environmental Protection Agency.

The Queensland Heritage Council will continue to decide what is entered into the Heritage Register. To allow the Queensland Heritage Council greater flexibility to perform its functions, the minimum number of meetings per year will be reduced from 10 to 6 and the Queensland Heritage Council will have an increased ability to delegate. Minor changes

to membership rules will ensure that the Queensland Heritage Council is a dynamic and representative body.

Accountable, transparent and efficient administrative processes for entering places in the Queensland Heritage Register

The *Queensland Heritage Act 1992* currently does not have sufficient mechanisms to provide the community with certainty about the progress of applications to enter places in the Queensland Heritage Register. To achieve established policy objectives, the process for entering places in, or removing places from the Heritage Register has been comprehensively revised to deliver a system that is transparent, streamlined and accessible. These amendments establish clear timeframes for decisions and ensure early engagement with owners and the community about applications being considered for the Heritage Register.

The Environmental Protection Agency must give public notice, receive and consider submissions, investigate the significance of a place and make a recommendation to the Queensland Heritage Council within 80 business days of receiving an application. The Queensland Heritage Council then has 60 business days in which to make its own enquiries, conduct a hearing, where appropriate, and make a decision. Should the Queensland Heritage Council fail to make a decision in the time allowed the application is deemed to be refused. The timeframes also allow for two ‘stop-clock’ periods of 40 business days in certain circumstances.

Under the *Queensland Heritage Act 1992* the Queensland Heritage Council is required to make two separate decisions about each application for entry—provisional entry and permanent entry. To streamline the decision-making process, the amendments remove the provisional decision.

Provisional entry in the Heritage Register will be replaced by a more targeted and flexible legislative tool, the Interim Protection Order. If circumstances warrant, an Interim Protection Order can provide temporary protection for a nominated place while it is being considered by the Heritage Council. An Interim Protection Order may only be issued by the Chief Executive of the Environmental Protection Agency if there is a strong likelihood that a place subject to an application for entry would satisfy the cultural heritage entry criteria, and is under threat from development. An Interim Protection Order will temporarily enter a place in the Heritage Register for a maximum of 60 business days.

The amendments greatly improve affected parties’ access to the decision-maker. Instead of objecting to a provisional decision and seeking

representation through an assessor appointed by the Queensland Heritage Council, the owner of a property subject to an application will be provided with the opportunity to speak directly to the Queensland Heritage Council before it makes a decision. Other parties may also be heard at the discretion of the Queensland Heritage Council.

The rights of the owner to appeal the entry of their property in the Heritage Register are unchanged. However, an owner no longer needs to object to preserve appeal rights. Limited new appeal rights are provided to an applicant. An applicant may only appeal if the Queensland Heritage Council fails to make a decision in time and, consequently, a deemed refusal is given.

Amendments to the criteria for entry in the register area designed to remove redundant requirements and will make the test for entry into the Heritage Register clearer and simpler. The existing principal test currently employed in the *Queensland Heritage Act 1992* will continue to be used to determine if a place may be entered in the Heritage Register. The test requires applicants to satisfy one or more of eight cultural heritage criteria. These cultural heritage criteria are based on nationally agreed standards and are specific indicators of cultural heritage significance. The amendments remove the superfluous test for cultural heritage significance in section 34(1), which requires that a place must be of cultural heritage significance and satisfy the criteria. The amendments establish that the test of cultural heritage significance is met because a place satisfies one or more cultural heritage criteria.

The Bill removes the ‘no prospect’ clause in section 34(3). This clause prohibits the entry of places into the Heritage Register if there is no prospect of the conservation of the place’s cultural heritage significance. The ‘no prospect’ clause duplicates the ‘no prudent and feasible alternative’ provision in section 44 of the *Queensland Heritage Act 1992*, which specifically provides for consideration of safety, health and economic issues when development of a registered place is proposed.

The *Queensland Heritage Act 1992* already provides the Queensland Heritage Council with some discretion about whether to enter a place that meets the criteria. The amendments outline this existing discretion, as part of the final decision stage of the entry in the Heritage Register process. However, the Bill reinforces that the Queensland Heritage Council may consider whether the physical condition or structural integrity of the place may affect the preservation of its cultural heritage significance.

The amendments also remove section 34(4), which provided for heritage precincts but is no longer required. Like other heritage places, heritage precincts and streetscapes can be effectively assessed against the cultural heritage criteria. The definition of ‘place’ has been revised to clarify that heritage precincts can be part of a ‘feature’ of a place and can therefore be entered in the Heritage Register without relying on this subsection.

Efficient integrated development assessment

The Queensland Heritage Council is currently a Concurrence Agency for heritage matters under the *Integrated Planning Act 1997*, and decides all development applications for registered places. To meet the policy objectives, the amendments transfer Concurrence Agency responsibilities to the Environmental Protection Agency. This will provide applicants with more direct access to the decision-maker. The amendments also allow for the Environmental Protection Agency to seek the Queensland Heritage Council’s advice on complex applications.

Development for which an exemption certificate has been issued does not require an approval for heritage matters. In line with its role in regulating development, the Environmental Protection Agency will be responsible for exemptions. The amendments will formalise and extend the General Exemptions, which specify work that can be carried out without approval. To provide for specific operational needs, General Exemptions will also be able to be issued for a particular class of registered place.

No change is proposed to development by the State. The Queensland Heritage Council provides advice to the State, but the final decision rests with the Minister proposing the development.

The Queensland Heritage Council is removed from its role of approving exemption certificates for liturgical purposes. Where development is on a registered place that is a place of public worship and the development is being undertaken for liturgical purposes, the development will be exempt and require no approval.

The *Queensland Heritage Act 1992* currently provides for Heritage agreements to be made between the owner of a registered place and the Minister. These amendments will remove the mandatory requirement for all heritage agreements to be attached to the title of a place, and will allow for another entity—with the owner’s approval—to enter into an agreement. As the majority of heritage agreements pertain to development, the amendments transfer the power to enter into heritage agreements from the Minister to the Chief Executive of the Environmental Protection Agency.

The amendments introduce into the Queensland Heritage Act 1992 a requirement for owners of heritage places to carry out essential maintenance. The maintenance requirements included in the amendments are targeted at preventing ‘demolition by neglect’. The provision allows the Chief Executive of the Environmental Protection Agency to issue a maintenance notice after consulting the owner and clarifying what work is required to prevent serious or irreparable damage to a State Heritage Place. This power will be used in extreme cases and is limited to work that is urgently required to protect the place and is minor in nature—for example, securing broken windows or clearing overgrown vegetation.

Identification and protection of historical archaeological places

To deliver the policy objectives of improved protection for historical archaeology and greater certainty for the development industry, the amendments propose a proactive and integrated approach that identifies important archaeological sites. The inclusion of a new category—Archaeological Place—in the Heritage Register will ensure information is easily accessible. The Bill provides specific archaeological criteria for the entry of an archaeological place into the Heritage Register. The current permitting system will be replaced by regulation of development through the Integrated Development Assessment System under the *Integrated Planning Act 1997*, and will include a requirement for an archaeological investigation to be carried out if development is likely to destroy the archaeological value of the place. It does not prevent development occurring.

These amendments also align protection for historic shipwrecks in Queensland waters with the Commonwealth provisions, and provide temporary protection for archaeological artefacts that are accidentally uncovered. In exceptional cases the State may declare ownership of an archaeological artefact that is important to Queensland. An affected person may seek compensation.

Improved protection for local heritage

Currently, the *Queensland Heritage Act 1992* deals only with places of cultural heritage significance to the State as a whole, and makes no provision for places that are significant only to a local community or area. While some local governments deal with heritage in their planning schemes, many have inadequate or no provision for identifying and protecting heritage places. These amendments will assist those local governments that do not have protection for heritage in their planning schemes by providing a simple process for keeping local heritage registers.

The local government will decide what is entered into its register. An Integrated Development Assessment System assessment code will provide a consistent basic level of protection for local heritage places.

Alternatives

There are no other viable alternatives to amending the *Queensland Heritage Act 1992* that will achieve the policy objectives. The legislative amendments are supported by a number of policy initiatives including a comprehensive state-wide survey to identify Queensland's cultural heritage places and a heritage grants program to provide resources to assist owners of heritage places.

Estimated costs to Government for implementation

The amendments will increase the Environmental Protection Agency's heritage responsibilities and consequently the level of resources required to administer heritage matters. While the Environmental Protection Agency will assume significant new roles, it is anticipated that the increased workload can be absorbed into the current allocation. Some savings in administration costs will result from the improved efficiency of the process provided by the amendments.

The Environmental Protection Agency will have prime responsibility for implementing the Bill. Business processes have been comprehensively reviewed by the Environmental Protection Agency with a view to implementing the amendments efficiently and effectively. The Queensland Heritage Council will develop new processes to meet its revised role with support from the Environmental Protection Agency.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Aspects of the Bill which infringe on fundamental legislative principles are outlined below.

Limited appeal rights

As is the case under the current legislation, decisions about nominations to the Register are currently subject to limited review. An owner of a place may appeal against the decision of the Council to enter their place in, or remove their place from, the Queensland Heritage Register. Entering a place in the Register is likely to impact on the development potential of a

place. The limitation of appeals to the owner is based on the recognition that they are the person whose rights, interests and obligations are affected by a listing of their property. A nominator or submitter does not have a material interest in the place. Judicial Review provides an appropriate process for reviewing procedural aspects of the Council's decision. The amendments introduce appeal rights for an applicant only when, as a result of the Council failing to make a decision in time, a deemed refusal is given. This appeal right has been added because a deemed decision affects an applicant's right to a properly made decision.

Under Part 7B, a property that is a place of cultural heritage significance may be entered in a local heritage register by a decision of the local government. The effect of the entry of a property in a local heritage register will be to increase the level of regulation of any development on the place by requiring it to be assessed for its impact on the cultural heritage significance of the place. This is likely to have an impact on an owner's ability to develop the property. No appeal has been provided as it is preferred to make this provision consistent with the approach taken in the *Integrated Planning Act 1997* and under which local government generally operates. Therefore, if the decision of the local government to enter a place in their register has a negative effect on the potential value of the property, an owner is entitled to claim compensation as set out in chapter 5, part 4 of *Integrated Planning Act 1997*.

Notice to maintain a heritage place

Section 54E introduces an obligation on an owner who has been issued with a maintenance notice to carry out essential maintenance work on a State Heritage Place. It is an offence for an owner to fail to comply with a notice. This amendment is necessary to ensure that State Heritage Places can be protected from serious damage, in some cases leading to demolition, that is the consequence of severe neglect. A notice may only be about work that is urgently required and is essential to prevent serious or irreparable damage to, or deterioration of, a State Heritage Place. The Chief Executive may only issue a notice after taking all reasonable steps to consult with an owner. Because a notice is about work that is urgently needed to prevent a registered place from being damaged, no appeal has been provided. This is necessary to prevent a delay in carrying out the work from effectively leading to the destruction of a registered place. To ensure that a notice does not have an unreasonable impact on the owner, only minor work, such as refixing roof sheeting or securing doors and windows, may be required. This power is clearly defined and may only be used to address serious and

urgent situations. To ensure it is used reservedly it cannot be delegated from the Chief Executive.

Interim Protection Orders

Part 6A, division 1, introduces a power for the Chief Executive to give an owner an Interim Protection Order. An Interim Protection Order may be given about a place that has been nominated for entry to the Queensland Heritage Register but not yet decided. The Chief Executive may only give an order for a place, if satisfied that it is necessary in the circumstances to conserve the cultural heritage significance of the place. The effect of an Order is to temporarily enter a place in the Register for a maximum period of 60 business days. Consequently, the Chief Executive becomes the concurrence agency for any development application that is lodged during the duration of the Order.

This provision replaces the temporary protection that was given by provisional entry in the Register. To streamline the process for deciding applications to the Register, the amendments remove provisional listing. Temporary protection for places under consideration for entry in a heritage register is a common feature in Australian heritage legislation as it assists in the rational consideration of applications and removes the incentive to carry out reactive demolitions. Section 88 of the Act, Stop Orders, provides a mechanism to deal with emergency situations, such as when demolition work is about to start or is underway. The Interim Protection Order will have a lesser affect on a place. Unlike a Stop Order, it will allow development of a place to commence or continue provided the appropriate approvals have been obtained. No appeal has been provided, as the effect of the Interim Protection Order is temporary and appeal is provided once a decision to enter a place in the Register has been made.

Declaration of Ownership of Archaeological Artefacts

Part 7, Division 2, introduces provision for the State to be able to assert ownership of an archaeological artefact. This provision will only be used in exceptional circumstances as a last resort to protect an artefact of particularly important historic significance. To ensure that a person who suffers loss as a result of a declaration is appropriately compensated, compensation provisions and appeal rights against a decision of the Chief Executive about compensation have been provided.

Penalties

Some new penalties have been introduced and some existing penalties have been increased to help achieve the purpose of the Act - to conserve Queensland's cultural heritage. Because many important heritage places are located in the historic centres of Australia's cities and towns, substantial penalties are common in Australian heritage legislation. This is necessary to effectively discourage demolition of registered places by counterbalancing the potentially large financial gains sometimes associated with removing an old building from a desirable development site.

The current penalties in the Act are generally set at three levels; a maximum of 17,000 penalty units for unauthorised work that demolishes or substantially damages a registered place, a maximum of 1,000 penalty units for an act that damages a registered place or an archaeological artefact of cultural heritage significance but is a lesser offence than carrying out unapproved development and a maximum of 100 penalties units for more minor offences that do not directly damage or lead to the damage of a heritage place but are required for the effective functioning of the Act. New penalties are consistent with the current levels and apart from the highest level, penalties are similar to the penalties set for comparable offences in the *Integrated Planning Act 1997*. Some existing penalties which were not consistent with this approach have been increased to bring them into line.

Penalties for interfering with archaeological artefacts currently range from 300 to 1,000 penalty units. To create a consistent approach and provide a more effective deterrent to destroying significant artefacts, the lower penalties have been increased. A new penalty has been introduced for failing to comply with a maintenance notice. Because the effect of failing to carry out the urgent work required by a maintenance notice can be demolition through neglect, a maximum penalty of 1,000 penalty units for a corporation and 100 penalty units for an individual is provided. The current penalty of 1,000 penalty units for destroying a Protected Areas is substantially less than those that apply to other registered places. Given that Protected Areas are declared by Governor-in Council and are intended to provide the highest level of protection, this is an anomaly. The amendment corrects this by increasing the penalty for destroying a Protected Area to a maximum of 17,000 penalty units for a corporation and 1,700 for an individual.

Consultation

The Bill has been developed over a period of three years and included:

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- a report on the functions and responsibilities of the Heritage Council and the Environmental Protection Agency
- a Ministerial Advisory Committee—comprising representatives of the government, the development industry and heritage interest groups
- a public discussion paper that was released for public comment and resulted in 108 public submissions.

The Queensland Heritage Council, the National Trust of Queensland, the Catholic Church, the Urban Development Institute of Queensland, the Property Council of Australia, the Archaeology Reference Group and the Local Government Association of Queensland Inc. have been consulted about the Bill.

Consulted State Government agencies with an interest in heritage or related matters include:

- Department of the Premier and Cabinet
- Department of Education, Training and the Arts
- Department of Housing
- Department of Infrastructure
- Department of Justice and Attorney-General
- Department of Local Government, Planning, Sport and Recreation
- Department of Main Roads
- Department of Natural Resources and Water
- Department of Primary Industries and Fisheries
- Department of Public Works
- Department of State Development
- Department of Transport
- Treasury Department
- Crown Law.

Notes on Provisions

Part 1 Preliminary

Clause 1 sets out the short title of the Act

Clause 2 provides for the commencement of the Act

Part 2 Amendment of Queensland Heritage Act 1992

Clause 3 specifies that part 2 of the Bill and the schedule amend the *Queensland Heritage Act 1992* (the Act).

Clause 4 amends section 2, which sets out the object of the Act and how it is primarily achieved to provide consistency with amendments made elsewhere in the Act. Amendments change the name of the Heritage Register to the Queensland Heritage Register and include the keeping of local heritage registers. Due to the integration of archaeological places into the Queensland Heritage Register, specific reference to submerged objects and the regulation of excavation is removed. Other minor changes simplify and clarify how the object of the Act is primarily achieved.

Clause 5 replaces section 4, which states that the Crown is bound by the Act, with a provision that has the same effect but is updated to reflect current drafting practice.

Clause 6 amends section 7, which sets out the functions of the Queensland Heritage Council, to give greater emphasis to the Council's strategic and policy functions. The revised list simplifies and clarifies the Council's functions. Responsibilities related to administration of the Queensland Heritage Register, which have been transferred to the Chief Executive, are removed. Functions set out in detail elsewhere in the Act, such as deciding applications to the Register, are not repeated in this section.

Clause 7 amends section 8, which sets out the delegation powers of the Queensland Heritage Council. The amendment removes the restriction on

delegation of the Council's decision to enter places in, or remove places from, the Queensland Heritage Register. This will allow the Council to establish more efficient decision-making processes needed to meet its statutory responsibility to deliver timely decisions. Delegation to an appropriately qualified public service officer has been inserted to allow for delegation to the Environmental Protection Agency to rapidly process applications that clearly do not meet the requirements for entry in the Register. Delegation to local government and to appropriately qualified persons has been removed. This was previously required to allow for delegation about development matters, which under the amendments are transferred to the Chief Executive.

Clause 8 amends section 10, which provides for the appointment of the chairperson and deputy chairperson of the Queensland Heritage Council. The amendment has been made to clarify that the term of the appointment of the chairperson and the deputy chairperson cannot exceed three years, which is the maximum term of appointment for a member under section 11. This section does not prevent the chair person or deputy chairperson from being reappointed.

Clause 9 replaces section 12, which sets out the circumstances in which a person is not eligible to be a member of the Queensland Heritage Council. The amendment introduces a maximum period of six years for which a person can continue to be a member. The purpose of this amendment is to ensure wide and evolving community representation on the Queensland Heritage Council. The amendment also brings the provision into line with requirements for spent convictions under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

Clause 10 amends section 13, which sets out when a member of the Queensland Heritage Council is taken to have vacated office, to ensure that a person convicted of an offence cannot remain a member.

Clause 11 amends section 19, which sets out the times and places of Queensland Heritage Council meetings. The amendment reduces the number of mandatory meetings per year from 10 to 6 to allow the Council greater flexibility in how it carries out its functions. The amendment does not limit the number of meetings the Council may hold a year.

Clause 12 amends section 28, which provides for the annual report of the Queensland Heritage Council, to ensure that particular information about how the Council is fulfilling its functions is included in the annual report. The amendment requires inclusion of a statement about measures needed to conserve Queensland's heritage and information about the timeliness of

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the Council decisions. The amendment also removes the requirement for the report to include a statement about donations, as the provision referred to, section 103, applies to the Minister not the Council.

Clause 13 amends sections 30 and 31, which set out the requirements for keeping the Queensland Heritage Register.

Section 30 is amended to transfer responsibility for keeping the Queensland Heritage Register from the Council to the Chief Executive, to change the name of registered places to State Heritage Places and to include a new category in the Register - archaeological places. The amendment also clarifies and simplifies what information the Register must contain about each registered place. The requirement to keep a record of permits made about registered places has been removed, as it is not practical to keep a complete and current record of permits issued by other entities under the *Integrated Planning Act 1997*. To bring protected areas into line with the other categories in the Register, information required to be kept about protected areas, which was previously not specified, has now been included.

Section 31 is amended to require that the Register be made freely available to members of the public and allows for it to be kept in an electronic form.

Clause 14 amends section 32, which sets out how the Heritage Council must, on application and payment of a fee, provide particular information from the Queensland Heritage Register to members of the public. The section is consequentially amended to align with changes made under section 30.

Clause 15 amends section 33, which sets out how changes may be made to an entry in the Queensland Heritage Register to ensure that information in the Register can be maintained and is of a high quality. The amendment allows the Chief Executive greater scope to keep information in the Register up-to-date and to correct minor errors. To balance the need for administrative efficiency and accuracy of the public record with the rights of the owner of a registered place, the amendment requires the Chief Executive to obtain the approval of the owner prior to making any change to a statement about the significance of the place.

Clause 16 amends section 34, which sets out the criteria for entry in the Queensland Heritage Register – the cultural heritage criteria. The amendment clarifies that this section applies to State heritage places. The amendment simplifies the test for entry by removing secondary and redundant requirements. The principal test in the Act, of satisfying one or

more of the eight cultural heritage entry criteria, continues to be used to determine if a place may be entered in the Register. The cultural heritage criteria are based on national standards and are specific indicators of cultural heritage significance. The amendments remove the requirement in subsection 1 for a duplicate but less rigorous test of cultural heritage significance, which is based on the definition of cultural heritage significance contained in the schedule (Dictionary). The amendment also removes subsection 3, which prohibits the entry of places in the Register if there is no prospect of the cultural heritage significance of the place being conserved. Due to its wide interpretation, this provision is not consistent with the object of the Act, nor is the application of this test at the point of entry consistent with best practice heritage management. However, a new provision has been inserted in section 42H, which will ensure that the physical condition and structural integrity of a place may still be taken into account when considering a place for listing. The amendment removes subsection 4, which makes special provision for heritage precincts, in particular streetscapes and properties adjoining a heritage place. This subsection is redundant as the cultural heritage significance of heritage precincts can be effectively assessed against the existing cultural heritage criteria. In addition, to clarify that a precinct can be part of a place and therefore entered in the Register, a new definition for 'feature', which has been inserted in the Dictionary, includes a precinct.

Clause 17 replaces sections 35 to 42, which set out the process for entering a place in or removing a place from the Queensland Heritage Register, with new sections 35 to 42M. The purpose of this amendment is to provide an improved process for dealing with applications for State Heritage Places. The new process introduces end-to-end timeframes, earlier engagement with owners of nominated places and the community, an expanded role for the Chief Executive and greater access to the decision-maker for affected parties.

Division 2, sections 35 to 39, provides for matters about applications to have a place entered in or removed from the Queensland Heritage Register as a State Heritage Place.

Section 35 sets out how a person or other entity may make an application to the Chief Executive to have a place entered in, or removed from, the Queensland Heritage Register. To improve accessibility of information and clarify application requirements, the amendment relocates information from the regulation and updates and clarifies what is required for particular applications. The amendment also provides for an applicant to withdraw an

application and makes provision for minor matters relating to an application made by the Chief Executive.

The purpose of section 36 is to reduce applications about matters that have already been dealt with. It will prevent a person from making application for the entry of a place in, or removal of a place from, the Queensland Heritage Register, if the Council has made a decision about the matter in the previous 12 months.

Section 37 provides for the early notification and provision of relevant information to affected parties. The Chief Executive must give notice of the application and a copy of the application to the owner and to the relevant local government, within 10 days after its receipt. The notice to the owner also includes information about how to make a submission and the owner's obligations under sections 43A and 43B to notify the Chief Executive about any impending development. To ensure that a person can nominate a place without fear of harassment, this section also provides for the applicant's details not to be included in a copy of the application given to the owner or local government without the applicant's permission.

Section 38 provides for the Chief Executive to give public notice of the application. The notice sets out details of where the application may be viewed and how a person may give the Chief Executive a submission.

Section 39 provides for the Chief Executive keeping a copy of an application available for inspection by members of the public. Similar to section 37, this section also provides for the applicant's details not to be included without their permission.

Division 3, sections 40 to 42, sets out matters relating to submissions and other representations about applications.

Section 40 sets out the period in which a submission about an application may be given to the Chief Executive and how it may be extended. The extension of the period to receive a submission does not extend the overall timeframes for making a decision.

Section 41 states the basis for making a submission - that a place does or does not satisfy the cultural heritage criteria.

Section 42 states how the Chief Executive may seek further information about an application from a person that the Chief Executive considers has appropriate knowledge or expertise who can assist the matter under consideration.

Division 4, sections 42A to 42C, sets out how a recommendation on an application to enter a place in, or remove a place from, the Queensland Heritage Register must be made by the Chief Executive to the Queensland Heritage Council about each application received.

Section 42A sets out how the Chief Executive must give the Queensland Heritage Council a heritage recommendation for an application within a set period, generally 80 business days after its receipt, to ensure a timely and transparent process. The section states which matters the Chief Executive must consider, what information must accompany the Chief Executive's recommendation and how the Chief Executive must make the recommendation on the basis of whether a place does or does not satisfy the cultural heritage criteria.

Section 42B provides for the Chief Executive to extend the timeframe for considering an application if circumstances, such as the remote location of a place or the complexity of the matters under consideration, mean that more time is required. The Chief Executive may extend the time to make a recommendation by up to 40 business days.

Section 42C sets out the notice requirements for a recommendation. The Chief Executive must notify and give a copy of the recommendation to the applicant, the owner, the local government and any submitters. To allow affected and interested parties to request an oral representation with the Queensland Heritage Council before a decision is made, the notice must include information about how to ask for an oral representation.

Division 5, sections 42D to 42M, provides for matters relating to the Queensland Heritage Council making a decision about applications to enter a place in, or remove a place from, the Queensland Heritage Register as a State heritage place.

Section 42D states the Queensland Heritage Council's role as decision-maker in relation to heritage recommendations.

Section 42E states how the Council may seek further information about a heritage recommendation from a person that the Council considers has appropriate knowledge or expertise.

Section 42F provides for how a person may ask the Council if they can make an oral representation about a heritage recommendation before a decision is made. The Council must make all reasonable effort to hear an owner of a place and may elect to hear other parties if the Council is satisfied that the person wishes to present relevant information that has not previously been provided.

Section 42G sets out that the Council may determine how oral representations are made and makes provision for the Council to deal with a variety of circumstances, for example, to hear a person in a remote location by using electronic communication.

Section 42H provides for the Council to make a timely decision about heritage recommendations and defines the matters the Council must consider when making its decision. The Council must make a decision on each heritage recommendation within 60 business days after the receipt of the recommendation. This time period may only be extended with the agreement of the owner to a maximum of 100 business days. In making a decision on a heritage recommendation, the Council must have regard to the application, any heritage submissions, any written submission sought from appropriate experts and any oral representations. To ensure that factors that may prevent a place from being conserved are considered prior to entering it in the Register, the Council may also have regard to the physical condition or structural integrity of the place.

Section 42I enables the Council to extend the time in which it must make its decision to a maximum of 100 business days. This provides for circumstances where an owner of a place may need more time to obtain relevant information or to attend an oral representation. The Council and the owner must both agree to an extension.

Section 42J provides for how the Council makes its decision on the basis of whether a place does or does not satisfy the cultural heritage criteria. The Council may enter a place in the Register as a State heritage place only if it satisfies one or more of the cultural heritage criteria. The Council must remove a place if satisfied that it no longer meets any criteria.

Section 42K provides for the Council to inform the Chief Executive about its decision and for the Chief Executive to give public notice of the decision. In addition to the public notice, notice of the decision and the reasons for it must be given to the applicant, the owner, the relevant local government and to any submitters. For certain decisions of the Council, the notice to the owner must include information about the owner's right to appeal.

Section 42L provides for a circumstance where the Council has not made a decision about a heritage recommendation in the time allowed. A decision is then taken to have been made and the application is deemed to be refused. This is necessary to ensure that all applications are finalised in the time allowed.

Section 42M provides for notice of a deemed decision to be given to the applicant and the owner. Information must be given to the applicant about their right to appeal a deemed decision.

Clause 18 amends section 43, which sets out the process for applying for and giving a certificate of immunity. A certificate of immunity prevents a place from being entered in the Queensland Heritage Register for a five year period. The amendment is consequential and does not change the operation of this section.

Clause 19 inserts new sections 43A and 43B, and a new part 4A.

Sections 43A and 43B require an owner of a nominated place to advise the Chief Executive about any development that the owner is aware of that may affect the place while it is under consideration as a State Heritage Place. To ensure that an owner is fully informed, information about this obligation is included in the initial notice sent under section 37. This amendment allows for the Chief Executive to be notified about proposed development of a nominated place and, in certain instances where it is considered necessary, to issue an Interim Protection Order under section 54A. To ensure the effective operation of these provisions a penalty of 100 penalty points for an owner failing to notify the Chief Executive has been introduced.

Part 4A, consisting of sections 43C to 43J, provides for the registration of Archaeological Places, a new category in the Queensland Heritage Register. The registration process for Archaeological Places is consistent with the process for entry in the Register as a State Heritage Place, but is a simplified version that does not require nominations. Places may only be considered for entry under this part if they are recommended by the Chief Executive. Archaeological places that meet the cultural heritage criteria can still be nominated to the Register as a State Heritage Place.

Section 43C sets out criteria for entry in the Register that are specific to an Archaeological Place and are a test of its importance to Queensland's cultural heritage. A place may only be entered in the Register as an Archaeological Place if it satisfies these archaeological criteria.

To ensure a transparent process and early engagement of affected parties, Section 43D provides for the notification of the owner, local government and the public if the Chief Executive intends to recommend a place for entry in or removal from the Register. Notification includes information about the reasons for the proposal and about how to make a submission.

Section 43E sets out how the Chief Executive may, after considering any submissions and other relevant operation, make a recommendation to the

Queensland Heritage Council about whether a place does or does not satisfy the archaeological criteria.

Under Section 43F, the Chief Executive must notify the owner, the local government and any submitters of the recommendation. To ensure that the most affected party has an opportunity to speak directly to the decision-maker, the owner may ask to make an oral representation to the Council before it makes its decision.

Section 43G provides for how an owner may ask the Council if they can make an oral representation. The Council must make all reasonable effort to hear an owner of a place.

Section 43H sets out the Council's process for hearing oral representations and is the same as section 42G.

Section 43I provides for the Council to make a decision on each recommendation. In making its decision the Council must have regard to any submissions and any oral representation by the owner. The Council may only decide to enter a place if the Council considers that it satisfies the archaeological criteria. The Council must remove a place that no longer satisfies the archaeological criteria.

Section 43J requires the Council to immediately inform the Chief Executive of its decision. The Chief Executive must within 10 business days notify the owner, local government and submitters, and give public notice of the Council's decision. If relevant, the owner is also notified about the process to appeal the decision.

Clause 20 amends section 44, which provides for the assessment of development applications made under the *Integrated Planning Act 1997*. The amendment makes the Chief Executive, rather than the Queensland Heritage Council, responsible for assessing applications for State Heritage Places under the Integrated Development Assessment System. The amendment also makes minor changes to section 44(2) and (3) to ensure consistency of this provision with the similar provision in section 45. The amendment clarifies that what must be considered is whether there is 'no prudent and feasible alternative' to a proposal.

Clause 21 inserts new sections 44A and 44B.

Section 44A provides for the assessment by the Chief Executive of development applications for archaeological places made under the *Integrated Planning Act 1997*. Applications must be assessed in relation to their likely impact on archaeological artefacts on the place and the Chief

Executive may impose conditions if they are necessary to appropriately manage any negative impact of the development.

To ensure that the Chief Executive can continue to draw on the expert knowledge of the Queensland Heritage Council, section 44B allows for certain development applications to be referred to the Council for advice. This section will allow the Chief Executive to seek advice about particularly complex or contentious applications before reaching a decision about a development.

Clause 22 amends section 45, which sets out the process for assessing development proposed by the State on Registered places. The amendment makes this provision more consistent with provisions for registered places under the *Integrated Planning Act 1997* by providing for the State to carry out development without approval because of an emergency and providing for use of exemption certificates. Some minor changes have been made to improve the consistency of notification requirements with other similar provisions and to provide consistency with section 44 about consideration of 'no prudent and feasible alternative' to a proposed development.

Clause 23 replaces section 46, which deals with making an application for an exemption certificate, with new sections 46 and 46A.

The new section 46 makes the Chief Executive rather than the Council responsible for dealing with exemption certificates. It also makes it easier to apply for an exemption certificate by broadening who can apply, stating the application requirements in the Act and simplifying the categories of development for which an exemption certificate may be issued.

Section 46A assists in the smooth processing of exemption certificates by providing for an information request. This allows the Chief Executive to continue to consider an application when further information is required, rather than refusing it on the basis of lack of information.

Clause 24 amends section 47, which provides for making a decision about an application for an exemption certificate, by making the Chief Executive rather than the Council responsible for deciding. It also amends the timeframe in which the decision must be made to allow for an applicant to respond to an information request.

Clause 25 replaces sections 48 and 49, with new sections 48, 49, 49A, 49B, and 49C.

Section 48, which provides for issuing an exemption certificate without an application having been made, is amended to make the Chief Executive responsible for issuing these certificates. The amendment makes specific

provision for issuing General Exemption Certificates, which are exemptions that can apply to all registered places. To allow for the operational requirements of certain types of places, for example hospitals or railway stations, a General Exemption Certificate may also be issued for a particular class of registered place. In addition, the amendment broadens the practical uses of a General Exemption by not limiting it to the owner of a place, by providing for a certificate to be issued with conditions and providing for the Chief Executive to publish General Exemption Certificates on the Department's website.

Matters previously contained in section 49 have been relocated. Section 49 makes provision to ensure that work carried out under an exemption certificate complies with the conditions of the certificate. To assist in preventing damage to a registered place and ensuring work carried out under an exemption certificate generally complies with conditions, a penalty of 1,000 penalty points for contravening a condition is introduced. This penalty is consistent with other penalties in the Act for offences that damage an artefact or place of cultural heritage significance, for example interfering with a shipwreck, but are a lesser offences than carrying out unapproved development at a registered place.

The exemption for liturgical purposes, previously provided for under section 49, is now dealt with under division 3, sections 49A, 49B and 49C. This amendment removes the Queensland Heritage Council from any role in approving development for liturgical purposes and removes the restriction previously contained in section 49 prohibiting demolition of a registered place. It expands the ability of religious organisations to change a State registered place without approval from the Heritage Council or the Chief Executive.

Section 49A sets out the purpose of the division, which is to make liturgical development exempt from assessment in schedule 8, part 1, table 5, item 2 of the *Integrated Planning Act 1997*, when combined with an amendment under clause 52.

Section 49B provides a definition for liturgical development, which is development in a place of public worship that is required for a liturgical purpose and is authorised by an official of a religious organisation with appropriate knowledge of its religious services.

To ensure that the Register is kept up-to-date, section 49C requires that the religious organisation proposing the development notify the Chief Executive about it prior to commencing the work.

Clause 26 amends section 50, which provides for heritage agreements, to make heritage agreements more flexible and to encourage greater use of them. Because most heritage agreements are about development, the amendment makes the Chief Executive rather than the Minister responsible for entering into agreements. To ensure that the use of heritage agreements is consistent with the strategic goals of the Queensland Heritage Council, the Chief Executive must seek the Council's advice before entering into an agreement. The amendment broadens the scope of agreements by providing for another person who has an interest in the place to enter into an agreement with the owner's consent and removing the mandatory requirement for an agreement to attach to the land.

Clause 27 amends section 51, which sets out what a heritage agreement may be about, to include the appropriate management of a registered place. The amendment also deletes section 51(3), which states that a local government may be a party to an agreement, as changes to section 50 have made this provision redundant.

Clause 28 deletes section 52 and 53, which deal with notification of the registrar of titles. To improve the clarity of the Act, all provisions about notifying the registrar are now dealt with in section 103B.

Clause 29 inserts a new part 6A, which introduces provisions into the Act that allow the Chief Executive to issue Interim Protection Orders and notices about maintaining a State heritage place.

Sections 54A to 54D provide for Interim Protection Orders. Under section 54A, an Interim Protection Order may be given by the Chief Executive for a place that is nominated to the Queensland Heritage Register. An Interim Protection Order allows for the temporary protection of a place that is under consideration for entry, if the place, based on the evidence available, is likely to be a place of cultural heritage significance and be under threat from development. It replaces the temporary protection previously given by provisional entry. Section 54B sets out the form and content of an order, section 54C sets out the duration of the order and section 54D sets out the effect of the order. To ensure that an Interim Protection Order does not have excessive impact on the owner of a place, the duration of the order is limited to a maximum of 60 business days. To support the functioning of this provision, the owner of a nominated place is required under sections 43A and 43B to notify the Chief Executive about development proposals. To ensure this provision is used judiciously, only the Chief Executive may issue an Interim Protection Order.

Section 54E makes provision for the Chief Executive to issue a notice about essential maintenance work. Maintenance notices are necessary to ensure that State Heritage Places are not destroyed as a result of neglect. The Chief Executive may issue a notice after consulting with the owner of the place. The notice can only be about essential maintenance work that is urgently required to prevent serious or irreparable damage to a State Heritage Place. To ensure that a notice does not have an unreasonable impact on the owner, only minor work, such as securing doors and windows or removing fire hazards, may be required. The power to give a maintenance notice cannot be delegated and will only be used to address serious cases of neglect. The amendment also introduces a penalty for failing to comply with a notice of a maximum of 1,000 penalty units for a corporation and 100 penalty units for an individual. These penalties are appropriate to help protect State Heritage Places and are consistent with other penalties in the Act for offences that damage a place of cultural heritage significance, but are a lesser offence than carrying out unapproved development.

Clause 30, replaces Part 7, divisions 1 and 2, sections 55 to 59, which deal with archaeological studies and discoveries and protected objects, with new provisions related to the protection of archaeological artefacts generally.

Section 55 provides a definition for 'interfere with' that is relevant to division 1. The requirement for a permit to carry out an archaeological study under the former section 55 has been removed. Only studies which involve development of a registered place will require an approval under either section 44, 44A or 45.

Section 56, which required that the Minister be notified of the discovery of an archaeological artefact, has been amended to require that the Chief Executive be notified and to give more detail about the requirements of the notice. To ensure that the discovery of an important artefact during an excavation is likely to be notified, the penalty for failing to notify has been increased from 50 penalty units to 1,000 penalty units. This penalty is necessary to help protect important archaeological artefacts and is consistent with other penalties in the Act for offences that damage an archaeological artefact, for example interfering with a shipwreck. It is the same as the penalty which previously applied under section 58 for destroying a protected object.

Section 57 makes it an offence to damage or remove an archaeological artefact about which a notice has been given under section 56. It introduces a penalty of 1,000 penalty units to help prevent the deliberate destruction of

an archaeological artefact before it can be investigated. This provision applies for a limited time period of 20 business days but can be waived with the written consent of the Chief Executive. This period balances the need to investigate an important archaeological artefact before it is destroyed with the requirement to continue any construction project that was underway when the artefact was discovered.

Section 58 helps to align protection for historic shipwrecks in Queensland waters with the Commonwealth provisions and provides blanket protection for all shipwrecks in Queensland waters that are over 75 years old. To ensure the effectiveness of this provision in discouraging damage of irreplaceable relics, a penalty of 1,000 penalty units has been introduced, which is consistent with other penalties for interfering with archaeological artefacts.

A new division, division 2 containing sections 59 to 59J, has been introduced to provide for the rare occasions when the State decides there is a pressing need to declare ownership of a particularly important archaeological artefact.

Section 59 provides for the Chief Executive to make a declaration if it is necessary to conserve the cultural heritage significance of an archaeological artefact and the artefact is located in, or has been removed from, a registered place. The section also specifies the notification requirements, including public notice required if making a declaration.

Sections 59A to 59E are provisions about compensation matters that arise from a declaration being made. Section 59A states that a person who suffers loss because of a declaration is entitled to claim compensation. Section 59B sets out a process for applying for compensation, including how the application must be made and a timeframe for making an application. Section 59C sets out how the Chief Executive may require further information and how the application may lapse if the information is not required. Under section 59D, the Chief Executive must decide an application within a specified time period of 60 business days. If the Chief Executive does not make a decision in the stated period the application is deemed to have been refused. Section 59E provides for the Chief Executive to promptly notify an applicant of the decision about their application. The notice must contain the reasons for the decision and details about the compensation, if the Chief Executive has decided to pay compensation.

Sections 59F to 59J provide an appeal process, which is similar to appeal processes for compensation contained in other Acts. Section 59F states that an applicant, who is dissatisfied with the Chief Executive's decision, may

appeal. Section 59G sets out how an appeal may be started. Section 59H states the relevant hearing procedures. Section 59I sets out the effect of the decision of the court. Section 59J states matters about an appeal against the decision of the Court.

Clause 31 makes a consequential amendment to section 60, which provides for the declaration of a protected area, to delete reference to 'protected objects' which has been removed from the Act.

Clause 32 amends section 61, which makes it an offence to destroy a protected area, to increase the penalty from 1,000 penalty units to 1,700 penalty units for an individual and 17,000 penalty units for a corporation. The declaration of a protected area by the Governor in Council is intended to provide the highest level of protection. This amendment ensures there is a sufficient deterrent for destroying protected areas.

Clause 33 makes minor consequential amendments to section 68, which deals with appeals relating to permits for protected areas. It removes a reference to a permit for carrying out a study as this permit is no longer required.

Clause 34 inserts a new Part 7B, which provides for protecting local heritage places. Local heritage places are places of local, rather than State, cultural heritage significance in a local government's area. This amendment ensures that all local governments will have a workable system for dealing with heritage matters. It will particularly assist those local governments that do not have adequate provision for identifying and protecting heritage places incorporated into their planning schemes. The amendment sets out a simple process to allow local governments to keep a register of places of cultural heritage significance in its area. The local government decides what is entered in its register.

Section 68A deals with preliminary matters and provides for the Chief Executive to be able to exempt those local governments that are already providing, through their planning schemes, for the identification and conservation of places of cultural heritage significance in their area.

Section 68B sets out the requirements for how a local government must keep its register. Registers may be kept in the form, including electronic form, the local government considers appropriate, but must be able to be inspected by the public free of charge.

Section 68C specifies what mandatory information a local government must keep in its register about each local heritage place. A local heritage

register must contain enough information to identify a local heritage place and a statement about the cultural heritage significance of the place.

Section 68D allows the Chief Executive to recommend a place to a local government for consideration for entry in its register. The Chief Executive may make a recommendation if satisfied that a place is of local cultural heritage significance for the area and entry in the local government's register will help to conserve the place. This provision will be used to provide local governments with information about places of cultural heritage significance in their area. In making the recommendation the Chief Executive must provide the local government with relevant information, including information about the cultural heritage significance of the place.

Section 68E allows a local government to propose to enter a place in, or remove a place from, its register. To ensure that a recommendation from the Chief Executive is properly considered, a local government is required to propose a place for entry and publish notice about it if it has been recommended to it by the Chief Executive. The recommendation must be supported by appropriate information, including information about the cultural heritage significance of the place.

Section 68F provides for notice to be given to the owner of a place and for public notice to be made. This ensures that affected and interested parties are informed about a proposal to enter a place in, or remove a place from, a local heritage register. The notice must state reasons for the proposal and how a person may give a submission about the proposal to the local government. This section also states the basis on which a submission may be made – that a place is or is not a place of cultural heritage significance for the area.

Section 68G requires the local government, before making its decision, to have regard to any submissions received and to any information about the place that has been provided by the Chief Executive to support a recommendation.

To make sure a timely decision is made, section 68H provides for the local government to make a decision about a proposal to enter or remove a place from its register by resolution with 80 business days of publication of the notice.

Section 68I requires the local government to promptly inform the owner and any submitters of its decision and the reasons for the decision, within 10 business days of making a decision.

Section 68J provides for an Integrated Development Assessment System assessment code to be prescribed in a regulation. The Code, which will provide a consistent, basic level of protection for local heritage places, is essential to ensure that all local governments have a workable system to protect heritage.

Section 68K contains provision for local government to maintain and update the information in its register. This is the same provision that applies to the Queensland Heritage Register under section 33.

Sections 68L and 68M provide for consistency with the *Integrated Planning Act 1997*. To allow local heritage registers and planning schemes to work in an integrated way, section 68L allows a local heritage register to be incorporated into a planning scheme. No appeal against the entry of a local heritage place in a local heritage Register is provided. However, compensation for potential loss of value is provided by Section 68M, which treats the entry of a place in a local heritage register as a change to a planning scheme, for the purposes of the compensation provisions in the *Integrated Planning Act 1997*.

Clause 35 amends Part 8, division 2, which is about powers of authorised persons in relation to enforcement, to insert new subdivisions 3A and 3B. The amendment provides additional powers to and an appropriate process for an authorised person investigating an offence, to seize evidence. These are standard provisions similar to those used in other Acts.

Subdivision 3A provides the power to seize evidence. The provisions do not extend the powers of the authorised person to enter a place, but set out how evidence may be seized depending on whether entry to a place was allowed without consent, was by consent of an occupier or was under a warrant. Section 84A provides for seizing evidence at a place that may be entered without consent or warrant, such as a public place. Section 84B, which deals with places that may only be entered with consent or a warrant, extends the powers to seize evidence, beyond that which is prescribed in a warrant, to include other things which the authorised person believes are evidence of an offence and may be destroyed or used to repeat the offence.

Subdivision 3B sets out the process for how an authorised person may deal with seized things including securing or tampering with seized things, reasonable powers to allow seizure or return a seized thing, the giving of receipts for seized things, the forfeiture of seized things if the owner cannot be found, the return of seized things or access to seized things.

Clause 36 inserts a new Part 8A, which provides for appeals to the Planning and Environment Court. This amendment does not substantially change the right of appeal but consolidates appeal provisions, which now relate to different categories in the Queensland Heritage Register, into one part.

Section 94A sets out who may appeal. Appeal rights continue to be provided to the owner of a place against a decision of the Queensland Heritage Council to enter a place in, or remove a place from the Queensland Heritage Register. Appeals are generally limited to the owner of a place as the owner is the person whose rights, interests and obligations are affected by a listing of their property. An additional appeal right has been included for a person who applied to have a place entered in or removed from the Queensland Heritage Register but, because the Council failed to make a decision in time, was given a deemed refusal. This appeal by an applicant has been added because a deemed decision may remove an applicant's right to a properly made decision.

Section 94B sets out the grounds for appeal, which have been relocated from section 41 and expanded to allow for appeal against about an Archaeological Place, but are otherwise unchanged. The grounds for appeal are that a place does or does not satisfy the relevant criteria for entry in the Register.

Section 94C provides for starting an appeal and section 94D provides a court process by linking the appeal process to the relevant provisions in the *Integrated Planning Act 1997*.

Clause 37 makes minor amendment to section 95, which provides for local government to assist the Minister or Council. As a consequence of the changed role of the Council, the amendment includes the Chief Executive in this section rather than the Council.

Clause 38 amends section 96, which provides for the non-application of this Act to Aboriginal or Torres Strait Islander places, by renumbering and relocating it to Part 2, at the front of the Act. Places that are of significance exclusively for their value to the culture and history of indigenous people are not able to be dealt with under the *Queensland Heritage Act 1992*. This amendment will improve the general understanding of how this Act relates to Aboriginal or Torres Strait Islander cultural heritage by making this provision more visible.

Clause 39 makes a minor amendment to section 98, to improve the clarity and consistency of terms used in the Act, in this case in relation to Queensland waters.

Clause 40 amends section 100, which provides for restoration orders to be made if a person is convicted of an offence against this Act. The amendment extends this to include an offence against the *Integrated Planning Act 1997*, as since 2003 development offences in relation to registered places have been contained in that Act.

Clause 41 amends section 101, which provides for non-development orders to be made if a person is convicted of an offence against this Act. The amendment extends this to include an offence against the *Integrated Planning Act 1997*, as since 2003 development offences in relation to registered places have been contained in that Act.

Clause 42 inserts new sections 103A and 103B.

Section 103A relates to the expanded role of the Chief Executive under the Act and makes provision for the Chief Executive to make guidelines about various matters for which the Chief Executive is responsible. To ensure that guidelines are readily available, section 103A also requires any guideline made by the Chief Executive to be published on the Department's website.

Section 103B consolidates and updates provisions that were previously dispersed that relate to matters about which the chief executive must give notice to the registrar of titles; entry of a place in or removal of a place from the Register and heritage agreements. The amendment provides for the details that must be given and for the registrar to keep a record of the details in a way that a search relating to title to land will reveal.

Clause 43 amends section 104, which provides for delegation by the Minister, and inserts new sections 104A and 104B.

Section 104 is amended to also include delegation by the Chief Executive. The Minister's ability to delegate is unchanged. The Chief Executive may delegate to an appropriately qualified public service officer with the exception of Interim Protection Orders, maintenance notices and the declaration of ownership of archaeological artefacts. This ensures that these matters, which are likely to have an impact on an individual's rights are used judiciously. To allow for delegation about minor development to organisations with established heritage processes, the Chief Executive may delegate the power to decide an application for an exemption certificate to an appropriately qualified person.

Section 104A provides for the Chief Executive to approve forms for use under the Act.

Section 104B is an amendment to provide for renumbering the Act and other legislation that mentions provisions in the Act.

Clause 44 inserts a new division, division 2, into Part 10, to provide for transitional matters relating to commencement of the amendments. These transitional provisions deal with various matters including transition of the Queensland Heritage Register and applications that have been made under the pre-amended Act, but not decided. To ensure the prompt commencement of timely processes, most applications will, on commencement, be transitioned into the new processes. The exception is applications to the Register that have been provisionally decided and an objection has been received. In these cases because the process is so advanced, it will continue to be determined under the pre-amended Act. Appeals relating to these applications will also continue under the pre-amended Act.

To allow for the smooth commencement of the local heritage provisions, section 121 provides for transferring places identified by a local government in a local planning instrument as places of cultural heritage significance into that local government's heritage Register. To ensure that local government has sufficient time to act under this section, information that is required in the local heritage Register must be included within two years of commencement.

Clause 45 amends the schedule, which is the dictionary, to generally update definitions and to reflect the amendments made to the Act. Definitions which are no longer required have been deleted, some definitions have been substantially amended and some new definitions have been inserted. New definitions relating to new provisions in the Act include 'archaeological artefact' and other terms associated with the Archaeological Places. A minor amendment has been made to the definition of 'cultural heritage significance', to improve the clarity of the definition and to make it more consistent with the definition used in the Commonwealth legislation. The definition of 'place' has been substantially amended to ensure that it deals with the wide range of places of cultural heritage significance, for example, places that contain ruins and heritage precincts. The definition of 'owner' has been amended to make provision for ownership by the State and local government.

Clause 46 amends the *Integrated Planning Act 1997*, as required to provide for the commencement of new or amended provisions in the *Queensland Heritage Act 1992*.

Clause 47 amends section 1.3.5(1) item 2 of the *Integrated Planning Act 1997*, which expands the definition of 'building work' for the purposes of making the work assessable development in relation to a registered place in the Queensland Heritage Register. The amended definition includes provision for dealing with excavations at places with archaeological significance and is more clearly related to the cultural heritage significance of a registered place.

Clause 48 makes minor and consequential amendment to section 4.3.1 of the *Integrated Planning Act 1997* to reflect new definitions.

Clause 49 makes a minor amendment to section 4.3.6 of the *Integrated Planning Act 1997* to provide for emergency development at a Queensland heritage place

Clause 50 makes a consequential amendment for purposes of drafting clarity to section 4.3.6A of the *Integrated Planning Act 1997*, which deletes the definition of registered professional engineer. It is relocated in the Dictionary under clause 54.

Clause 51 inserts a new section 4.3.6B into the *Integrated Planning Act 1997* to provide an exemption for emergency building work on a registered place in the Queensland Heritage Register. This section replaces a provision previously contained in the *Queensland Heritage Act 1992* and transferred in to the *Integrated Planning Act 1997* after 2003 that provided for emergency work. This amendment improves the operation of emergency work in relation to registered places by incorporating it into the relevant section of the *Integrated Planning Act 1997* and removing it from schedule 8 and the Dictionary. The amendment sets out a process that ensures that work can be carried out in an emergency but the impact of the work on the cultural heritage significance is minimised. A penalty of 1,665 penalty units is introduced, which is consistent with other similar provisions in the *Integrated Planning Act 1997*.

Clause 52 makes consequential amendments to schedule 8, part 1, table 5, item 2 of the *Integrated Planning Act 1997*, which sets out what is assessable development on a Heritage Registered Place. The amendment replaces Heritage Registered Place with Queensland Heritage Place, to differentiate it from a local heritage place. It removes the exemption for emergency work, which is now dealt with under s4.3.6B of the *Integrated*

Planning Act 1997 and includes exemption for liturgical development. The amendment also inserts a new item 2A to make development on local heritage places assessable unless it is development that is mentioned in schedule 9 of the *Integrated Planning Act 1997*.

Clause 53 makes consequential amendments to schedule 8A, table 3, item 7 of the *Integrated Planning Act 1997* to make the Chief Executive administering the *Queensland Heritage Act 1992*, the assessment manager and to change references to heritage Registered place to Queensland heritage place. It inserts a new item 7A for development on a local heritage place that makes the local government for the place the assessment manager.

Clause 54 amends schedule 10, the Dictionary in the *Integrated Planning Act 1997*, to remove emergency work and to insert definitions for local heritage place, Queensland heritage place and registered professional engineer

Part 4 Minor and consequential amendments

Clause 55 and the schedule makes provision for minor and consequential amendments to the *Geothermal Exploration Act 2004*, the *Queensland Heritage Act 1992*, the *Valuation of Land Act 1944* and the *Whistleblowers Protection Act 1994*.