

Queensland



QUEENSLAND HERITAGE ACT 1992

**Reprinted as in force on 28 November 2003
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- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
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The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

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

Also see endnotes for information about—

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

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QUEENSLAND HERITAGE ACT 1992

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QUEENSLAND HERITAGE ACT 1992

[as amended by all amendments that commenced on or before 28 November 2003]

An Act to provide for the conservation of Queensland's cultural heritage

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Queensland Heritage Act 1992*.

3 Objects of this Act

(1) The object of this Act is to make provision for the conservation of Queensland's cultural heritage and, for that purpose—

- (a) to provide for the establishment of the Queensland Heritage Council; and
- (b) to provide for the maintenance of a register of places of significance to Queensland's cultural heritage; and
- (c) to regulate development of registered places; and
- (d) to provide for heritage agreements to encourage the conservation of registered places; and
- (e) to provide for the protection and conservation of submerged objects of significance to Queensland's cultural heritage; and
- (f) to regulate the excavation of sites that contain, or may contain, objects of significance to Queensland's cultural heritage; and
- (g) to provide appropriate powers of protection and enforcement.

(2) In exercising powers conferred by this Act, the Minister, the council and other bodies and persons concerned in its administration must seek to achieve—

- (a) the retention of the cultural heritage significance of the places and objects to which it applies; and
- (b) the greatest sustainable benefit to the community from those places and objects consistent with the conservation of their cultural heritage significance.

4 Definitions

The dictionary in the schedule defines particular words used in this Act.

5 Crown bound

(1) This Act binds the Crown not only in right of Queensland but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

(2) Nothing in this Act renders the Crown in any of its capacities liable to be prosecuted for an offence.

PART 2—QUEENSLAND HERITAGE COUNCIL

Division 1—Establishment and functions

6 Establishment of council

(1) The Queensland Heritage Council, formerly established under this Act, is continued in existence under the name Queensland Heritage Council.

(2) The council—

- (a) is a body corporate; and
- (b) may sue and be sued in its corporate name.

7 Council's relationship with the State

The council does not represent the State.

8 Functions of council

(1) The council has the following functions—

- (a) to advise the Minister on matters relating to Queensland's cultural heritage and in particular on the measures necessary to conserve Queensland's cultural heritage for the benefit of the present community and future generations;
- (b) to administer the heritage register as required under this Act;
- (c) to encourage public interest in, and understanding of, issues relevant to the conservation of Queensland's cultural heritage;
- (d) to encourage and assist the appropriate management of places and objects of cultural heritage significance;
- (e) to keep appropriate records, and encourage others to keep appropriate records, of places and objects of cultural heritage significance;
- (f) to cooperate and collaborate with federal, State and local authorities in the conservation of places and objects of cultural heritage significance;
- (g) to undertake any other functions assigned to the council under this Act or by the Minister.

(2) In performing its functions, the council must act independently, impartially and in the public interest.

9 Delegation by council

(1) The council may delegate its functions under this Act to—

- (a) a member; or
- (b) a committee of the council consisting of appropriately qualified persons, 1 of whom must be a member; or
- (c) a local government; or
- (d) an appropriately qualified person.

(2) However, the council may not delegate its function under this Act to enter a place in, or remove a place from, the heritage register.

(3) In this section—

“appropriately qualified person” means a person with the qualifications, experience or standing appropriate to perform the function.

Division 2—Membership

10 Membership of council

The council consists of the following members—

- (a) a representative, appointed by the Governor in Council, of each of the following entities—
 - (i) the National Trust of Queensland;
 - (ii) the Local Government Association of Queensland (Incorporated);
 - (iii) the Queensland Council of Unions;
 - (iv) an organisation representing the interests of property owners and managers in Queensland;
 - (v) an organisation representing the interests of rural industries in Queensland;
- (b) 7 persons, appointed by the Governor in Council, with appropriate knowledge, expertise and interest in heritage conservation.

11 Chairperson and deputy chairperson of council

(1) The Governor in Council must appoint a member to be the chairperson, and another member to be the deputy chairperson, of the council.

(2) A person may be appointed the chairperson or deputy chairperson at the same time the person is appointed a member.

(3) A person who is appointed as chairperson or deputy chairperson holds office as chairperson or deputy chairperson for the term decided by the Governor in Council, but stops holding office as chairperson or deputy chairperson before the term ends if the person sooner ceases to be a member.

(4) The office of chairperson or deputy chairperson becomes vacant if the person holding the office resigns the office by signed notice of resignation given to the Minister.

(5) However, a member resigning the office of chairperson or deputy chairperson may continue to be a member.

(6) The deputy chairperson must act as chairperson—

- (a) during a vacancy in the office of chairperson; and
- (b) during all periods when the chairperson is absent from duty or, for another reason, can not perform the functions of the office.

12 Term of appointment

A member must be appointed for a term of not more than 3 years.

13 Disqualification from membership

A person can not become, or continue as, a member if the person is, or has been—

- (a) convicted of an indictable offence, whether on indictment or summarily; or
- (b) convicted of an offence against this Act.

14 Vacation of office

(1) A member is taken to have vacated office if the member—

- (a) resigns his or her position on the council by signed notice of resignation given to the Minister; or
- (b) can not continue as a member under section 13; or
- (c) is absent without—
 - (i) the council's permission from 3 consecutive council meetings of which due notice has been given; or
 - (ii) the Minister's approval under section 16.

(2) In this section—

“meeting” means a meeting with a quorum present.

15 When notice of resignation takes effect

A notice of resignation under section 11(4) or 14(1)(a) takes effect when the notice is given to the Minister or, if a later time is stated in the notice, at the later time.

16 Leave of absence for a member

(1) The Minister may approve a leave of absence for a member of more than 3 months.

(2) The Minister may appoint another person to act in the office of the member while the member is absent on the approved leave.

(3) If the member is the deputy chairperson, the Minister may appoint another member to act in the deputy chairperson's office while the deputy chairperson is absent on the approved leave.

17 Effect of vacancy in membership of council

(1) Subsection (2) applies despite section 10.

(2) The performance of a function by the council is not affected merely because of a vacancy in the council membership.

18 Remuneration of members

A member is entitled to be paid the fees and allowances decided by the Governor in Council.

*Division 3—Council business***19 Conduct of business**

Subject to this division, the council may conduct its business, including its meetings, in the way it considers appropriate.

19A Times and places of meetings

(1) The council must meet at least 10 times a year.

(2) Council meetings are to be held when and where the chairperson decides.

(3) However, the chairperson must call a council meeting if asked, in writing, to do so by the Minister or at least 6 members.

(4) Notice of when and where a council meeting must be held, and of the business for the meeting, must be given to each member at least 5 business days before the day for the meeting.

19B Quorum

A quorum for the council is 6 members.

19C Presiding at meetings

(1) The chairperson must preside at all council meetings at which the chairperson is present.

(2) If the chairperson is absent from a council meeting, but the deputy chairperson is present, the deputy chairperson must preside.

(3) If the chairperson and deputy chairperson are both absent from a council meeting or the offices are vacant, a member chosen by the members present must preside.

19D Conduct of meetings

(1) A question at a council meeting is decided by a majority of the votes of the members present.

(2) Each member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.

(3) A member present at the meeting who abstains from voting is taken to have voted in the negative.

(4) The council may hold meetings, or allow members to take part in its meetings, by using any technology that reasonably allows members to hear and take part in discussions as they happen.

Example—

Teleconferencing.

(5) A member who takes part in a council meeting under subsection (4) is taken to be present at the meeting.

(6) A resolution is validly made by the council, even if it is not passed at a council meeting, if—

- (a) a majority of the council members gives written agreement to the resolution; and
- (b) notice of the resolution is given under procedures approved by the council.

19E Minutes

(1) The council must keep—

- (a) minutes of its meetings; and
- (b) a record of any resolutions made under section 19D(6).

(2) Subsection (3) applies if a resolution is passed at a council meeting.

(3) If asked by a member who voted against the passing of the resolution, the council must record in the minutes of the meeting that the member voted against the resolution.

Division 4—Council committees

19F Committees

(1) The council may establish committees of the council for effectively and efficiently performing its functions.

(2) A committee may include a person who is not a member.

(3) The council must decide the terms of reference of a committee.

(4) The functions of a committee are to—

- (a) advise and make recommendations to the council about matters, within the scope of the council's functions, referred by the council to the committee; and
- (b) exercise powers delegated to it by the council.¹

¹ See section 9 for the council's power of delegation.

(5) A committee must keep a record of the decisions it makes when exercising a power delegated to it by the council.

(6) The council may decide matters about a committee that are not provided for under this Act, including, for example, the way a committee must conduct meetings.

19G Remuneration of committee members

(1) A committee member is entitled to be paid the fees and allowances decided by the chief executive.

(2) The fees and allowances paid under subsection (1) must not be more than the fees and allowances payable to a member.

Division 5—Disclosure of interests by members and committee members

19H Disclosure of interests of members

(1) This section applies to a member (the “**interested person**”) if—

- (a) the interested person has a direct or indirect interest in a matter being considered, or about to be considered, by the council; and
- (b) the interest could conflict with the proper performance of the person’s duties about the consideration of the matter.

(2) As soon as practicable after the relevant facts come to the interested person’s knowledge, the person must disclose the nature of the interest to a council meeting.

(3) Unless the council otherwise directs, the interested person must not—

- (a) be present when the council considers the matter; or
- (b) take part in a decision of the council about the matter.

(4) The interested person must not be present when the council is considering whether to give a direction under subsection (3).

(5) If there is another member who must, under subsection (2), also disclose an interest in the matter, the other member must not—

- (a) be present when the council is considering whether to give a direction under subsection (3) about the interested person; or

(b) take part in making the decision about giving the direction.

(6) Subsection (7) applies if—

(a) because of this section, a member is not present at a meeting for considering or deciding a matter, or for considering or deciding whether to give a direction under subsection (3); and

(b) there would be a quorum if the member were present.

(7) The remaining members present are a quorum for considering or deciding the matter, or for considering or deciding whether to give the direction, at the meeting.

(8) A disclosure under subsection (2) must be recorded in the council's minutes.

19I Disclosure of interests of committee members

(1) This section applies to a committee member (the “**interested person**”) if—

(a) the interested person has a direct or indirect interest in a matter being considered, or about to be considered, by the committee; and

(b) the interest could conflict with the proper performance of the person's duties about the consideration of the matter.

(2) As soon as practicable after the relevant facts come to the interested person's knowledge, the person must disclose the nature of the interest to a committee meeting.

(3) Unless the committee otherwise directs, the interested person must not—

(a) be present when the committee considers the matter; or

(b) take part in a decision of the committee about the matter.

(4) The interested person must not be present when the committee is considering whether to give a direction under subsection (3).

(5) If there is another member who must, under subsection (2), also disclose an interest in the matter, the other member must not—

(a) be present when the committee is considering whether to give a direction under subsection (3) about the interested person; or

(b) take part in making the decision about giving the direction.

(6) Subsection (7) applies if—

- (a) because of this section, a committee member is not present at a meeting for considering or deciding a matter, or for considering or deciding whether to give a direction under subsection (3); and
- (b) there would be a quorum if the committee member were present.

(7) The remaining committee members present are a quorum for considering or deciding the matter, or for considering or deciding whether to give the direction, at the committee meeting.

(8) A disclosure under subsection (2) must be recorded in the committee's minutes.

Division 6—Other provisions about the council

19J Annual report

(1) The council must, by 31 October in each year, give the Minister a written report on the administration of this Act during the financial year that ended on 30 June in the year.

(2) The report must include a statement of any donations received under section 67A and of their application.

(3) As soon as practicable, but within 14 sitting days after receiving the report, the Minister must table the report in the Legislative Assembly.

19K Excluded matter for Corporations legislation

The council is declared to be an excluded matter for the Corporations Act, section 5F,² in relation to the following provisions of the Corporations Act—

- (a) parts 2D.1 and 2D.6;
- (b) chapters 2K and 2L;
- (c) parts 5.7, 5.7B, 5.9 and 5B.2.

² Corporations Act, section 5F (Corporations legislation does not apply to matters declared by State or Territory law to be an excluded matter)

PART 3—THE HERITAGE REGISTER

20 The heritage register

(1) There is to be a register known as the heritage register.

(2) The heritage register is to be a record of—

- (a) registered places and heritage agreements relating to registered places; and
- (b) protected areas; and
- (c) orders or permits made or granted under this Act; and
- (d) orders made or granted under the *Integrated Planning Act 1997* relating to registered places.

(3) The heritage register is to be maintained by the council in accordance with this Act.

(4) An entry in the heritage register in relation to a registered place must—

- (a) adequately identify the place—
 - (i) by reference to a certificate of title or an official plan of survey; or
 - (ii) by survey information that enables its boundaries to be clearly and accurately ascertained; or
 - (iii) by a suitable plan; and
- (b) contain a description of the place; and
- (c) contain a statement of the history of the place; and
- (d) contain a statement of the cultural heritage significance of the place related to the criteria in this Act by which its cultural heritage significance is determined.

21 Heritage register to be available for public inspection

(1) The heritage register, or a copy of the heritage register, must be kept available for public inspection at a place determined by the council during ordinary business hours.

(2) The prescribed fee may be charged for inspection of the heritage register.

22 Extracts from heritage register

(1) The council must, on application by a member of the public and payment of the prescribed fee—

- (a) provide a certified copy of any entry in the heritage register; or
- (b) provide a certificate as to whether a property is affected by an entry in the heritage register or is otherwise affected by this Act.

(2) A certified copy of an entry in the heritage register is admissible as evidence in legal proceedings and, in the absence of proof to the contrary, is to be taken as proof of the entry and of its contents.

22A Changing entries in the heritage register

(1) The council may correct or update a permanent entry in the heritage register for a registered place if the correction or updating—

- (a) relates only to the address or real property description of the place; or
- (b) merely adds an informative note to the entry.

(2) The agreement of the owner of the registered place is not required for a correction or updating under subsection (1).

(3) The council may, with the written agreement of the owner of a registered place, change a permanent entry in the heritage register for the place if the change is a minor change.

PART 4—REGISTRATION OF PLACES

23 Criteria for entry in the register

(1) A place may be entered in the heritage register if it is of cultural heritage significance and satisfies 1 or more of the following criteria—

- (a) the place is important in demonstrating the evolution or pattern of Queensland's history;

- (b) the place demonstrates rare, uncommon or endangered aspects of Queensland's cultural heritage;
- (c) the place has potential to yield information that will contribute to an understanding of Queensland's history;
- (d) the place is important in demonstrating the principal characteristics of a particular class of cultural places;
- (e) the place is important because of its aesthetic significance;
- (f) the place is important in demonstrating a high degree of creative or technical achievement at a particular period;
- (g) the place has a strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
- (h) the place has a special association with the life or work of a particular person, group or organisation of importance in Queensland's history.

(2) A place is not to be excluded from the heritage register on the ground that places with similar characteristics have already been entered in the register.

(3) A place does not satisfy the criteria for entry in the heritage register if there is no prospect of the cultural heritage significance of the place being conserved.

(4) A place may be entered in the heritage register even if part of the place does not fully satisfy a criterion in subsection (1) but only if it forms part of a streetscape that satisfies a criterion in subsection (1) or is adjacent to a registered place and exhibits the characteristics of the registered place and failure to enter the place would reduce the overall cultural heritage significance of the streetscape or the registered place.

24 Proposal to make entry in register

(1) The council may, on its own initiative or on application by any person, consider whether a particular place should be entered in the heritage register.

(2) The council may require an applicant who seeks the entry of a particular place in the heritage register to give such information as the council requires to enable it to deal properly with the application.

(3) The council may invite written submissions in relation to a place that it has under consideration for possible entry in the heritage register—

- (a) from any person or body with a special knowledge of, or interest in, the place; or
- (b) from any person or body with a special interest in Queensland's cultural heritage.

(4) If the council is of the opinion that a place is of cultural heritage significance and satisfies 1 or more of the criteria for entry in the heritage register, the council may provisionally enter the place in the heritage register and the council must then immediately—

- (a) give the owner of the place, and the local government for the area in which the place is situated, a written notice—
 - (i) stating that the council proposes to enter the place in the heritage register on a permanent basis; and
 - (ii) stating the reasons on which the proposal is based (including a statement of the relevant criteria); and
 - (iii) explaining the right to object to the proposal; and
- (b) give public notice that the council proposes to enter the place in the heritage register on a permanent basis.

25 Proposal to recommend removal of place from register

(1) The council may, on its own initiative or on application by any person, consider whether the entry of a particular place in the heritage register should be removed.

(2) The council may require an applicant who seeks removal of a particular place from the heritage register to give such information as the council requires to enable it to deal properly with the application.

(3) The council may invite written submissions in relation to a place that it has under consideration for possible removal from the heritage register—

- (a) from any person or body with special knowledge of, or interest in, the place; or
- (b) from any person or body with a special interest in Queensland's cultural heritage.

(4) If the council is of the opinion that the cultural heritage significance of a particular place no longer justifies its retention in the heritage register, the council must—

- (a) give the owner of the place, and the local government for the area in which the place is situated, a written notice—
 - (i) stating that the council proposes to remove the place from the heritage register; and
 - (ii) stating the reasons on which the proposal is based; and
 - (iii) explaining the right to object to the proposal; and
- (b) give public notice that the council proposes to remove the place from the heritage register.

26 Objections

(1) If the council gives notice under this Act that it proposes to enter a particular place in the heritage register on a permanent basis, or to remove a particular place from the heritage register, the owner of the place or any other person may object to the proposal by written notice to the council stating in detail the grounds of the objection.

(2) An objection must be made to the council within 20 business days after notice of the proposal was last given under this Act or such longer time as the Minister may allow.

(3) An objection to the proposed entry of a place in the heritage register on a permanent basis may be made only on the basis that the place is not of cultural heritage significance or does not satisfy the criteria for entry in the register.

(4) An objection may be withdrawn at any time.

27 Panel of assessors

(1) There is to be a panel of expert assessors.

(2) The function of an assessor is to inquire into, and report on, objections to the entry of places in, or the removal of places from, the heritage register.

(3) The panel is to consist of at least 10 assessors appointed by the Minister on terms and conditions determined by the Minister (but the terms

and conditions must not be such as to allow the Minister to influence the assessor's decision).

(4) Appointments to the panel are to be made on the basis of expertise in fields relevant to heritage conservation after the Minister has, by public advertisement, called for expressions of interest.

(5) A member of the panel is to be paid such fees and allowances as may be determined by the Minister.

(6) A person who is a member of the council or is engaged in remunerated work for the council, other than work as an assessor, must not be appointed to the panel of assessors.

(7) If a person who is a member of the panel of assessors is appointed a member of the council, the person ceases to be a member of the panel from the day the person is appointed to the council until 2 months after the day the person ceases to be a member of the council.

(8) If a person who is a member of the panel of assessors undertakes to do remunerated work for the council, other than work as an assessor, the person ceases to be a member of the panel from the day the person starts the work until 2 months after the day the work is completed.

28 Referring objection to assessor

(1) This section applies if an objection is made to the council's proposal to enter a place in the heritage register on a permanent basis or to remove a place from the heritage register.

(2) The council must, within 10 business days after the last day for receiving objections, or within any longer time the Minister may allow, select an assessor from the panel of assessors and refer the objection to the assessor.

(3) If the objection is withdrawn, the assessor must immediately stop assessing and reporting on the objection.

29 Consideration of objection

(1) On reference of an objection to an assessor, the assessor must enquire into and report to the council on the objection.

(2) The assessor must allow the objector a reasonable opportunity to make representations personally or in writing to the assessor and may

receive representations from, or consult with, such other persons as the assessor considers appropriate.

(3) The assessor must—

- (a) proceed as expeditiously as possible to conduct the inquiry; and
- (b) give the council a report on the objection within 40 business days after reference of the objection to the assessor or such longer time as may be allowed by the Minister.

(4) The council must, within 20 business days after receiving the assessor's report, consider the report and decide whether to proceed with its proposal and, if so, whether the proposal should be varied in any way in the light of the assessor's report.

30 Entry in and removal from register

(1) If no objection is made to the proposed entry of a place in the heritage register on a permanent basis, or the proposed removal of a place from the heritage register, the council may—

- (a) permanently enter the place in the register; or
- (b) remove the place from the register.

(2) If an objection has been made to the proposed entry of a place in the heritage register on a permanent basis, the council may, after considering the assessor's report—

- (a) permanently enter the place, as originally proposed, in the register; or
- (b) permanently enter the place, as varied from the original proposal, in the register; or
- (c) remove the provisional entry of the place from the register.

(3) If an objection has been made to the proposed removal of a place from the heritage register, the council may, after considering the assessor's report—

- (a) remove the place from the register; or
- (b) leave the entry of the place in the register.

(4) Notice of the entry of a place in, or removal of a place from, the heritage register, or a decision by the council not to proceed with a proposal, must be given immediately—

- (a) by written notice to the owner of the place and to the local government for the area in which the place is situated; and
- (b) by public notice.

(5) If the owner of a place, having objected under this part, is dissatisfied with a decision of the council to enter the place in the heritage register on a permanent basis, or to remove the place from the heritage register, or not to proceed with a proposal for entry or removal of the place from the heritage register, the owner may, within 20 business days after notice of the decision is given to the owner under subsection (4), appeal to the Planning and Environment Court against the decision.

(6) If the appeal is against a decision to enter a place in the heritage register on a permanent basis, the appeal may only be made on the basis that the place is not of cultural heritage significance or does not satisfy the criteria for entry in the register.

(7) On an appeal under this section, the Planning and Environment Court may confirm, vary or reverse the decision under appeal and make consequential orders and directions.

31 Entry in land register

(1) If—

- (a) a place is entered or provisionally entered in the heritage register; or
- (b) a place registered or provisionally registered in the heritage register ceases to be so registered;

the Minister must notify the registrar of titles.

(2) On receiving a notification under this section, the registrar of titles must enter the notification in a file maintained for that purpose.

32 Certificate of immunity

(1) The owner of a place, or another person with the written agreement of the owner, may apply to the council for a certificate of immunity from registration in respect of the place.

(2) Separate applications are required under this section in respect of a place consisting of land comprised in separate titles unless the land forms a single parcel of contiguous land.

(3) The application must be accompanied by—

- (a) any information required by the regulations; and
- (b) the prescribed fee.

(4) The applicant must, at the request of the council, give any further information that the council reasonably requires to decide the application.

(5) On receipt of the application, the council must, subject to subsection (6), consider the application and, if it appears that the place to which the application relates or part of it does not satisfy the criteria for entry in the heritage register, must issue a certificate of immunity in respect of the place or the relevant part of the place.

(6) The council need not consider the application if the application appears to be frivolous or vexatious.

(7) If a certificate of immunity is issued in respect of a place, the place may not be entered in the heritage register within 5 years of the date of the certificate.

(8) If a certificate of immunity is not issued on the application, the council must provide the applicant with a written statement of the reasons for not issuing the certificate.

PART 5—DEVELOPMENT IN REGISTERED PLACES

Division 1—Assessing development applications

33 Criteria for assessing development applications under the Integrated Planning Act 1997

(1) If, under the *Integrated Planning Act 1997*, the council is the assessment manager or a referral agency for a development application, the council must assess the application against the objects of this Act.

(2) If the council is satisfied the effect of approving the development would be to destroy or substantially reduce the cultural heritage significance of a registered place, the council must, if it is satisfied there is a prudent and feasible alternative to carrying out the development—

- (a) if the council is the assessment manager for the application—refuse the application; or
- (b) if the council is a concurrence agency for the application—tell the assessment manager to refuse the application.

(3) In deciding if there is a prudent and feasible alternative to carrying out the development, the council must have regard to—

- (a) safety, health and economic considerations; and
- (b) any other matters the council considers relevant.

34 Development by the State

(1) This section applies if the State proposes to carry out development in relation to a registered place.

(2) The chief executive of the department or agency proposing the development must give the council a report on the proposed development.

(3) The report must contain the details prescribed under a regulation.

(4) If the council is satisfied the development would substantially affect the cultural heritage significance of the registered place, the council must publish a public notice stating the following—

- (a) details of the development;
- (b) that written submissions may be made about the development;
- (c) a day by which submissions must be made, and the person to whom, and the place where, the submissions must be made.

(5) The day stated under subsection (4)(c) must not be earlier than 15 business days after the day the notice is published.

(6) The council must consider all submissions made about the development and recommend to the Minister proposing the development that—

- (a) the development may be carried out; or
- (b) the development may be carried out subject to stated conditions or modifications; or
- (c) the development should not be carried out.

(7) If the council is satisfied the effect of carrying out the development would be to destroy or substantially reduce the cultural heritage

significance of the place, the council may only recommend the development may be carried out if it is satisfied there is no prudent and feasible alternative to carrying out the development.

(8) In deciding if there is a prudent and feasible alternative to carrying out the development, the council must have regard to—

- (a) safety, health and economic considerations; and
- (b) any other matters the council considers relevant.

(9) The Minister proposing the development must consider the council's recommendation and decide whether to accept or reject it.

(10) If the development was publicly notified under subsection (4), the Minister proposing the development must also give public notice of the decision under subsection (9) a reasonable time before the development starts.

Division 2—Exemption certificates

35 Application for exemption certificate

(1) The owner of a registered place may apply to the council for an exemption certificate to carry out on the place development mentioned in subsection (4).

(2) The application must be supported by enough information to enable the council to decide the application.

(3) The council may require—

- (a) the applicant to give additional information about the application; or
- (b) any information included in the application, or any additional information required under paragraph (a), to be verified by statutory declaration.

(4) An exemption certificate may be issued for development that—

- (a) is excluded work; or
- (b) is genuinely required for a place of worship for liturgical purposes; or
- (c) is permitted under a heritage agreement; or

- (d) would have no impact on the cultural heritage significance of the place.

36 Deciding application for exemption certificate

(1) The council must decide the application within 20 business days after the day the council receives the application.

(2) If the council approves the application, with or without conditions, the council must, as soon as practicable after approving the application, give the applicant an exemption certificate.

(3) If the council refuses the application or approves it with conditions, the council must, as soon as practicable, give the applicant a notice stating the reasons for the refusal or the conditions.

37 Council may give certificate of exemption without application

The council may, at any time and without the owner having applied under section 35, give the owner of a registered place an exemption certificate to carry out on the place development mentioned in section 35(4).

38 Exemption certificate for liturgical purposes

For an application for an exemption certificate for development mentioned in section 35(4)(b) to be successful—

- (a) an official, authorised by a religious organisation, must give the council a certificate stating that the development is genuinely required for liturgical purposes; and
- (b) the council must be satisfied the development is genuinely required for liturgical purposes; and
- (c) the development must not be the substantial or total demolition of a place of worship.

PART 6—HERITAGE AGREEMENTS

39 Heritage agreements

(1) The Minister may, after obtaining and considering the council's advice, enter into a heritage agreement with the owner of a registered place.

(2) A heritage agreement attaches to the land and is binding on the owner from time to time of the registered place.

(3) The Minister may, after obtaining and considering the council's advice, by agreement with the owner of a registered place, vary or terminate a heritage agreement.

(4) A heritage agreement is, so far as it affects the use of a registered place, binding on the occupier of a registered place.

40 Provisions of heritage agreement

(1) A heritage agreement may contain any provision to promote—

- (a) the conservation of the registered place; or
- (b) public appreciation of the importance of the place to Queensland's cultural heritage.

(2) A heritage agreement may, for example—

- (a) restrict the use of the registered place; or
- (b) require specified work or work of a specified kind to be carried out in accordance with specified standards in a registered place; or
- (c) restrict the nature of work that may be carried out in a registered place; or
- (d) provide that the registered place is to be available for public inspection at specified times and regulate charges that may be made for admission to the registered place; or
- (e) provide for financial, technical, or other professional advice or assistance to the owner with respect to the maintenance or conservation of the registered place; or
- (f) provide for a review of the valuation of the registered place; or

- (g) specify development that may be carried out in the registered place for which an exemption certificate will be issued.

(3) A local government may be a party to a heritage agreement.

41 Notification on land register

(1) If the Minister enters into—

- (a) a heritage agreement with the owner of a registered place; or
- (b) an agreement with the owner of a registered place varying or terminating a heritage agreement;

the Minister must notify the registrar of titles of the agreement.

(2) On receiving a notification under this section, the registrar of titles must enter the notification in a file maintained for that purpose.

42 Agreements to be entered in heritage register

A heritage agreement or an agreement varying or terminating a heritage agreement must be entered in the heritage register.

43 Enforcement of heritage agreement

(1) If—

- (a) a person fails to comply with a heritage agreement; or
- (b) there is reason to believe that a party to the agreement may fail to comply with the agreement;

any party to the agreement may apply to the Planning and Environment Court for an order under this section.

(2) The court may make such orders as may be necessary to secure compliance with the agreement, remedy the default or deal with any related or incidental matters.

PART 7—PROTECTION OF CULTURAL RELICS

Division 1—Protected relics

44 Declaration of submerged relics

(1) If the Governor in Council is of the opinion that remains of a ship, or some other object, situated in, or recovered from, territorial waters of the State is of cultural heritage significance, the Governor in Council may, by regulation, declare the remains or other object to be a protected relic.

(2) If the Governor in Council is of the opinion that an object situated in or recovered from territorial waters of the State may be the remains of a ship, or some other object, of cultural heritage significance, the Governor in Council may, by regulation, make a provisional declaration that the object is a protected relic.

(3) A provisional declaration under this section operates (subject to amendment or revocation) for 1 year from its making.

45 Declaration of land based relics

If the Governor in Council is of the opinion that an object situated on, or under, the surface of land is of cultural heritage significance, the Governor in Council may, by regulation, declare the object to be a protected relic.

46 Restricted zones

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

- (a) declare an area (not larger than 200 ha) of Queensland's territorial waters in which a protected relic is situated to be a restricted zone; or
- (b) declare an appropriate area of land on, or under, the surface of which a protected relic is situated to be a restricted zone; or
- (c) vary or revoke any such declaration.

(2) The declaration may—

- (a) restrict access to a restricted zone; or
- (b) restrict or prohibit specified activities within a restricted zone.

(3) A person must not, without reasonable excuse, contravene a restriction or prohibition imposed under subsection (2) in relation to a restricted zone.

Maximum penalty—500 penalty units.

47 Offences

A person must not, without the Minister's written consent and without reasonable excuse—

- (a) knowingly damage or destroy a protected relic; or
- (b) knowingly interfere with a protected relic; or
- (c) dispose of a protected relic; or
- (d) remove a protected relic from waters in which, or land on which, it is situated.

Maximum penalty—1 000 penalty units.

48 Discovery of relics

A person who discovers in Queensland's territorial waters the remains of a ship, or some other object, that may be of cultural heritage significance must report the discovery to the Minister as soon as practicable after the discovery is made.

Maximum penalty—50 penalty units.

49 Arrangements between Queensland and the Commonwealth

The Governor in Council may make arrangements with the Governor-General of the Commonwealth for the performance of functions by a competent authority of the Commonwealth in relation to the protection, recovery, preservation and exhibition of protected relics.

Division 2—Areas of archaeological interest**50 Areas of archaeological interest**

If the Governor in Council is of the opinion that a particular area may contain objects of cultural heritage significance, the Governor in Council may, by regulation, declare the area to be a protected area.

51 Offence to destroy protected area etc.

A person must not, without reasonable excuse, destroy, damage, excavate or disturb a protected area except in accordance with a permit.

Maximum penalty—1 000 penalty units.

52 Permits

(1) The Minister may grant a permit authorising operations that would otherwise be contrary to this division.

(2) The prescribed fee is payable on application for a permit.

(3) A permit may be granted on such conditions as the Minister considers appropriate.

(4) The conditions may, for example—

- (a) require that the operations be supervised by a person with appropriate qualifications and experience stated in the condition;
- (b) require that the operations be carried out in accordance with specified professional standards;
- (c) make provision for the way in which objects of possible cultural heritage significance uncovered in the course of the operations are to be dealt with;
- (d) require the holder of the permit to pay specified fees, or fees calculated in accordance with a specified scale, for the evaluation, cataloguing and curation of objects uncovered in the course of the operations.

(5) A person must not contravene a condition of a permit.

Maximum penalty for this subsection—1 000 penalty units.

53 Appeals

(1) If the Minister decides to refuse an application for a permit under this part, or to grant the application but subject to conditions, the applicant may, within 30 days after receiving notice of the Minister's decision, appeal to the Planning and Environment Court against the decision.

(2) The court may—

- (a) confirm, vary or quash the Minister's declaration or decision; and
- (b) make consequential orders and directions.

PART 8—ENFORCEMENT

Division 1—Authorised persons

54 Appointment and qualifications

(1) The chief executive may appoint a public service officer or employee as an authorised person.

(2) However, the officer or employee may be appointed as an authorised person only if the chief executive is satisfied the officer or employee is qualified for appointment because the person has the necessary expertise or experience.

(3) Subsection (2) does not limit the issues the chief executive may consider when deciding whether to appoint an officer or employee as an authorised person.

55 Functions of authorised persons

(1) An authorised person has the following functions—

- (a) to inspect places, or objects in a place, for the purpose of deciding or recording the cultural heritage significance of the places or objects in the place;
- (b) to conduct investigations and inspections to monitor and enforce compliance with this Act.

(2) For performing an authorised person's functions under this Act, an authorised person has the powers given under this Act.

(3) An authorised person is subject to the directions of the chief executive in exercising the powers.

56 Appointment conditions and limit on powers

(1) An authorised person holds office on any conditions stated in—

- (a) the officer's instrument of appointment; or
- (b) a signed notice given to the officer; or
- (c) a regulation.

(2) The instrument of appointment, a signed notice given to the authorised person or a regulation may limit the authorised person's powers under this Act.

(3) In this section—

“signed notice” means a notice signed by the chief executive.

57 Issue of identity card

(1) The chief executive must issue an identity card to each authorised person.

(2) The identity card must—

- (a) contain a recent photo of the person; and
- (b) contain a copy of the person's signature; and
- (c) identify the person as an authorised person under this Act; and
- (d) state an expiry date for the card.

(3) This section does not prevent the giving of a single identity card to a person for this Act and other purposes.

57A Production or display of identity card

(1) In exercising a power under this Act in relation to a person, an authorised person must—

- (a) produce the authorised person's identity card for the person's inspection before exercising the power; or

(b) have the identity card displayed so it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the person's inspection at the first reasonable opportunity.

(3) For subsection (1), an authorised person does not exercise a power in relation to a person only because the authorised person has entered a place as mentioned in section 57E(1)(b) or (2).

57B When authorised person ceases to hold office

(1) An authorised person ceases to hold office if any of the following happens—

- (a) the term of office stated in a condition of office ends;
- (b) under another condition of office, the authorised person ceases to hold office;
- (c) the authorised person's resignation under section 57C takes effect.

(2) Subsection (1) does not limit the ways an authorised person may cease to hold office.

(3) In this section—

“condition of office” means a condition on which the authorised person holds office.

57C Resignation

(1) An authorised person may resign by signed notice given to the chief executive.

(2) However, if holding office as an authorised person is a condition of the authorised person holding another office, the authorised person may not resign as an authorised person without resigning from the other office.

57D Return of identity card

A person who ceases to be an authorised person must return the person's identity card to the chief executive within 21 days after ceasing to be an authorised person unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

Division 1A—Powers of authorised persons***Subdivision 1—Entry of places*****57E Authorised person's power to enter places**

(1) An authorised person may enter a place³ if—

- (a) its occupier consents to the entry; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised by a warrant; or
- (d) it is a place of business and is—
 - (i) open for carrying on the business; or
 - (ii) otherwise open for entry.

(2) For the purpose of asking the occupier of a place for consent to enter, an authorised person may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the authorised person reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

(3) For subsection (1)(d), a place of business does not include a part of the place where a person resides.

³ See the schedule for the definition of “place” for this Act.

Subdivision 2—Procedure for entry**57F Entry with consent**

(1) This section applies if an authorised person intends to ask an occupier of a place to consent to the authorised person or another authorised person entering the place under section 57E(1)(a).

(2) Before asking for the consent, the authorised person must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If the consent is given, the authorised person may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

- (a) the occupier has been told—
 - (i) the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the authorised person consent to enter the place and exercise powers under this part; and
- (d) the time and date the consent was given.

(5) If the occupier signs the acknowledgment, the authorised person must immediately give a copy to the occupier.

(6) If—

- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
- (b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

57G Application for warrant

(1) An authorised person may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

57H Issue of warrant

(1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and
- (b) the evidence is at the place, or, within the next 7 days, may be at the place.

(2) The warrant must state—

- (a) that a stated authorised person may, with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for entry; and
 - (ii) exercise the authorised person’s powers under this part; and
- (b) the offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 14 days after the warrant’s issue, the warrant ends.

57I Special warrants

(1) An authorised person may apply for a warrant (a “**special warrant**”) by phone, fax, radio or another form of communication if the authorised person considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the authorised person’s remote location.

(2) Before applying for the special warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.

(3) The authorised person may apply for the special warrant before the application is sworn.

(4) After issuing the special warrant, the magistrate must immediately fax a copy (a “**facsimile warrant**”) to the authorised person if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy to the authorised person—

- (a) the magistrate must tell the authorised person—
 - (i) what the terms of the special warrant are; and
 - (ii) the date and time the special warrant is issued; and
- (b) the authorised person must complete a form of warrant (a “**warrant form**”) and write on it—
 - (i) the magistrate’s name; and
 - (ii) the date and time the magistrate issued the special warrant; and
 - (iii) the terms of the special warrant.

(6) The facsimile warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the other powers stated in the special warrant issued.

(7) The authorised person must, at the first reasonable opportunity, send to the magistrate—

- (a) the sworn application; and
- (b) if the authorised person completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the special warrant.

(9) If—

- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a special warrant; and
- (b) the warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a special warrant authorised the exercise of the power.

57J Warrants—procedure before entry

(1) This section applies if an authorised person named in a warrant issued under this part for a place is intending to enter the place under the warrant.

(2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following things—

- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the authorised person's identity card or other document evidencing the authorised person's appointment;
- (b) give the person a copy of the warrant or if the entry is authorised by a facsimile warrant or warrant form mentioned in section 57I(6), a copy of the facsimile warrant or warrant form;
- (c) tell the person the authorised person is permitted by the warrant to enter the place;
- (d) give the person an opportunity to allow the authorised person immediate entry to the place without using force.

(3) However, the authorised person need not comply with subsection (2) if the authorised person believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

Subdivision 3—General powers of investigators on entry to places**57K General powers for places**

(1) An authorised person who enters a place under subdivision 2 may exercise any of the following powers—

- (a) search any part of the place;
- (b) inspect, examine, photograph or film anything in the place;
- (c) take extracts from, and make copies of, any document in the place;
- (d) take into the place any persons, equipment and materials the authorised person reasonably requires for exercising a power under this division;
- (e) require a person in the place to give the authorised person reasonable information or help and provide reasonable facilities to exercise the powers mentioned in paragraphs (a) to (d).

Examples for paragraph (e)—

1. Giving information about how to access electronic systems at the place.
2. Provision of a photocopier for copying a document

(2) When making a requirement mentioned in subsection (1)(e), the authorised person must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

(3) The person must not fail, without reasonable excuse, to comply with the requirement.

Maximum penalty for subsection (3)—100 penalty units.

57L Power to require name and address

(1) An authorised person may require another person to state the person's name and residential or business address if the authorised person—

- (a) finds the other person committing, or about to commit, an offence against this Act; or
- (b) finds the other person in circumstances that lead, or has information that leads, the authorised person to reasonably

suspect the other person has just committed an offence against this Act.

(2) When making the requirement, the authorised person must give the other person an offence warning.

(3) The authorised person may also require the other person to give evidence of the correctness of the stated name or required address if, in the circumstances, it would be reasonable to expect the other person to—

- (a) be in possession of evidence of the correctness of the stated name or address; or
- (b) otherwise be able to give the evidence.

(4) A requirement under this section is called a **“personal details requirement”**.

(5) In this section—

“offence warning” means a warning that, without reasonable excuse, it is an offence for the person to whom the direction or requirement is given, or of whom it is made, not to comply with it.

Subdivision 4—Miscellaneous provisions

57M Authorised persons may use help and force in exercise of powers

(1) An authorised person may exercise a power under this division with the help that is reasonable in the circumstances.

(2) Without limiting subsection (1), a person engaged by the council may help the authorised person exercise powers under this division.

Examples of persons who may help authorised persons—

1. Locksmith.
2. Computer technician.

(3) Also, an authorised person may exercise a power under this division using the force that is reasonable in the circumstances.

57N Notice of damage

(1) This section applies if—

- (a) an authorised person damages property when exercising or purporting to exercise a power under this division; or
- (b) a person (the “**other person**”) acting under the direction of an authorised person damages property.

(2) The authorised person must promptly give written notice of particulars of the damage to the person who appears to the authorised person to be the owner of the property.

(3) If the authorised person believes the damage was caused by a latent defect in the property or circumstances beyond the control of the authorised person or other person, the authorised person may state it in the notice.

(4) If, for any reason, it is impracticable to give the notice to the person mentioned in subsection (2), the authorised person must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

(5) This section does not apply to damage the authorised person reasonably believes is trivial.

(6) In this section—

“**owner**”, of property, includes the person in possession or control of it.

570 Compensation

(1) A person may claim from the State the cost of repairing or replacing property damaged because of the exercise or purported exercise of a power under this division.

(2) The cost may be claimed and ordered to be paid in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount claimed; or
- (b) for an offence against this Act brought against the person claiming the amount.

(3) A court may order an amount be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(4) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

*Division 2—Stop orders***58 Stop orders**

(1) If the Minister is of the opinion that it is necessary to do so to protect a place of cultural heritage significance, the Minister may make an order (a “**stop order**”) requiring a person to stop any work or activity, or prohibiting a person from starting any work or activity, that may destroy or reduce the cultural heritage significance of the place.

(2) The stop order may be served personally or by affixing it in a prominent position in the place.

(3) The stop order—

- (a) operates from the time of service; and
- (b) continues in force, subject to earlier revocation, for 40 business days from the time of service or a shorter period stated in the order.

59 Contravention of stop order

A person must not contravene a stop order.

Maximum penalty—17 000 penalty units.

*Division 3—General offences***59A False or misleading statements**

(1) A person must not state anything to an authorised person that the person knows is false or misleading in a material particular.

Maximum penalty—500 penalty units.

(2) In a proceeding for an offence against subsection (1), it is enough to state that the statement made was, without specifying which, ‘false or misleading’.

59B False or misleading documents

(1) A person must not give an authorised person a document containing information that the person knows is false or misleading in a material particular.

Maximum penalty—500 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the authorised person, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) In a proceeding for an offence against subsection (1), it is enough to state that the document was, without specifying which, 'false or misleading'.

59C Obstructing and impersonating authorised persons

(1) A person must not obstruct an authorised person in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(2) If a person has obstructed an authorised person and the authorised person decides to proceed with the exercise of the power, the authorised person must warn the person that—

- (a) it is an offence to obstruct the authorised person, unless the person has a reasonable excuse; and
- (b) the authorised person considers the person's conduct an obstruction.

(3) A person must not pretend to be an authorised person.

Maximum penalty—100 penalty units.

(4) In this section—

“**obstruct**” includes assault, hinder and threaten, and attempt to obstruct.

59D Failure to comply with personal details requirement

(1) A person of whom a personal details requirement is made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) For subsection (1), a person has a reasonable excuse if—

- (a) the requirement is given because the authorised person giving it suspected the person to whom the requirement was given has committed an offence against this Act; and
- (b) the person to whom the requirement is given is not proved to have committed the offence.

59E Executive officers must ensure corporation complies with Act

(1) The executive officers of a corporation must ensure the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

(5) In this section—

“**executive officer**”, of a corporation, means a person who is concerned with, or takes part in, its management, whether or not the person is a director or the person's position is given the name of executive officer.

PART 9—MISCELLANEOUS

60 Assistance by local governments

A local government must, at the request of the Minister or the council, provide any information or assistance that the Minister or the council reasonably requires for the purposes of this Act.

61 Non-application to Aboriginal or Torres Strait Islander places etc.

This Act does not apply to—

- (a) a place that is of cultural heritage significance solely through its association with Aboriginal tradition or Island custom; or
- (b) a place situated on Aboriginal or Torres Strait Islander land unless the place is of cultural heritage significance because of its association with Aboriginal tradition or Island custom and with European or other culture, in which case this Act applies to the place if the trustees of the land consent.

62 Misleading statements

A person must not make a statement to a person concerned in the administration of this Act on a matter relating to the administration of this Act that the person knows to be false or misleading.

Maximum penalty—50 penalty units.

63 Evidence

(1) In proceedings for an offence against this Act, a certificate of the Minister stating that a place referred to in the certificate is—

- (a) in Queensland's territorial waters; or
- (c) in a specified protected area;

is proof, in the absence of proof to the contrary, of the matters stated in the certificate.

(2) A document that appears to be a certificate under this section is to be accepted as such a certificate in the absence of proof to the contrary.

64 Proceedings

A proceeding for an offence against this Act may be brought only by a person authorised by the Minister (either generally or in the particular case) to bring the proceeding.

65 Restoration orders

(1) If a person is convicted of an offence against this Act, the court may, in addition to imposing a penalty for the offence, order the person to make good, to the satisfaction of the Minister, any damage caused through the commission of the offence.

(2) A person must not fail to comply with an order under this section.

Maximum penalty—17 000 penalty units.

(3) If a person fails to comply with the order, the Minister may cause the necessary work to be carried out and recover the cost of doing so, as a debt, from the person in default.

66 Non-development order

(1) If the owner of a registered place is convicted of an offence against this Act involving the destruction of, or damage to, the registered place, the Minister may by order served on the owner prohibit development of the place for a period (not longer than 10 years) specified in the order.

(2) Before the Minister makes an order under subsection (1), the Minister must allow the owner a reasonable opportunity to show cause why the order should not be made.

(3) A copy of an order under this section must be given to the registrar of titles and entered on a file maintained for that purpose.

(4) An order under this section attaches to the land and is binding not only on the owner and occupier as at the date of the order, but also on any person who becomes an owner or occupier of the land while the order remains in force.

(5) A person must not contravene an order under this section.

Maximum penalty—17 000 penalty units.

67 Immunity

(1) No liability is incurred by the Minister, the council, any member of the council, or another person acting in the administration of this Act, for an honest act or omission in the exercise or purported exercise of functions under this Act.

(2) A liability that would, apart from this section, attach to a person attaches to the State.

67A Donations towards the objects of this Act

(1) The Minister may accept donations of money to assist the objects of this Act.

(2) The Minister must ensure—

- (a) proper accounts are kept of donations made under subsection (1); and
- (b) the donations are used only for the purpose of conserving Queensland's cultural heritage.

68 Regulation-making power

The Governor in Council may make regulations under this Act.

68A Numbering and renumbering of Act

In the next reprint of this Act, the provisions of this Act must be numbered and renumbered as permitted by the *Reprints Act 1992*.

SCHEDULE**DICTIONARY**

section 4

“Aboriginal land” has the meaning given by the *Aboriginal Land Act 1991*.

“aesthetic significance”, of a place or object, includes its visual merit or interest.

“authorised person” means a person appointed under section 54.

“building” includes furniture, fittings and other objects—

- (a) associated with the building; and
- (b) that contribute to the building’s cultural heritage significance.

“conservation” includes protection, stabilisation, maintenance, preservation, restoration, reconstruction and adaptation.

“council” means the Queensland Heritage Council;

“Crown” includes an instrumentality or agency of the Crown.

“cultural heritage significance”, of a place or object, includes its aesthetic, architectural, historical, scientific, social or technological significance to the present generation or past or future generations.

“development” means development as defined under the *Integrated Planning Act 1997*.

“emergency work”—

1. “Emergency work” means reversible work that is necessary to give temporary support, shelter or security to a registered place, a protected area or protected object—
 - (a) because it has been, or is likely to be, damaged by fire or natural disaster; or
 - (b) because of accidental or intentional damage.
2. “Emergency work” does not include demolition.

“excluded work”, for a registered place—

SCHEDULE (continued)

1. “Excluded work” means—
 - (a) maintenance work; or
 - (b) minor repair work; or
 - (c) minor work (other than minor repair work) that—
 - (i) will not cause detriment to the cultural heritage significance of the place; and
 - (ii) is not of a significant scale; and
 - (iii) is reversible.
2. “Excluded work” does not include emergency work.

“exemption certificate” means a certificate issued under section 35.

“heritage register” means the register maintained under part 3.

“maintenance work”—

1. “Maintenance work” means work performed for the protective care of a registered place, including, for example, the protective care of the materials, features, contents and setting comprising the following—
 - (a) fences;
 - (b) gardens and grounds;
 - (c) roads and paths;
 - (d) roof and drainage systems;
 - (e) services and utilities.
2. “Maintenance work” also includes painting work in a colour conforming with an existing colour scheme at the registered place.

“member” means a member of the council.

“mining interest” means a lease, claim or other interest in, or a permit, licence, authority or other right in relation to, land that is granted under—

- (a) the *Mineral Resources Act 1989* or the *Petroleum Act 1923*; or
- (b) another Act related to mining for minerals, petroleum or natural gas.

SCHEDULE (continued)

“minor repair work” means work of a minor nature—

- (a) involving repairs to the materials, features, contents and setting that comprise a registered place; and
- (b) using the same types of materials and the same construction methods as were originally used on the registered place.

“notice” means written notice.

“object” means an object or group of objects, and includes an object or group of objects that has become attached to, or has merged with, land.

“owner”—

- (a) in relation to land, means—
 - (i) if the land is alienated from the Crown by grant of an estate in fee simple—the proprietor of the estate in fee simple; or
 - (ii) if the land is held from the Crown under a statutory lease, licence or permit conferring a right to possession of the land—the lessee or licensee;

and includes a mortgagee in possession of the land, a person who has a mining interest in the land and, if the land is a State forest or timber reserve under the *Forestry Act 1959*, the State; or

- (b) in relation to an object that has not become attached to, and has not merged with, land—means a person legally entitled to possession of the object.

“party” to a heritage agreement includes any person who is bound by the agreement.

“personal details requirement” see section 57L.

“place” means a defined or readily identifiable area of land (which may be comprised in separate titles and in different ownership), and includes—

- (a) a building and such of its immediate surrounds as may be required for its conservation;
- (b) a natural feature of historical significance and such of its immediate surrounds as may be required for its conservation.

SCHEDULE (continued)

“protected area” means an area declared to be a protected area under part 7.

“protected object” means an object declared, or provisionally declared, under section 46 to be a protected object.

“public notice” means notice published in—

- (a) the gazette; and
- (b) a newspaper circulating throughout Queensland; and
- (c) if the notice relates to a place situated in an area for which a local newspaper is published—the local newspaper.

“registered place” means a place entered or provisionally entered in the heritage register.

“registrar of titles” means the registrar of titles or other person responsible for keeping a register of interests in land.

“territorial waters of the State” means—

- (a) waters within Queensland (including inland waterways); or
- (b) waters adjacent to Queensland to which the *Historic Shipwrecks Act 1976* (Cwlth) does not apply.

“Torres Strait islander land” has the meaning given by the *Torres Strait Islander Land Act 1991*.

“waters” includes underlying land and reefs.

ENDNOTES**1 Index to endnotes**

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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 28 November 2003. Future amendments of the Queensland Heritage Act 1992 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) | = previously |
| amd | = amended | proc | = proclamation |
| amdt | = amendment | prov | = provision |
| ch | = chapter | pt | = part |
| def | = definition | pubd | = published |
| div | = division | R[X] | = Reprint No.[X] |
| exp | = expires/expired | RA | = Reprints Act 1992 |
| gaz | = gazette | reloc | = relocated |
| hdg | = heading | renum | = renumbered |
| ins | = inserted | rep | = repealed |
| lap | = lapsed | (retro) | = retrospectively |
| notfd | = notified | rv | = revised edition |
| o in c | = order in council | s | = section |
| om | = omitted | sch | = schedule |
| orig | = original | sdiv | = subdivision |
| p | = page | SIA | = Statutory Instruments Act 1992 |
| para | = paragraph | SIR | = Statutory Instruments Regulation 2002 |
| prec | = preceding | SL | = subordinate legislation |
| pres | = present | sub | = substituted |
| prev | = previous | unnum | = unnumbered |

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

TABLE OF REPRINTS

| Reprint No. | Amendments included | Effective | Reprint date |
|-------------|---------------------|------------------|--|
| 1 | to 1992 Act No. 36 | 2 July 1992 | 1 August 1992 |
| 2 | to 1995 Act No. 57 | 28 November 1995 | 5 December 1995 |
| 2A | to 2000 Act No. 26 | 27 June 2000 | 19 July 2000 |
| 2B | to 2000 Act No. 26 | 28 February 2002 | 28 February 2002 (Column discontinued) Notes |
| 2C | to 2003 Act No. 32 | 28 November 2003 | |

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

| Name of table | Reprint No. |
|--------------------------|-------------|
| Changed names and titles | 2 |

6 List of legislation

Queensland Heritage Act 1992 No. 9

date of assent 27 March 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 21 August 1992 (1992 SL No. 253)

amending legislation—

Statute Law (Miscellaneous Provisions) Act 1992 No. 36 s 2 sch 2

date of assent 2 July 1992

sch 2 amdt 1 commenced 19 June 1992 (see s 2 sch 2)

remaining provisions commenced on date of assent

Environmental Legislation Amendment Act 1995 No. 40 pts 1, 5

date of assent 27 October 1995

commenced on date of assent

Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1 (this Act is amended, see amending legislation below)

date of assent 28 November 1995

s 4 sch 1 amdts rep on assent 1995 No. 58 s 4 sch 1

amending legislation—

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1 (amends 1995 No. 57 above)

date of assent 28 November 1995

commenced on date of assent (see ss 2(1), 4 sch 1)

Mental Health Act 2000 No. 16 ss 1–2, 590 sch 1 pt 2

date of assent 8 June 2000

ss 1–2, 590 commenced on date of assent (see s 2(1))

remaining provisions commenced 28 February 2002 (2002 SL No. 27) (provisions were to commence 8 June 2002 (automatic commencement under AIA s 15DA(2) (2001 SL No. 46 s 2)))

Primary Industries and Natural Resources Legislation Amendment Act 2000 No. 26 ss 1, 12 sch 1

date of assent 27 June 2000

commenced on date of assent

Queensland Heritage and Other Legislation Amendment Act 2003 No. 32 pts 1–2, s 3 sch

date of assent 23 May 2003

ss 1–2 commenced on date of assent

s 17 not yet proclaimed into force (see s 2)

remaining provisions commenced 28 November 2003 (2003 SL No. 267)

7 List of annotations**Commencement**

s 2 om R2 (see RA s 37)

Objects of this Act

s 3 amd 2003 No. 32 s 4

Definitions

s 4 **Note**—s 4 contained definitions for this Act. Definitions are now located in the schedule—Dictionary.
amd 2003 No. 32 s 5(1)

PART 2—QUEENSLAND HERITAGE COUNCIL

pt hdg sub 2003 No. 32 s 6

Division 1—Establishment and functions

div hdg sub 2003 No. 32 s 6

Establishment of council

s 6 sub 2003 No. 32 s 6

Council's relationship with the State

s 7 sub 2003 No. 32 s 6

Functions of council

s 8 sub 2003 No. 32 s 6

Delegation by council

s 9 sub 2003 No. 32 s 6

Division 2—Membership

div hdg sub 2003 No. 32 s 6

Membership of council

s 10 sub 2003 No. 32 s 6

Chairperson and deputy chairperson of council

s 11 amd 1995 No. 40 s 20; 2000 No. 16 s 590 sch 1 pt 2
sub 2003 No. 32 s 6

Term of appointment

s 12 sub 2003 No. 32 s 6

Disqualification from membership

s 13 sub 2003 No. 32 s 6

Vacation of office

s 14 sub 2003 No. 32 s 6

When notice of resignation takes effect

s 15 sub 2003 No. 32 s 6

Leave of absence for a member

s 16 sub 2003 No. 32 s 6

Effect of vacancy in membership of council

s 17 sub 2003 No. 32 s 6

Remuneration of members

s 18 sub 2003 No. 32 s 6

Division 3—Council business

div hdg sub 2003 No. 32 s 6

Conduct of business

s 19 sub 2003 No. 32 s 6

Times and places of meetings

s 19A ins 2003 No. 32 s 6

Quorum

s 19B ins 2003 No. 32 s 6

Presiding at meetings

s 19C ins 2003 No. 32 s 6

Conduct of meetings

s 19D ins 2003 No. 32 s 6

Minutes

s 19E ins 2003 No. 32 s 6

Division 4—Council committees

div 4 (ss 19F–19G) ins 2003 No. 32 s 6

Division 5—Disclosure of interests by members and committee members

div 5 (ss 19H–19I) ins 2003 No. 32 s 6

Division 6—Other provisions about the council

div 6 (ss 19J–19K) ins 2003 No. 32 s 6

The heritage register

s 20 amd 2003 No. 32 s 3 sch

Extracts from heritage register

s 22 amd 2003 No. 32 s 3 sch

Changing entries in the heritage register

s 22A ins 2003 No. 32 s 7

Criteria for entry in the register

s 23 amd 1995 No. 40 s 21; 2003 No. 32 s 8

Objections

s 26 amd 2003 No. 32 ss 9, 3 sch

Panel of assessors

s 27 amd 2003 No. 32 s 10

Referring objection to assessor

s 28 sub 2003 No. 32 s 11

Consideration of objection

s 29 amd 2003 No. 32 s 3 sch

Entry in and removal from register

s 30 amd 2003 No. 32 ss 12, 3 sch

Certificate of immunity

s 32 amd 2003 No. 32 ss 13, 3 sch

PART 5—DEVELOPMENT IN REGISTERED PLACES

pt hdg sub 2003 No. 32 s 14

Division 1—Assessing development applications

div hdg sub 2003 No. 32 s 14

Criteria for assessing development applications under the Integrated Planning Act 1997

s 33 sub 2003 No. 32 s 14

Development by the State

s 34 sub 2003 No. 32 s 14

Division 2—Exemption certificates

div hdg sub 2003 No. 32 s 14

Application for exemption certificate

s 35 sub 2003 No. 32 s 14

Deciding application for exemption certificate

s 36 sub 2003 No. 32 s 14

Council may give certificate of exemption without application

s 37 sub 2003 No. 32 s 14

Division 3—General

div hdg om 2003 No. 32 s 14

Exemption certificate for liturgical purposes

s 38 sub 2003 No. 32 s 14

PART 6—HERITAGE AGREEMENTS

pt hdg amd 2003 No. 32 s 15

Provisions of heritage agreement

s 40 amd 2003 No. 32 s 16

Enforcement of heritage agreement

s 43 amd 1992 No 36 s 2 sch 2

Declaration of submerged relics

s 44 amd 1995 No. 40 s 22

Declaration of land based relics

s 45 amd 1995 No. 40 s 22

Restricted zones

s 46 amd 1995 No. 40 s 22

Areas of archaeological interest

s 50 amd 1995 No. 40 s 22

PART 8—ENFORCEMENT**Division 1—Authorised persons**

div hdg sub 2003 No. 32 s 18

Appointment and qualifications

s 54 sub 2003 No. 32 s 18

Functions of authorised persons

s 55 sub 2003 No. 32 s 18

Appointment conditions and limit on powers

s 56 sub 2003 No. 32 s 18

Issue of identity card

s 57 sub 2003 No. 32 s 18

Production or display of identity card

s 57A ins 2003 No. 32 s 18

When authorised person ceases to hold office

s 57B ins 2003 No. 32 s 18

Resignation

s 57C ins 2003 No. 32 s 18

Return of identity card

s 57D ins 2003 No. 32 s 18

Division 1A—Powers of authorised persons

div 1A (ss 57E–57O) ins 2003 No. 32 s 18

Division 2—Stop orders**Stop orders**

s 58 amd 2003 No. 32 s 3 sch

Division 3—General offences

div 3 (ss 59A–59E) ins 2003 No. 32 s 19

Evidence

s 63 amd 2003 No. 32 s 3 sch

Donations towards the objects of this Act

s 67A ins 2003 No. 32 s 20

Regulation-making power

prov hdg sub 2003 No. 32 s 3 sch
s 68 sub 1995 No. 40 s 23

Numbering and renumbering of Act

s 68A ins 2003 No. 32 s 21

Regulations

s 69 om 1995 No. 40 s 23

PART 10—AMENDMENT OF VALUATION OF LAND ACT 1944

pt 10 (ss 70–71) om R1 (see RA s 40)

SCHEDULE—DICTIONARY

sub 2003 No. 32 s 22

Note—definitions for this Act were originally located in s 4.

def “**aboriginal land**” reloc 2003 No. 32 s 5(4)

def “**aesthetic significance**” ins 1995 No. 40 s 19(2)

reloc 2003 No. 32 s 5(4)

def “**authorised person**” ins 2003 No. 32 s 5(3)

reloc 2003 No. 32 s 5(4)

def “**building**” sub 2003 No. 32 s 5(2)–(3)

reloc 2003 No. 32 s 5(4)

def “**conservation**” reloc 2003 No. 32 s 5(4)

def “**council**” reloc 2003 No. 32 s 5(4)

def “**Crown**” reloc 2003 No. 32 s 5(4)

def “**cultural heritage significance**” sub 1995 No. 40 s 19

reloc 2003 No. 32 s 5(4)

def “**development**” sub 2003 No. 32 s 5(2)–(3)

reloc 2003 No. 32 s 5(4)

def “**emergency work**” ins 2003 No. 32 s 5(3)

reloc 2003 No. 32 s 5(4)

def “**excluded work**” ins 2003 No. 32 s 5(3)

reloc 2003 No. 32 s 5(4)

def “**exemption certificate**” ins 2003 No. 32 s 5(3)

reloc 2003 No. 32 s 5(4)

def “**heritage register**” reloc 2003 No. 32 s 5(4)

def “**maintenance work**” ins 2003 No. 32 s 5(3)

reloc 2003 No. 32 s 5(4)

def “**member**” ins 2003 No. 32 s 5(3)

reloc 2003 No. 32 s 5(4)

def “**mining interest**” reloc 2003 No. 32 s 5(4)

def “**minor repair work**” ins 2003 No. 32 s 5(3)

reloc 2003 No. 32 s 5(4)

def “**notice**” ins 2003 No. 32 s 5(3)

reloc 2003 No. 32 s 5(4)

def “**object**” reloc 2003 No. 32 s 5(4)

def “**owner**” amd 1992 No 36 s 2 sch 2; 2000 No. 26 s 12 sch 1

reloc 2003 No. 32 s 5(4)

def “**party**” reloc 2003 No. 32 s 5(4)

def “**personal details requirement**” ins 2003 No. 32 s 5(3)

reloc 2003 No. 32 s 5(4)

def “**place**” reloc 2003 No. 32 s 5(4)
def “**protected area**” reloc 2003 No. 32 s 5(4)
def “**protected object**” ins 2003 No. 32 s 5(3)
reloc 2003 No. 32 s 5(4)
def “**protected relic**” om from s 4 2003 No. 32 s 5(2)
def “**public notice**” reloc 2003 No. 32 s 5(4)
def “**registered place**” reloc 2003 No. 32 s 5(4)
def “**registrar of titles**” reloc 2003 No. 32 s 5(4)
def “**restricted zone**” om from s 4 2003 No. 32 s 5(2)
def “**territorial waters of the State**” reloc 2003 No. 32 s 5(4)
def “**Torres Strait Islander land**” reloc 2003 No. 32 s 5(4)
def “**waters**” reloc 2003 No. 32 s 5(4)