



# Queensland Heritage Act 1992

Current as at 22 July 2024

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Queensland

# Queensland Heritage Act 1992

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# Queensland Heritage Act 1992

## 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*.

#### 2 Object of this Act

- (1) The object of this Act is to provide for the conservation of Queensland's cultural heritage for the benefit of the community and future generations.
- (2) The object is to be primarily achieved by—
  - (a) establishing the Queensland Heritage Council; and
  - (b) keeping a register of places and areas of State cultural heritage significance called the Queensland heritage register; and
  - (c) requiring the reporting of the discovery of archaeological artefacts and underwater cultural heritage artefacts; and
  - (d) providing for the identification and management of places of local cultural heritage significance by local governments; and
  - (e) regulating, in conjunction with other legislation, development affecting the cultural heritage significance of Queensland heritage places; and

- (f) providing for heritage agreements to encourage appropriate management of Queensland heritage places; and
  - (g) providing for appropriate enforcement powers to help protect Queensland's cultural heritage.
- (3) In exercising powers conferred by this Act, the Minister, the chief executive, the council and other persons and entities concerned in its administration must seek to achieve—
- (a) the retention of the cultural heritage significance of the places and artefacts to which it applies; and
  - (b) the greatest sustainable benefit to the community from those places and artefacts consistent with the conservation of their cultural heritage significance.

### **3 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.

### **4 Definitions**

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

## **5 Act binds all persons**

- (1) This Act binds all persons including the State, and to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the State 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 provide strategic advice to the Minister about matters relating to Queensland's cultural heritage, including, for example, measures necessary to conserve Queensland's cultural heritage;
  - (b) to encourage interest in, and understanding of, Queensland's cultural heritage, including, for example, by—

[s 8A]

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- (i) providing information to the community; and
  - (ii) promoting or supporting events relating to Queensland's cultural heritage;
  - (c) to advise entities about conserving Queensland's cultural heritage, including, for example, government entities and community organisations;
  - (d) to encourage the appropriate management of places of cultural heritage significance;
  - (e) to give advice to the planning chief executive about the effect that development proposed under a development application or change application may have on the cultural heritage significance of a State heritage place;
- Note—*
- See also the Planning Act, section 275ZJ.
- (f) to perform other functions given 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.

## **8A Council's powers**

The council has the powers—

- (a) necessary or convenient to perform its functions; or
- (b) given to it under another provision of this Act or under another Act.

## **9 Delegation by council**

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) an appropriately qualified public service officer.



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## **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) National Trust of Australia (Queensland) Limited;
  - (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) The chairperson or deputy chairperson holds office as chairperson or deputy chairperson for the term, of not more than 3 years, decided by the Governor in Council.
- (4) Despite subsection (3), a person stops holding office as chairperson or deputy chairperson if the person stops being a member.

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- (5) 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.
- (6) However, a member resigning the office of chairperson or deputy chairperson may continue to be a member.
- (7) 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 Eligibility for membership**

- (1) A person can not be appointed as a member if the person—
  - (a) has a conviction, other than a spent conviction, for an indictable offence or an offence against this Act; or
  - (b) has been a member for at least 6 consecutive years and the proposed appointment would happen less than 1 year after the day the person was last a member.
- (2) A person who is a member can not be reappointed as a member if the reappointment would result in the person continuing as a member for more than 6 consecutive years.

### **13A Minister's power to obtain criminal history**

- (1) The Minister may ask the commissioner of the police service for—
  - (a) a written report about the criminal history of a person who is being considered for appointment as a member; and

- 
- (b) a brief description of the circumstances of a conviction mentioned in the report.
  - (2) However, the Minister may make the request only if the person has given the Minister written consent for the request.
  - (3) The commissioner of the police service must comply with the request.
  - (4) However, subsection (3) applies only in relation to information in the commissioner's possession or to which the commissioner has access.
  - (5) The Minister must ensure the report is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

### **13B Criminal history is confidential**

- (1) A person must not, directly or indirectly, disclose to anyone else a report about a person's criminal history or information contained in the report given under section 13A, unless the disclosure is permitted under subsection (2).

Maximum penalty—50 penalty units.

- (2) The person may make the disclosure to someone else—
  - (a) to the extent necessary to perform the person's functions under this Act; or
  - (b) for the purpose of the other person performing a function under this Act; or
  - (c) if the disclosure is authorised under an Act; or
  - (d) if the disclosure is otherwise required or permitted by law; or
  - (e) if the person to whom the information relates consents to the disclosure.

### **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) is convicted of an indictable offence or an offence against this Act; 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(5) 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.

### **20 Times and places of meetings**

- (1) The council must meet at least 6 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.
- (5) Subsection (1) does not limit the number of meetings the council may hold in a year.

### **21 Quorum**

A quorum for the council is 6 members.

### **22 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.

## **23 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.

## **24 Minutes**

- (1) The council must keep—
  - (a) minutes of its meetings; and

- 
- (b) a record of any resolutions made under section 23(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**

### **25 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.
- Note—*  
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.

### **26 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**

### **27                      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; or
  - (c) if the matter is a heritage recommendation—make an oral representation to the council under part 4, division 5, subdivision 2 about the recommendation.
- (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.

## **28 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; or

- (c) if the matter is a heritage recommendation—make an oral representation to the council under part 4, division 5, subdivision 2 about the recommendation.
- (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.

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## **Division 6                      Other provisions about the council**

### **29            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) information, required by the Minister, relating to the performance of the council's functions under this Act; and
  - (b) information about the timeliness of the council's dealings with applications under part 4, division 5; and
  - (c) a statement about the measures the council considers necessary to conserve Queensland's cultural heritage.
- (3) As soon as practicable, but within 14 sitting days after receiving the report, the Minister must table the report in the Legislative Assembly.

### **30            Excluded matter for Corporations legislation**

The council is declared to be an excluded matter for the Corporations Act, section 5F, 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.

## **Part 3                                    The Queensland heritage register**

### **31            The Queensland heritage register**

- (1) The chief executive must keep a register called the Queensland heritage register.
- (2) The Queensland heritage register must include a record of the following—
  - (a) State heritage places;
  - (b) protected areas.
- (3) An entry in the Queensland heritage register, for each place or area, must—
  - (a) include enough information to identify the location and boundaries of the place or area; and
  - (b) include information about the history of the place or area; and
  - (c) include a description of the place or area; and
  - (d) if the place or area is the subject of a heritage agreement—state that fact; and
  - (e) for a State heritage place—include a statement about the cultural heritage significance of the place related to the cultural heritage criteria; and
  - (f) for a protected area—include a statement about the cultural heritage significance of the place relevant to the declaration of the protected area.
- (4) An entry in the Queensland heritage register for a place or area that is the subject of a heritage agreement may include—
  - (a) if the person or entity who entered into the agreement with the chief executive is required to carry out work or do something else under the agreement—information about the work or thing; or

- (b) if development is permitted to be carried out in the place or area under the agreement—information about the development.
- (5) The chief executive may keep the Queensland heritage register in the form, including electronic form, the chief executive considers appropriate.

### **32 Register to be available online**

- (1) The chief executive must publish a copy of the Queensland heritage register on the department's website.
- (2) The chief executive must ensure that the copy is available for inspection on the department's website during business hours, free of charge, at—
  - (a) the department's head office; and
  - (b) other places the chief executive considers appropriate.

### **33 Extracts from register and certificate about certain matters**

- (1) The chief executive must, on application by a person and payment of the fee prescribed under a regulation, give to the person—
  - (a) a certified copy of any entry in the Queensland heritage register; or
  - (b) a certificate as to whether a place or area—
    - (i) is a State heritage place or a protected area; or
    - (ii) is the subject of a heritage agreement; or
    - (iii) is the subject of an application to have the place entered in or removed from the register; or
    - (iv) is an excluded place.
- (2) A certified copy of an entry in the Queensland 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.

### 34 Changing entries in register

- (1) The chief executive may change an entry in the Queensland heritage register for a Queensland heritage place if the change—
  - (a) is the addition of an informative note to the entry; or
  - (b) corrects, updates or otherwise varies the information that identifies the location and boundaries of the place; or
  - (c) is another change to correct an error, or update information, in the entry.
- (2) However, the chief executive must not, without the written agreement of the owner of a Queensland heritage place and the council—
  - (a) change information that identifies a boundary for the place under subsection (1)(b), unless the change is a minor change; or
  - (b) change a statement mentioned in section 31(3)(e) or (f) under subsection (1)(c), unless the change is a minor change.
- (3) In this section—

***minor change*** means a change that is only to correct a minor error or make another change that is not a change of substance.

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## Part 4                      Matters about registration of State heritage places in Queensland heritage register

### Division 1                  Criteria for entry in register as State heritage place

#### 35        Criteria for entry in register

(1) A place may be entered in the Queensland heritage register as a State heritage place if it 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;

*Example of a place for paragraph (c)—*

a place that has potential to contain an archaeological artefact that is an important source of information about 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 Queensland heritage register on the ground that places with similar characteristics have already been entered in the register.

## **Division 2                      Applications for entry of places in, or removal of places from, register**

### **36            Applying to enter place in, or remove place from, register**

- (1) A person or other entity may apply to the chief executive—
- (a) to have a place entered in the Queensland heritage register as a State heritage place; or
  - (b) to have a State heritage place removed from the register.
- (2) The application must—
- (a) be in the approved form; and
  - (b) include the details, required in the approved form, to enable the chief executive to give the council a heritage recommendation for the application; and
  - (c) for an application to enter a place in the register, be accompanied by—
    - (i) a written statement, that is based on and refers to historical research, about how the place satisfies each of the cultural heritage criteria the applicant considers relevant for the place; and
    - (ii) information about the history of the place that is based on and refers to historical research; and
    - (iii) copies or details of material used for the historical research, including, for example, photographs, maps, plans and historical titles information; and
    - (iv) a description of the features of the place that contribute to its cultural heritage significance, supported by photographs, drawings or other documents showing the features; and



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- (v) a plan showing the relationship between the place's cadastral boundaries, features mentioned in subparagraph (iv) and the boundary proposed for the place; and
  - (d) for an application to remove a State heritage place from the register, be accompanied by—
    - (i) a written statement, that is based on and refers to the following, about how the place does not satisfy each of the cultural heritage criteria the applicant considers relevant for the place—
      - (A) information in the entry for the place in the register;
      - (B) historical research; and
    - (ii) copies or details of material used for the historical research, including, for example, photographs, maps, plans and historical titles information.
  - (3) An application to remove part of a State heritage place must also include—
    - (a) a description of the features of the part proposed for removal, supported by photographs, drawings or other documents showing the features; and
    - (b) a plan showing the relationship between the place's cadastral boundaries, features mentioned in paragraph (a) and the part proposed for removal.
  - (4) The applicant may withdraw the application at any time before the council makes a decision on a heritage recommendation for the application.
  - (5) If the chief executive makes an application under this section, sections 38(1)(a) and 46(1)(a) do not apply in relation to the application.
  - (6) Subsection (1) is subject to section 37.

### **36A Non-complying application**

- (1) This section applies if the chief executive considers an application about a place under section 36(1) does not comply with section 36(2) or (3) (a *non-complying application*).
- (2) The chief executive must, within 10 business days after receiving the application, give the applicant a notice stating—
  - (a) the application does not comply with section 36(2) or (3); and
  - (b) the reasons the chief executive considers it does not comply; and
  - (c) the applicant may make a new application about the place under section 36(1) that addresses the matters mentioned in paragraph (b).
- (3) For this Act, a non-complying application is taken not to have been received by the chief executive.

### **37 Particular restriction on application**

- (1) If a place has been removed from the Queensland heritage register as a State heritage place, or the council has decided under this part not to enter a place in the register, a person or other entity can not apply to have the place entered in the register until at least 5 years after—
  - (a) the day the place was removed from the register; or
  - (b) the day the council decided not to enter the place in the register.
- (2) If a place has been entered in the Queensland heritage register as a State heritage place, or the council has decided under this part not to remove a place from the register, a person or other entity can not apply to have the place removed from the register until at least 5 years after—
  - (a) the place was entered in the register; or
  - (b) the council decided not to remove the place from the register.

### 38 Initial notice of application

- (1) The chief executive must, within 10 business days after receiving an application for a place—
  - (a) give notice of its receipt to the applicant; and
  - (b) if the applicant is not the local government for the area in which the place is situated—give the local government a copy of the application; and
  - (c) if the applicant is not the owner of the place—give the owner a copy of the application and a notice stating each of the following—
    - (i) the day the application was received;
    - (ii) for an application to have the place entered in the Queensland heritage register—that the place is under consideration for entry in the register;
    - (iii) for an application to have the place removed from the register—that the place is under consideration for removal from the register;
    - (iv) that the owner may give the chief executive a written submission about the application;
    - (v) information about the period in which the submission may be given;

*Note—*

See section 41 for the period in which a submission may be given.

- (vi) that the owner may give the council a written response to the chief executive's heritage recommendation about the place;
- (vii) information about the period in which the response may be given.

*Note—*

See section 50B for the period in which a response may be given.

- (2) If a notice under subsection (1)(a) or (c) is given to the owner of a place about an application to have the place entered in the

Queensland heritage register, the notice must include information about the owner's obligations under sections 58 and 59 in relation to the place.

- (3) A copy of an application given to a local government or owner of a place under subsection (1)(b) or (c) must not include the applicant's personal information, unless the applicant has given written consent to its inclusion.

### **39 Chief executive to publish notice of application**

- (1) The chief executive must, within 10 business days after acting under section 38 in relation to an application for a place, publish notice of the application—
  - (a) in a newspaper circulating generally in the area in which the place is situated; and
  - (b) on the department's website.
- (2) The notice under subsection (1)(a) must—
  - (a) include enough information to identify the place; and
  - (b) state the following—
    - (i) whether the place is under consideration for entry in, or removal from, the Queensland heritage register;
    - (ii) where the application may be viewed;
    - (iii) that a person or other entity may give the chief executive a written submission about the application;
    - (iv) where the submission may be given;
    - (v) information about the period in which the submission may be given.

### **40 Applications to be available online**

- (1) The chief executive must publish a copy of each application on the department's website.

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- (2) However, a copy of an application must not include the applicant's personal information, unless the applicant has given written consent to its inclusion.
  - (3) The chief executive must ensure that a copy of each application is available for inspection on the department's website during business hours, free of charge, at—
    - (a) the department's head office; and
    - (b) other places the chief executive considers appropriate.

### **Division 3                      Submissions and representations about applications**

#### **41            When submission about application may be given to chief executive**

- (1) A person or other entity may give the chief executive a written submission (a *heritage submission*) for an application within 20 business days after notice of the application is published under section 39(1)(a).
- (2) However, the chief executive and a person or other entity intending to give a submission under subsection (1) may, at any time before the end of the period mentioned in the subsection, agree in writing on a day (the *later day*) by which the submission may be given.
- (3) Also, if the later day agreed to by the chief executive and a person or entity (the *parties*) under subsection (2) is less than 40 business days after the notice of the application is published, the parties may, at any time before the end of the later day, agree in writing on another day (the *latest day*) by which the submission may be given.
- (4) The later day or latest day must not be more than 40 business days after notice of the application was published.

#### **42 Basis for making submission**

A heritage submission for an application must be made on the basis that the place the subject of the application does or does not satisfy the cultural heritage criteria.

#### **43 Chief executive may seek further information**

Before giving the council a heritage recommendation for an application, the chief executive may ask a person or other entity the chief executive considers appropriate to make written representations to the chief executive about the place the subject of the application.

### **Division 4 Heritage recommendations**

#### **44 Chief executive to give heritage recommendation to council**

- (1) After considering the relevant material for an application, the chief executive must give a written recommendation (a *heritage recommendation*) to the council about whether the place the subject of the application should be entered in, removed from (with or without variation) or stay on the Queensland heritage register.
- (2) The chief executive must give the council a heritage recommendation for an application by the final recommendation day for the application.
- (3) A heritage recommendation must be accompanied by—
  - (a) a copy of the application to which it relates; and
  - (b) the heritage submissions for the application; and
  - (c) the written representations made under section 43 about the place the subject of the application.
- (4) If the chief executive considers the place satisfies 1 or more of the cultural heritage criteria, the chief executive must recommend that—

- 
- (a) the place be entered in the register; or
  - (b) the place stay on the register, with or without variation.
- (5) If the chief executive considers the place does not satisfy any of the cultural heritage criteria, the chief executive must recommend that—
- (a) the place not be entered in the register; or
  - (b) the place be removed from the register.
- (6) In this section—

*final recommendation day*, for an application, means the later of the following days—

- (a) 80 business days after its receipt;
- (b) if, under section 45(2), the chief executive extends the period for making the heritage recommendation for the application—120 business days after its receipt.

*relevant material*, for an application, means the following—

- (a) the application;
- (b) the heritage submissions for the application;
- (c) the written representations made under section 43 about the place the subject of the application;
- (d) other information the chief executive considers relevant to the application.

#### **45 Further consideration of application**

- (1) This section applies if the chief executive considers more time is needed to make a heritage recommendation for an application because of the matters that need to be considered in relation to the application.
- (2) The chief executive may at any time before 80 business days after receipt of the application, give notice to the applicant, and the owner of the place the subject of the application if the owner is not the applicant, that—

- (a) because of the matters that need to be considered in relation to the application, the chief executive needs more time to make a heritage recommendation for the application; and

*Example—*

The chief executive might need more time to consider an application because of the remote location of the place the subject of the application.

- (b) the period within which the chief executive must make the heritage recommendation is extended to a day that is 120 business days after receipt of the application.

#### **46 Notice of heritage recommendation**

- (1) The chief executive must, within 10 business days after giving the council a heritage recommendation for an application, give a copy of the recommendation to each of the following—
  - (a) the applicant;
  - (b) if the applicant is not the owner of the place the subject of the application—the owner;
  - (c) if the applicant is not the local government for the area in which the place is situated—the local government;
  - (d) any other person or entity, if the person or entity gave the chief executive a heritage submission for the application.
- (2) The copy of the heritage recommendation must be accompanied by a notice stating the person or entity to whom it is given may, within 10 business days after its receipt—
  - (a) ask in writing to make oral representations to the council about the recommendation; and
  - (b) if the person or entity is the owner—tell the council in writing that the person or entity will be giving the council a written response to the recommendation.



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## Division 4A                      Destroyed place recommendations

### 46A    Chief executive may give destroyed place recommendation

- (1) The chief executive may give the council a written recommendation (a *destroyed place recommendation*) that a State heritage place be removed from the register if—
  - (a) the place has been—
    - (i) completely or substantially destroyed by fire or natural disaster; or
    - (ii) wholly or substantially demolished by development carried out under a development approval or a recommendation under section 71(7); and
  - (b) the chief executive considers the place no longer satisfies any of the cultural heritage criteria; and
  - (c) the chief executive has consulted with the owner of the place about the proposed recommendation.
- (2) The destroyed place recommendation must be accompanied by—
  - (a) details of the complete or substantial destruction or the whole or substantial demolition; and
  - (b) reasons why the chief executive considers the place no longer satisfies any of the cultural heritage criteria; and
  - (c) details of how the owner of the place was consulted with under subsection (1)(c), and the outcome of the consultation.

## **Division 5                      Council to decide about entry of place in, or removal of place from, register**

### **Subdivision 1              Preliminary**

#### **47              Council's role in relation to heritage or destroyed place recommendations**

The council must consider and make a decision on each heritage recommendation or destroyed place recommendation it receives.

#### **48              Council may seek further information**

Before making a decision on a heritage recommendation or destroyed place recommendation for a State heritage place, the council may ask a person or other entity the council considers appropriate to make written representations to the council about the place.

### **Subdivision 2              Oral representations about heritage recommendations**

#### **49              Request to make oral representations about heritage recommendation**

- (1) This section applies if a person or entity is given a notice under section 46(2) for a heritage recommendation.
- (2) The person or entity may, by notice given to the council, ask to make oral representations to the council before it makes a decision on the heritage recommendation.
- (3) The person or entity must make the request within 10 business days after receiving the notice mentioned in subsection (1).

- (4) If the person or entity is the owner of the place the subject of the heritage recommendation, the council must take all reasonable steps to comply with the request.
- (5) If the person or entity is not the owner of the place the subject of the heritage recommendation, the council may decide to hear the person or entity if satisfied it is appropriate in the circumstances.
- (6) In deciding to hear a person or entity mentioned in subsection (5), the council must have regard to—
  - (a) the heritage submission, if any, given by the person or entity for the application to which the heritage recommendation relates; and
  - (b) whether the person or entity has new information about the place the subject of the recommendation that is relevant to—
    - (i) the recommendation; and
    - (ii) the cultural heritage criteria.

## **50 How oral representations may be made**

- (1) The council may allow a person or entity to make oral representations about a heritage recommendation in the way the council considers appropriate.
- (2) Without limiting subsection (1), the council may allow a person or entity to make the representations by phone, videoconferencing or another form of electronic communication if the council considers it is reasonable in the circumstances, including, for example, because of the person's or entity's remote location.

## **Subdivision 2A Heritage responses to heritage recommendations**

### **50A Notice about making heritage response to heritage recommendation**

- (1) This section applies if the owner of a place is given a notice under section 46(2) for a heritage recommendation about the place.
- (2) The owner may, by notice given to the council, tell the council that the owner will be giving the council a written response (a *heritage response*) to the heritage recommendation.
- (3) The owner must give the notice to the council within 10 business days after receiving the notice mentioned in subsection (1).

### **50B When heritage response must be given to council**

- (1) This section applies if the owner of a place gives the council a notice under section 50A(2).
- (2) The owner must give the heritage response to the council within 20 business days after the owner gives the notice to the council.
- (3) However, the owner and council may, at any time before the end of the period mentioned in subsection (2), agree in writing on a day (the *later day*) by which the heritage response must be given.
- (4) The later day must not be more than 30 business days after the owner gives the notice to the council.

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## **Subdivision 3      Decisions on heritage recommendations**

### **51      Council to make decision on heritage recommendation**

- (1) The council must make a decision on a heritage recommendation for an application within the later of the following periods to end—
  - (a) 60 business days after receiving the recommendation;
  - (b) if the owner of the place the subject of the recommendation gives the council a notice under section 50A(2), or if the council and the owner agree under section 52 to extend the day for making the decision—100 business days after receiving the recommendation.
- (2) In making the decision, the council—
  - (a) must have regard to all of the following—
    - (i) the application to which the heritage recommendation relates;
    - (ii) the heritage submissions for the application;
    - (iii) the written representations made under section 43 or 48 about the place the subject of the application;
    - (iv) if the council allows a person or entity to make oral representations about the recommendation—the representations;
    - (v) if the owner of the place gives the council a heritage response for the recommendation—the heritage response; and
  - (b) may have regard to other information the council considers relevant to the application.
- (3) Without limiting subsection (2)(b), the council may, in making the decision, have regard to whether the physical condition or structural integrity of the place may prevent its cultural heritage significance being preserved.

- (4) Also, without limiting subsection (2)(b), the council may, in making the decision, have regard to—
- (a) whether the cultural heritage significance of the place is mainly because of its natural features; and
  - (b) whether the place or its natural features are protected or conserved under another law of the State or Commonwealth, and the extent of the protection or conservation under that law.

*Examples of places for subsection (4)—*

- 1 a national park under the *Nature Conservation Act 1992*
- 2 a place on the national heritage list under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth)

## **52 Agreement about extending time for making decision**

- (1) This section applies if the council and the owner of a place the subject of a heritage recommendation agree that more time is needed to make a decision on the recommendation because of the matters that need to be considered in relation to it.
- (2) The council and the owner of the place may agree in writing to extend the day for making the decision to a day that is 100 business days after the day the council received the heritage recommendation.
- (3) An agreement under subsection (2) must be made before the end of 60 business days after the day the council received the heritage recommendation.

## **53 Council's decision about entering place in, or removing place from, register**

- (1) The council may decide to enter the place the subject of an application in the Queensland heritage register if the council considers it satisfies 1 or more of the cultural heritage criteria.
- (2) The council must decide to remove the place the subject of an application from the Queensland heritage register if the council considers it no longer satisfies any of the cultural heritage criteria.

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- (3) In making a decision on a heritage recommendation for an application about the proposed entry of a place in the Queensland heritage register, the council may decide—
    - (a) to enter the place, as proposed in the heritage recommendation, in the register; or
    - (b) to enter the place, as varied from the heritage recommendation, in the register; or
    - (c) not to enter the place in the register.
  - (4) In making a decision on a heritage recommendation for an application about the proposed removal of a place from the Queensland heritage register, the council may decide—
    - (a) to remove the place from the register; or
    - (b) to vary the entry of the place in the register; or
    - (c) to leave the place in the register.

## **54 Notice of council's decision**

- (1) Immediately after making a decision on a heritage recommendation, the council must advise the chief executive of the decision, the reasons for the decision and the day it was made.
- (2) Within 10 business days after receiving the advice, the chief executive must—
  - (a) publish the decision, and notice of the day it was made, in the gazette; and
  - (b) give notice of the decision and the reasons for it to—
    - (i) the applicant for the application to which the heritage recommendation relates; and
    - (ii) if the applicant is not the owner of the place the subject of the application—the owner; and
    - (iii) if the applicant is not the local government for the area in which the place is situated—the local government; and

- (iv) any other person or entity, if the person or entity gave the chief executive a heritage submission for the application.
- (3) If the council's decision on a heritage recommendation is a decision mentioned in section 53(3)(a) or (b), or (4)(a) or (b), the notice given under subsection (2)(b) to the owner of the place must be accompanied by an information notice about the decision.

## **55 When council is taken to have made decision**

- (1) This section applies if the council fails to make a decision on a heritage recommendation for an application within the relevant period for the recommendation.
- (2) If the application is for the entry of a place in the Queensland heritage register, the council is taken to have decided not to enter the place in the register.
- (3) If the application is for the removal of a place from the Queensland heritage register, the council is taken to have decided to leave the place in the register.
- (4) A decision mentioned in subsection (2) or (3) is taken to have been made by the council at the end of the relevant period for the recommendation.
- (5) In this section—
  - relevant period*, for a heritage recommendation, means—
    - (a) 60 business days after the council receives the recommendation; or
    - (b) if the owner of the place the subject of the recommendation has given the council a notice under section 50A(2), or if the council and the owner have agreed, under section 52, to extend the day for making the decision on the recommendation—100 business days after the council receives the recommendation.



**56 Notice of decision under s 55**

- (1) If the council is taken to have made a decision under section 55 in relation to an application, the chief executive must, as soon as practicable after the day the decision is taken to have been made, give notice of the decision to—
  - (a) the applicant; and
  - (b) if the applicant is not the owner of the place the subject of the application—the owner.
- (2) The notice given under subsection (1) to the applicant must be accompanied by an information notice about the decision.

**Subdivision 4 Decisions on destroyed place recommendations****56A Council to make decision on destroyed place recommendation**

- (1) The council must, within 60 days after receiving a destroyed place recommendation for a place, decide to either—
  - (a) remove the place from the register; or
  - (b) leave the place on the register, with or without variation.
- (2) The council may decide to remove a State heritage place the subject of a destroyed place recommendation from the Queensland heritage register, only if the council considers—
  - (a) the place has been—
    - (i) completely or substantially destroyed by fire or natural disaster; or
    - (ii) wholly or substantially demolished by development carried out under a development approval or a recommendation under section 71(7); and
  - (b) the place does not satisfy any of the cultural heritage criteria; and

- (c) the owner of the place has been consulted about the removal.
- (3) Immediately after making a decision on a destroyed place recommendation, the council must advise the chief executive of the decision and the day it was made.
- (4) Within 10 business days after receiving the advice, the chief executive must—
  - (a) publish the decision, and notice of the day it was made, in the gazette; and
  - (b) give notice of the decision to—
    - (i) the owner of the place; and
    - (ii) the local government for the area in which the place is situated.

## **Division 5A Excluded places**

### **56B Place excluded from entry in Queensland heritage register as State heritage place**

- (1) The owner of a place may apply to the chief executive to have the place excluded from entry in the Queensland heritage register as a State heritage place.
- (2) This part applies in relation to the place and the application—
  - (a) as if the place were a State heritage place and the application were an application under section 36 to have the place removed from the register; and
  - (b) as if a reference in the part to remove a place from the register were a reference to exclude the place from entry in the register as a State heritage place; and
  - (c) as if a reference in section 44 to a place staying on the register were a reference to entering the place in the register as a State heritage place; and
  - (d) as if the reference in section 53(2) to a place no longer satisfying any of the cultural heritage criteria were a

reference to the place not satisfying any of the cultural heritage criteria; and

- (e) as if the reference in section 53(4) to a decision to leave a place in the register were a reference to a decision (an *entry decision*) to enter the place in the register as a State heritage place; and
- (f) as if the reference in section 54(3) to a decision mentioned in section 53(4)(a) or (b) included a reference to an entry decision; and
- (g) as if the reference in section 55(3) to the council being taken to have decided to leave a place in the register were a reference to the council being taken to have excluded the place from entry in the register as a State heritage place; and
- (h) with other necessary changes.

*Note—*

If the council decides to remove a State heritage place from the Queensland heritage register, or enter a place in the register, application can not be made to have the place entered in, or removed from, the register for at least 5 years—see section 37.

## Division 6                      Other matters

### 58            **Obligation to give notice about proposed development**

- (1) This section applies to the owner of a place if—
  - (a) the owner—
    - (i) has applied under division 2 to have the place entered in the Queensland heritage register; or
    - (ii) is given a notice under section 38(1)(c) for an application to have the place entered in the register; and
  - (b) the council has not made a decision on a heritage recommendation for the application.

- (2) The owner must, at least 10 business days before a prescribed application is made in relation to the place, give the chief executive notice of the application, if—
- (a) the owner is the applicant; or
  - (b) the application is supported by the written consent of the owner.

Maximum penalty—100 penalty units.

- (3) In this section—

*prescribed application* means—

- (a) an application for a development approval; or
- (b) a change application other than a change application for a minor change to a development approval, as defined in the Planning Act.

## **59 Obligation to give notice about development approvals**

- (1) Subsection (2) applies to the owner of a place if—
- (a) the owner—
    - (i) has applied under division 2 to have the place entered in the Queensland heritage register; or
    - (ii) is given a notice under section 38(1)(c) for an application to have the place entered in the register; and
  - (b) when the owner made the application or was given the notice, the owner knew or ought reasonably to have known that a person had a development approval for development on the place.
- (2) The owner must, within the relevant period, advise the chief executive of the development approval.

Maximum penalty—100 penalty units.

- (3) Subsection (4) applies to the owner of a place if—
- (a) the owner—

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- (i) has applied under division 2 to have the place entered in the Queensland heritage register; or
  - (ii) is given a notice under section 38(1)(c) for an application to have the place entered in the register; and
- (b) when the owner made the application or was given the notice, the owner knew or ought reasonably to have known that a following application (each a **relevant application**) in relation to the place had been made but not decided under the Planning Act—
- (i) an application for a development approval;
  - (ii) a change application other than a change application for a minor change to a development approval, as defined in the Planning Act.
- (4) The owner must, within the relevant period, advise the chief executive of the relevant application.

Maximum penalty—100 penalty units.

- (5) In this section—

**relevant period** means 10 business days after the owner received a notice under section 38(1)(a) or (c) for the application to have the place entered in the Queensland heritage register.

## **Part 6                      Development in Queensland heritage places and local heritage places**

### **Division 1                Development on Queensland heritage place by State**

#### **71            Development by the State**

- (1) This section applies if the State—

- (a) proposes to carry out development in relation to a Queensland heritage place other than because of an emergency endangering—
    - (i) the life or health of a person; or
    - (ii) the structural safety of a building; and
  - (b) does not have an exemption certificate for the development.
- (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) Subsection (5) applies if—
- (a) the place is a State heritage place, other than an archaeological State heritage place, and the council is satisfied the development would substantially affect the cultural heritage significance of the place; or
  - (b) the place is an archaeological State heritage place and the council is satisfied the development would have a detrimental impact on any archaeological artefact on the place.
- (5) The council must publish a public notice stating the following—
- (a) details of the development;
  - (b) that a person or other entity may give the council a written submission about the development;
  - (c) where the submission may be given;
  - (d) that the submission must be given within 20 business days after the notice is published.
- (6) The council must consider the report and all submissions made about the development and recommend to the Minister proposing the development that—
- (a) the development may be carried out; or

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- (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 place is a State heritage place, other than an archaeological State heritage place, and 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 considering whether there is no 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 (5), 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

### 71A Definitions for div 2

In this division—

*decision-maker* means—

- (a) for a Queensland heritage place—the chief executive; or
- (b) for a local heritage place—the chief executive officer of the local government for the local government area in which the place is situated.

*heritage place* means a Queensland heritage place or local heritage place.

## **72 Application for exemption certificate**

- (1) A relevant person for a heritage place may apply to the decision-maker for the place for an exemption certificate to carry out development mentioned in subsection (3) on the place.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) be accompanied by all of the following—
    - (i) enough details about the proposed development to enable the decision-maker to assess its impact on the cultural heritage significance of the place;
    - (ii) a plan showing the location of the development in relation to the features of the place that contribute to its cultural heritage significance;
    - (iii) if the application is for development permitted under a heritage agreement or local heritage agreement for the place—details of the agreement to support the application;
    - (iv) if the application is for development other than development mentioned in subparagraph (iii)—information showing how the development will not have a detrimental impact, or will only have a minimal detrimental impact, on the cultural heritage significance of the place;
    - (v) the fee prescribed under a regulation.
- (3) An exemption certificate may be given to carry out development on a heritage place only if the development—
  - (a) is permitted under a heritage agreement or local heritage agreement for the place; or



- (b) will not have a detrimental impact, or will only have a minimal detrimental impact, on the cultural heritage significance of the place.
- (4) In this section—  
*relevant person*, for a heritage place, means—
  - (a) the owner of the place; or
  - (b) with the owner’s consent, another person who has an interest in the place.

### **73 Inquiry about application**

- (1) The decision-maker may, by notice given to the applicant, require the applicant to give the decision-maker further information the decision-maker reasonably requires to decide the application.
- (2) The notice must state the applicant is required to give the information to the decision-maker within 60 business days after the notice is given.
- (3) The applicant is taken to have withdrawn the application if, within 60 business days after the notice is given, the applicant does not comply with a requirement under subsection (1).
- (4) A notice under subsection (1) must be given to the applicant within 10 business days after the decision-maker receives the application.

### **74 Deciding application for exemption certificate**

- (1) The decision-maker must decide the application within 20 business days after the later of the following—
  - (a) the day the decision-maker receives the application;
  - (b) if, under section 73, the applicant gives the decision-maker further information about the application—the day the decision-maker receives the information.

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- (2) If the decision-maker approves the application, with or without conditions, the decision-maker must, as soon as practicable after approving the application, give the applicant an exemption certificate.
- (3) If the decision-maker refuses the application or approves it with conditions, the decision-maker must, as soon as practicable, give the applicant a notice stating the reasons for the refusal or the conditions.

## 75 Giving exemption certificate without application

- (1) The decision-maker for a heritage place may give a person an exemption certificate to carry out development mentioned in section 72(3) on the place.
- (2) The chief executive's power to give an exemption certificate under this section includes the power to give a certificate (a ***general exemption certificate***) in relation to all Queensland heritage places or a class of Queensland heritage places.
- (3) The power of the chief executive officer of a local government to give an exemption certificate under this section includes the power to give a certificate (also a ***general exemption certificate***) in relation to all local heritage places in the local government's area or a class of local heritage places in the area.
- (4) An exemption certificate, including a general exemption certificate, may be given under this section at any time, with or without conditions, and without a person having applied for the certificate under section 72.
- (5) The chief executive may give a general exemption certificate under this section by publishing the certificate on the department's website.
- (6) The chief executive officer of a local government may give a general exemption certificate under this section by publishing a notice in a newspaper circulating generally in the local government's area that—

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- (a) states the general exemption certificate has been given; and
  - (b) includes a brief description of the exemption; and
  - (c) states where the general exemption certificate may be viewed.
- (7) The chief executive officer must ensure that a copy of a general exemption certificate is available for inspection during business hours, free of charge, at the local government's public office.
- (8) A general exemption certificate may be made available in written or electronic form.

## **76 Compliance with conditions of exemption certificate**

A person who carries out, on a heritage place, development for which an exemption certificate has been given under this division, must not contravene a condition of the certificate.

Maximum penalty—

- (a) for an exemption certificate given by the chief executive—1,000 penalty units; or
- (b) for an exemption certificate given by the chief executive officer of a local government—100 penalty units.

## **Division 3 Development for liturgical purposes**

### **77 Purpose of div 3**

The purpose of this division is to provide for matters about liturgical development that is not categorised as assessable development under a regulation made under the Planning Act.

### **78 When is development *liturgical development***

Development is *liturgical development* if the development—

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- (a) is in a place, or the precincts of a place, that is a place of public worship and a Queensland heritage place; and
- (b) is required for a liturgical purpose; and
- (c) is proposed by an official of a religious organisation with appropriate knowledge of its religious services.

## 79 Notice of development

At least 20 business days before starting development that is liturgical development, an official of the religious organisation proposing the development must give the chief executive a notice that—

- (a) states the name and position of the official; and
- (b) includes a brief description of the proposed development and the liturgical purpose for which it is required.

# Part 7 Heritage agreements and local heritage agreements

## 80 Heritage agreements or local heritage agreements

- (1) The chief executive may, after obtaining and considering the council's advice, enter into an agreement (a *heritage agreement*) for a Queensland heritage place with—
  - (a) the owner of the place; or
  - (b) with the owner's consent, another person or entity who has an interest in the place.
- (2) The chief executive officer of a local government may enter into an agreement (a *local heritage agreement*) for a local heritage place with—
  - (a) the owner of the place; or
  - (b) with the owner's consent, another person or entity who has an interest in the place.

- (3) A heritage agreement or local heritage agreement attaches to the land the subject of the agreement, unless the agreement states otherwise.

*Note—*

For when a heritage agreement that attaches to land is binding on an owner or occupier of a place, see section 174.

- (4) The chief executive may, after obtaining and considering the council's advice, change or end a heritage agreement—
- (a) if the agreement was entered into with the owner of the Queensland heritage place—by agreement with the owner; or
  - (b) if the agreement was entered into with another person or entity—by agreement with the person or entity and the owner.
- (5) The chief executive officer of a local government may change or end a local heritage agreement for a local heritage place—
- (a) if the agreement was entered into with the owner of the place—by agreement with the owner; or
  - (b) if the agreement was entered into with another person or entity—by agreement with the person or entity and owner.

## **81 Provisions of heritage agreement or local heritage agreement**

- (1) A heritage agreement or local heritage agreement may contain any provision to promote—
- (a) the conservation and appropriate management of the heritage place; or
  - (b) for a Queensland heritage place—public appreciation of the importance of the place to Queensland's cultural heritage; or
  - (c) for a local heritage place—public appreciation of the importance of the place to local cultural heritage.

- (2) A heritage agreement or local heritage agreement may, for example—
- (a) restrict the use of the heritage place; or
  - (b) require specified work or work of a specified kind to be carried out in accordance with specified standards in the heritage place; or
  - (c) restrict the nature of work that may be carried out in the heritage place; or
  - (d) provide that the heritage place is to be available for public inspection at specified times and regulate charges that may be made for admission to the heritage 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 heritage place; or
  - (f) provide for a review of the valuation of the heritage place; or
  - (g) specify development that may be carried out in the heritage place for which an exemption certificate will be issued.
- (3) In this section—
- heritage place* means a Queensland heritage place or local heritage place.

## **82 Enforcement of heritage agreement or local heritage agreement—Planning and Environment Court order**

- (1) If—
- (a) a person fails to comply with a heritage agreement or local 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 8**

# **Notices about essential repair and maintenance of State heritage places and local heritage places**

### **83 Application of pt 8**

- (1) This part applies to a local government prescribed by regulation.
- (2) The Minister may recommend to the Governor in Council the making of a regulation under subsection (1) only if the Minister is satisfied the local government has appropriate procedures in place for exercising a power under section 84 in relation to the local government.
- (3) A regulation may prescribe matters the Minister must consider in being satisfied that a local government has appropriate procedures in place.

### **84 Decision-maker may give notice about essential repair or maintenance work**

- (1) This section applies if the decision-maker for a heritage place reasonably believes—
  - (a) it is necessary to carry out essential repair or maintenance work on the place; and
  - (b) the work is required to be carried out to protect the place from damage or deterioration caused by weather, fire, vandalism or insects.
- (2) The decision-maker may give the owner of the place a notice (a *repair and maintenance notice*) requiring the owner to

carry out the essential repair or maintenance work stated in the notice.

- (3) Before giving the repair and maintenance notice, the decision-maker must take reasonable steps to consult with the owner of the place about the essential repair or maintenance work the decision-maker believes necessary to carry out.
- (4) The repair and maintenance notice must state the following—
  - (a) the essential repair or maintenance work the decision-maker requires to be carried out on the heritage place;
  - (b) that the decision-maker believes the work is necessary to prevent damage to, or deterioration of, the place;
  - (c) the reasons for the decision-maker's belief;
  - (d) that the owner of the place must carry out the stated work within the stated reasonable period;
  - (e) that it is an offence to fail to comply with the notice unless the owner has a reasonable excuse.
- (5) The stated period for subsection (4)(d) must not be less than 20 business days after the owner receives the repair and maintenance notice.
- (6) The owner of the place must comply with the repair and maintenance notice unless the owner has a reasonable excuse.

Maximum penalty—

- (a) for a repair and maintenance notice given by the chief executive—
  - (i) for an individual—100 penalty units; or
  - (ii) for a corporation—1,000 penalty units; or
- (b) for a repair and maintenance notice given by the chief executive officer of a local government—
  - (i) for an individual—75 penalty units; or
  - (ii) for a corporation—750 penalty units.



*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 160A, to have also committed the offence.

(7) In this section—

***decision-maker*** means—

- (a) for a State heritage place—the chief executive; or
- (b) for a local heritage place—the chief executive officer of the local government for the local government area in which the place is situated.

***essential repair or maintenance work***, in relation to a heritage place, means work of a minor nature that, if carried out on the place, would help to prevent damage to, or deterioration of, the place.

*Examples—*

- repairing wall or roof frames
- re-fixing loose wall or roof boards
- removing potential fire hazards
- maintaining existing fire management systems
- putting locks on doors and windows
- boarding up insecure openings in an unoccupied building
- shutting down electricity or gas services to an unoccupied building
- taking steps for managing or eradicating termites or other insects
- cleaning and repairing gutters and downpipes

***heritage place*** means a State heritage place or local heritage place.

## **85 Report to chief executive about repair and maintenance notice**

- (1) This section applies if the chief executive officer of a local government has given the owner of a local heritage place a repair and maintenance notice under section 84 in a financial year.

- (2) The chief executive officer must give the chief executive a notice stating the following before 1 August in the next financial year—
- (a) that it gave the repair and maintenance notice to the owner;
  - (b) whether the owner complied with the notice.

## **Part 9**

# **Discovery and protection of archaeological artefacts and underwater cultural heritage artefacts**

### **Division 1**

## **Offences relating to archaeological artefacts and underwater cultural heritage artefacts**

#### **88 Definition for div 1**

In this division—

*interfere with* includes damage, destroy, disturb, expose or move.

#### **89 Requirement to give notice about discovery**

- (1) A person who discovers a thing the person knows or ought reasonably to know is an archaeological artefact or underwater cultural heritage artefact that is an important source of information about an aspect of Queensland's history must give the chief executive a notice under this section.

Maximum penalty—1,000 penalty units.

- (2) The notice must—
- (a) be in the approved form; and

- (b) be given to the chief executive as soon as practicable after the person discovers the thing; and
- (c) state where the thing was discovered; and
- (d) include a description or photographs of the thing.

## **90 Offence about interfering with archaeological artefact**

- (1) This section applies to an archaeological artefact for which a person has, under section 89, given the chief executive a notice.
- (2) A person who knows that the notice has been given must not, without the chief executive's written consent or unless the person has a reasonable excuse, interfere with the archaeological artefact until at least 20 business days after the giving of the notice.

Maximum penalty—1,000 penalty units.

## **91 Offence about interfering with underwater cultural heritage artefact**

A person must not, without the chief executive's written consent or unless the person has a reasonable excuse, interfere with an underwater cultural heritage artefact.

Maximum penalty—1,000 penalty units.

## **Division 2 Provisions about ownership of particular artefacts**

### **Subdivision 1 Preliminary**

#### **91A Definition for div 2**

In this division—

*artefact* means an archaeological artefact or underwater cultural heritage artefact.

## **Subdivision 2      Declaration of ownership**

### **92      Declaration about ownership of particular artefacts**

- (1) The chief executive may, by public notice, declare that an artefact that is in, or has been removed from, a Queensland heritage place is the property of the State if the chief executive is satisfied—
  - (a) the artefact is important to Queensland’s cultural heritage; and
  - (b) a declaration under this section is necessary to help conserve the cultural heritage significance of the artefact.
- (2) The notice must—
  - (a) include enough information to identify the artefact; and
  - (b) state that a person who suffers loss because of the exercise of the chief executive’s power under subsection (1) is entitled to apply for compensation for the loss; and
  - (c) state how the person may apply for the compensation.
- (3) As soon as practicable after the notice is published, the chief executive must give a copy of it to any person the chief executive reasonably considers is likely to suffer loss because of the exercise of the chief executive’s power under subsection (1).

## **Subdivision 3 Compensation**

### **93 Entitlement to compensation**

Subject to this division, a person who suffers loss because of the exercise of the chief executive's power under section 92 is entitled to be paid just and reasonable compensation for the loss.

### **94 Applying for compensation**

- (1) A person who suffers loss because of the exercise of a power under section 92 may apply to the chief executive for compensation for the loss.
- (2) The application must—
  - (a) be in writing; and
  - (b) be made within 20 business days after the notice is published; and
  - (c) state—
    - (i) details of the person's loss; and
    - (ii) the amount of compensation claimed and the grounds for the amount claimed.
- (3) The applicant also must give the chief executive any other relevant information reasonably required by the chief executive to decide the application.
- (4) Despite subsection (2)(b), the chief executive may accept a person's application for compensation made more than 20 business days after the notice is published if the chief executive is satisfied it would be reasonable in all the circumstances to accept the application.

### **95 Lapsing of application**

- (1) If an application for compensation is made under this division, the chief executive may make a requirement under

section 94(3) for information to decide the application by giving the applicant a notice stating—

- (a) the required information; and
  - (b) the time by which the information must be given to the chief executive; and
  - (c) that, if the information is not given to the chief executive by the stated time, the application will lapse.
- (2) The stated time must be reasonable and, in any case, at least 20 business days after the requirement is made.
  - (3) The chief executive may give the applicant a further notice extending or further extending the time if the chief executive is satisfied it would be reasonable in all the circumstances to give the extension.
  - (4) A notice may be given under subsection (3) even if the time to which it relates has lapsed.
  - (5) If the applicant does not comply with the requirement within the stated time, or any extension, the application lapses.

## 96 Deciding application

- (1) The chief executive must consider and decide an accepted application within 60 days after the last of the following to happen—
  - (a) the chief executive receives the application;
  - (b) the chief executive receives all necessary information to decide the application.
- (2) If the chief executive has not decided an accepted application within the period stated in subsection (1) for the application, the chief executive is taken to have refused to pay compensation.
- (3) In this section—

*accepted application* means an application made under section 94(2) or an application the chief executive accepts under section 94(4).

## **97 Notice about decision**

- (1) As soon as practicable after deciding the application, the chief executive must give the applicant a notice about the decision.
- (2) If the chief executive decides to pay compensation, the notice must—
  - (a) state details of the amount and how the amount was assessed; and
  - (b) if the amount is less than the amount claimed—be accompanied by a QCAT information notice.
- (3) If the chief executive decides not to pay compensation, the notice must be accompanied by a QCAT information notice for the decision.
- (4) In this section—

*QCAT information notice* means an information notice complying with the QCAT Act, section 157(2).

## **Subdivision 4 External reviews by QCAT**

### **98 External review of compensation decisions**

An applicant for the payment of compensation under this division who is dissatisfied with the following decisions of the chief executive may apply, as provided under the QCAT Act, to QCAT for a review of the decision—

- (a) a refusal to pay compensation;
- (b) a decision about the amount of compensation.

## Part 10 Protected areas

### Division 1 Declaration of, and entry to, protected areas

#### 103 Declaration of protected areas

A regulation may declare an area containing a place of cultural heritage significance to be a protected area.

#### 104 Offence to destroy protected area

- (1) A person must not enter or interfere with a protected area unless the person—
- (a) is acting under a permit to enter the protected area; or
  - (b) otherwise has a reasonable excuse.

Maximum penalty—

- (a) for an individual—1,700 penalty units;
- (b) for a corporation—17,000 penalty units.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 160A, to have also committed the offence.

- (2) For subsection (1), it is a reasonable excuse if the entering or interfering happens under a heritage agreement or an exemption certificate for the protected area.
- (3) In this section—
- interfere with* includes the following—
- (a) damage;
  - (b) destroy;
  - (c) excavate.



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**105 Applying for permit to enter a protected area**

- (1) A person may apply for a permit to enter a protected area.
- (2) The application must be—
  - (a) made to the chief executive in the approved form; and
  - (b) supported by enough information to enable the chief executive to decide the application; and
  - (c) supported by the written consent of the owner of the land to be entered within the protected area; and
  - (d) accompanied by the fee prescribed under a regulation.

**106 Additional information may be required**

The chief executive 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.

**107 Approving an application for a permit to enter a protected area**

- (1) If the chief executive is satisfied the application should be approved, the chief executive must—
  - (a) approve the application, with or without conditions; and
  - (b) within 10 business days after approving the application, give the applicant a permit to enter the protected area.
- (2) The permit applies for the period stated in it.
- (3) The conditions may, for example—
  - (a) require that operations after entry be supervised by a person with appropriate qualifications and experience stated in the condition; or

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- (b) require that the operations after entry be carried out as required by stated professional standards; or
  - (c) make provision for the way in which artefacts of possible cultural heritage significance uncovered in the course of the operations must be dealt with; or
  - (d) require the holder of the permit to pay stated fees, or fees calculated under a stated scale, for the evaluation, cataloguing and curation of artefacts uncovered during the operations; or
  - (e) as far as circumstances permit, require the artefacts to be kept and preserved in the Queensland Museum.
- (4) A person must not contravene a condition of a permit.  
Maximum penalty for subsection (4)—1,000 penalty units.

## **108 Refusing an application for a permit to enter a protected area**

- (1) If the chief executive is not satisfied the application should be approved, the chief executive must—
- (a) refuse the application; and
  - (b) within 10 business days after deciding the application should not be approved, give the applicant written notice of the refusal.
- (2) The chief executive may refuse the application if the chief executive is satisfied the applicant—
- (a) does not have the necessary expertise or experience to be given the permit; or
  - (b) does not have a sufficient reason to enter the area; or
  - (c) is not a suitable person to hold the permit.

*Example of unsuitability—*

the applicant has been convicted of an offence against this Act, another Act dealing with cultural heritage or a similar law of another State, or has held a similar permit that has been cancelled under this Act, another Act dealing with cultural heritage or a similar law of another State

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- (3) Subsection (2) does not limit the grounds on which the chief executive may refuse the application.

**109 Chief executive may cancel a permit to enter a protected area**

The chief executive may cancel a permit to enter a protected area on the following grounds—

- (a) the conditions of the protected area have changed;
- (b) it has become unsafe to enter or remain in the protected area;
- (c) the permit holder has not complied with a condition of the permit or a requirement of this Act;
- (d) the holder has been convicted of an offence against this Act;
- (e) the permit was granted because of a materially false or misleading representation or declaration made, either orally or in writing, by the holder.

**110 Procedure for cancelling a permit to enter a protected area**

- (1) If the chief executive is satisfied a permit to enter a protected area should be cancelled, the chief executive must give the permit holder a notice inviting the permit holder to show cause why the permit should not be cancelled.
- (2) The notice must state—
  - (a) the facts and circumstances forming the basis for the chief executive's belief that the permit should be cancelled; and
  - (b) that representations may be made about the proposed cancellation; and
  - (c) how the representations may be made; and
  - (d) where the representations may be made or sent; and

- (e) a day and time by which the representations must be made.
- (3) The day stated in the notice must be at least 20 business days after the notice is given.
- (4) If, after considering any submission about the proposed cancellation, the chief executive is still satisfied the permit should be cancelled, the chief executive must decide to cancel the permit.
- (5) The chief executive must give the permit holder written notice of the decision within 10 business days after the decision is made.
- (6) The cancellation takes effect on—
  - (a) if the applicant does not appeal against the decision—the day the period for appeals ends; or
  - (b) if the applicant appeals against the decision but withdraws the appeal—the day the appeal is withdrawn; or
  - (c) if the applicant appeals against the decision and the appeal is dismissed—the day the appeal is ended.

## **Division 2                      Appeals**

### **111      Appeals about permit to enter protected area**

- (1) This section applies if the chief executive—
  - (a) refuses a person's application for a permit to enter a protected area; or
  - (b) grants a person's application for a permit to enter a protected area, subject to conditions; or
  - (c) cancels a person's permit to enter a protected area.
- (2) The person may, within 20 business days after receiving the permit or the notice of the chief executive's refusal or

cancellation, appeal the chief executive's action to the Planning and Environment Court.

- (3) However, if the appeal is against the cancellation of a permit to enter a protected area, and the cancellation is on the ground that the person has been convicted of an offence against this Act, the appeal may be made within 20 business days after—
  - (a) the day the period for appeals against the conviction ends; or
  - (b) if an appeal is made against the conviction—the day the appeal is ended.
- (4) Subsection (3) applies only to the extent it provides a later time for making an appeal than subsection (2) provides.
- (5) The *Planning and Environment Court Act 2016*, part 5, division 1, with any changes the court considers appropriate, applies to the appeal as if the appeal were a Planning Act appeal under that Act.

## **Division 4                      Miscellaneous**

# **Part 11                              Provisions about places of cultural heritage significance in local government areas**

## **Division 1                      Identifying places of local cultural heritage significance**

### **112      Local government to identify places in planning scheme or local heritage register**

A local government must identify places in its local government area that are of cultural heritage significance for the area—

- (a) in its planning scheme; or

- (b) in a register (a *local heritage register*) kept by the local government.

## **Division 1A            Chief executive's recommendation about a place**

### **112A Chief executive may recommend place becomes a local heritage place**

- (1) This section applies if the chief executive is satisfied a place is of cultural heritage significance for a local government area.
- (2) The chief executive may, by notice given to the local government for the area, recommend the local government take the action mentioned in section 112 the local government considers appropriate to conserve the cultural heritage significance of the place.
- (3) The notice must include—
  - (a) enough information to identify the location and boundaries of the place; and
  - (b) a statement about the cultural heritage significance of the place; and
  - (c) information to support the statement.

### **112B Local government to act on chief executive's recommendation**

- (1) This section applies if—
  - (a) the chief executive gives a local government a notice about a place under section 112A(2); and
  - (b) the local government keeps a local heritage register.
- (2) The local government must propose to enter the place in the register.

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## **Division 2                    Local heritage registers**

### **113    Form and availability of local heritage register**

- (1) A local government may keep its local heritage register in the form, including electronic form, it considers appropriate.
- (2) A local government must ensure its local heritage register, or a copy of its local heritage register, is available for inspection during business hours, free of charge, at the local government's public office.

### **114    Content of register**

A local heritage register must include, for each place entered in the register under division 3—

- (a) enough information to identify the location and boundaries of the place; and
- (b) a statement about the cultural heritage significance of the place.

## **Division 3                    Entry of places in, and removal of places from, local heritage registers**

### **116    Local government to propose entry of place in, or removal of place from, local heritage register**

- (1) A local government may, on its own initiative, propose to enter a place in its local heritage register if—
  - (a) the place is in the local government's area; and
  - (b) the local government reasonably considers the place is a place of cultural heritage significance for its area.
- (3) A local government must propose to remove a place from its local heritage register if the local government is satisfied it is no longer a place of cultural heritage significance for its area.

## **117 Notice of proposal**

- (1) If a local government proposes to enter a place in, or remove a place from, its local heritage register, the local government must—
  - (a) give the owner of the place notice of the proposal; and
  - (b) within 10 business days after giving the notice under paragraph (a), publish the notice in a newspaper circulating generally in its area.
- (2) The notice must—
  - (a) include enough information to identify the place; and
  - (b) state the following—
    - (i) whether the place is under consideration for entry in, or removal from, the local government's local heritage register;
    - (ii) the reasons for the proposed entry or removal;
    - (iii) that a person or other entity may give the local government a written submission about the proposal;
    - (iv) where the submission may be given and the basis on which it may be given;
    - (v) that the submission must be given to the local government within 20 business days after the notice is published.
- (3) A submission under subsection (2) must be made on the basis that the place is or is not a place of cultural heritage significance for the local government's area.

## **118 Local government to consider submissions and other information**

Before deciding to enter a place in, or remove a place from, its local heritage register, a local government—

- (a) must have regard to—



- 
- (i) the submissions received under section 117 about the proposal to enter or remove the place; and
  - (ii) if the chief executive gave a notice to the local government under section 112A(2)—the information about the place included in the notice; and
- (b) may have regard to other information the local government considers relevant.

### **119 Local government resolution to enter place in, or remove place from, local heritage register**

- (1) A local government may, by resolution, decide to enter a place in its local heritage register if—
- (a) the place is in the local government’s area; and
  - (b) the local government is satisfied it is a place of cultural heritage significance for its area.
- (2) A local government may, by resolution, decide to remove a place from its local heritage register if the local government is satisfied the place is no longer a place of cultural heritage significance for its area.
- (3) A decision under subsection (1) or (2) must be made by the local government within 80 business days after the notice under section 117 is published for the place.

### **120 Notice of decision**

If a local government decides to enter a place in, or remove a place from, its local heritage register, the local government must, within 10 business days after making the decision, give notice of the decision and the reasons for it to—

- (a) the owner of the place; and
- (b) any other person or entity, if the person or entity gave the local government a submission under section 117 about the proposal to enter or remove the place.

## **Division 4                      Assessing development under Planning Act**

### **121      Particular matters for assessing development on a local heritage place on a local heritage register**

- (1) This section applies to development on a local heritage place on a local heritage register.
- (2) A regulation may prescribe—
  - (a) assessment benchmarks for the Planning Act for the assessment of the development under that Act, other than an assessment carried out by the planning chief executive; or
  - (b) for the Planning Act, the matters a referral agency under that Act other than the planning chief executive—
    - (i) must or may assess a development application for the development against; or
    - (ii) must or may assess a development application for the development having regard to.

## **Division 5                      Other matters**

### **122      Changing entries in register**

- (1) A local government may change an entry for a place in its local heritage register if the change—
  - (a) is the addition of an informative note to the entry; or
  - (b) corrects, updates or otherwise varies the information that identifies the location and boundaries of the place; or
  - (c) is another change to correct an error, or update information, in the entry.
- (2) However, the local government must not, without the written agreement of the owner of a place—

- 
- (a) change information that identifies a boundary for the place under subsection (1)(b), unless the change is a minor change; or
  - (b) change a statement mentioned in section 114(b) for the place under subsection (1)(c), unless the change is a minor change.
- (3) In this section—
- minor change* means a change that is only to correct a minor error or make another change that is not a change of substance.

### **123 Local heritage register may be adopted in planning scheme**

A local government's planning scheme may, under the *Statutory Instruments Act 1992*, section 23, apply, adopt or incorporate its local heritage register.

### **124 Provision about entitlement to claim compensation**

- (1) This section applies if a place is entered in a local government's local heritage register under division 3.
- (2) For the Planning Act, chapter 2, part 4, division 2, the entry of the place in the local heritage register is taken to be an adverse planning change to the local government's planning scheme.
- (3) An owner of the place at the time the change mentioned in subsection (2) happens is entitled to claim compensation under the Planning Act, section 31, in relation to the change.
- (4) For claiming compensation—
  - (a) the change mentioned in subsection (2) has effect as if the local government's planning scheme were amended to the extent of the change; and
  - (b) the local government's planning scheme that was in effect before the amendment mentioned in paragraph (a) happens is taken to be a superseded planning scheme under the Planning Act; and

- (c) the Planning Act, chapter 2, part 4, division 2, applies in relation to the claim with any necessary changes.
- (5) However, an owner is not entitled to claim compensation under the Planning Act, section 31 in relation to the change more than once.

## Part 12 Enforcement

### Division 1 Authorised persons

#### 125 Appointment and qualifications

- (1) The chief executive may, by instrument in writing, appoint a public service officer or public service employee as an authorised person.
- (2) The chief executive officer of a local government may, by instrument in writing, appoint a local government employee of the local government as an authorised person.
- (3) However, the administering executive may appoint a person as an authorised person only if the administering executive is satisfied the person is appropriately qualified for appointment.
- (4) In this section—
  - local government employee* means—
    - (a) a local government employee under the *Local Government Act 2009*; or
    - (b) a council employee under the *City of Brisbane Act 2010*.

#### 126 Functions and general powers of authorised persons

- (1) An authorised person appointed by the chief executive has the following functions—

- 
- (a) to inspect places, or artefacts in a place, for the purpose of deciding or recording the cultural heritage significance of the places or artefacts in the place;
  - (b) to conduct investigations and inspections to monitor and enforce compliance with—
    - (i) this Act; and
    - (ii) the Planning Act, so far as it relates to assessable development completely or partly for a Queensland heritage place.
- (2) An authorised person appointed by the chief executive officer of a local government has the following functions—
- (a) to inspect places, or artefacts in a place, in the local government's area for the purpose of deciding or recording the cultural heritage significance of the places or artefacts in the place;
  - (b) to conduct investigations and inspections to monitor and enforce compliance with—
    - (i) the local heritage provisions for the local government's area; and
    - (ii) the Planning Act, so far as it relates to assessable development completely or partly for a local heritage place in the local government's local heritage register.
- (3) For performing an authorised person's functions under this Act, an authorised person has the powers given under this Act.
- (4) An authorised person is subject to the directions of the administering executive in exercising the powers.
- (5) In this section—
- local heritage provision***, for a local government area, means a following provision of this Act to the extent it relates to a local heritage place in the area of the local government—
- (a) part 6, division 2, if the chief executive officer is the decision-maker for the local heritage place;

- (b) part 7;
- (c) part 8, if the local government is prescribed by regulation under section 83.

## 127 Appointment conditions and limit on powers

- (1) An authorised person holds office on any conditions stated in—
  - (a) the authorised person’s instrument of appointment; or
  - (b) a signed notice given to the authorised person; 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) Without limiting subsection (1) or (2), the instrument of appointment for an authorised person appointed by the chief executive officer of a local government must state the local heritage provisions for the local government’s area for which the authorised person is appointed.
- (4) In this section—

*local heritage provision*, for a local government area, see section 126(5).

*signed notice* means a notice signed by the administering executive.

## 128 Issue of identity card

- (1) The administering 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.

### **129 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 133(1)(b) or (2).

### **130 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 131 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.

### **131 Resignation**

- (1) An authorised person may resign by signed notice given to the administering 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.

### **132 Return of identity card**

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

Maximum penalty—

- (a) for an authorised person appointed by the chief executive—20 penalty units; or
- (b) for an authorised person appointed by the chief executive officer of a local government—10 penalty units.

## **Division 2 Powers of authorised persons**

### **Subdivision 1 Entry of places**

#### **133 Authorised person's power to enter places**

- (1) An authorised person may enter a place 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.

## **Subdivision 2 Procedure for entry**

### **134 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 133(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.

### **135 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.

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### 136 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 or of a development offence under the Planning 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 any authorised person or 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.

### 137 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.

### **138 Warrants—procedure before entry**

- (1) This section applies if an authorised person is intending to enter a place under a warrant issued under this part.
- (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 137(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 authorised persons on entry to places**

#### **139      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.

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## 140 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 Power to seize evidence

### 141 Seizing evidence at a place that may be entered without consent or warrant

- (1) An authorised person who enters a place under this division without the consent of the occupier and without a warrant,

may seize a thing at the place only if the authorised person reasonably believes the thing is evidence of an offence against this Act.

- (2) This section does not apply to an authorised person appointed by the chief executive officer of a local government.

**142 Seizing evidence at a place that may only be entered with consent or warrant**

- (1) Subsections (2) to (5) apply if—
- (a) an authorised person appointed by the chief executive is authorised to enter a place under this division only with the consent of an occupier of the place or a warrant; and
  - (b) the authorised person enters the place after obtaining the necessary consent or under a warrant.
- (2) If the authorised person enters the place with the occupier's consent, the authorised person may seize a thing at the place only if—
- (a) the authorised person reasonably believes the thing is evidence of an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.
- (3) If the authorised person enters the place with a warrant, the authorised person may seize the evidence for which the warrant was issued.
- (4) The authorised person also may seize anything else at the place if the authorised person reasonably believes—
- (a) the thing is evidence of an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing being—
    - (i) hidden, lost or destroyed; or
    - (ii) used to continue, or repeat, the offence.



- (5) Also, the authorised person may seize a thing at the place if the authorised person reasonably believes it has just been used in committing an offence against this Act.
- (6) If an authorised person appointed by the chief executive officer of a local government is authorised to enter a place under this division with a warrant, the authorised person may seize the evidence for which the warrant was issued.

## Subdivision 5 Dealing with seized things

### 143 Securing seized things

Having seized a thing, an authorised person may—

- (a) move the thing from the place where it was seized (the *place of seizure*); or
- (b) leave the thing at the place of seizure, but take reasonable action to restrict access to it.

*Examples of restricting access to a thing—*

- sealing a thing and marking it to show access to it is restricted
- sealing the entrance to a room where the thing is situated and marking it to show access to it is restricted

### 144 Tampering with seized things

- (1) If an authorised person restricts access to a seized thing, a person must not tamper with the thing, or something restricting access to the thing, without an authorised person's approval.

Maximum penalty—100 penalty units.

- (2) In this section—

*tamper* includes attempt to tamper.

### **145 Powers to support seizure**

- (1) To enable a thing to be seized, an authorised person may require the person in control of it—
  - (a) to take it to a stated reasonable place by a stated reasonable time; and
  - (b) if necessary, to remain in control of it at the stated place for a reasonable time.
- (2) The requirement—
  - (a) must be made by notice; or
  - (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice as soon as practicable.
- (3) A further requirement may be made under this section about the same thing if it is necessary and reasonable to make the further requirement.
- (4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.
- (5) Subject to section 153, the cost of complying with subsection (4) must be borne by the person.

### **146 Authorised person may require thing's return**

- (1) If an authorised person has required a person to take a thing to a stated place by a stated reasonable time under section 145, the authorised person may require the person to return the thing to the place from which it was taken.
- (2) A person of whom a requirement is made under subsection (1) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.
- (3) Subject to section 153, the cost of complying with subsection (2) must be borne by the person.

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### **147 Receipts for seized things**

- (1) As soon as practicable after an authorised person seizes a thing, the authorised person must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the authorised person must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing's nature, condition and value.

### **148 Forfeiture of seized things**

- (1) A seized thing is forfeited to a relevant entity if the authorised person who seized the thing—
  - (a) can not find its owner, after making reasonable inquiries; or
  - (b) can not return it to its owner, after making reasonable efforts.
- (2) In applying subsection (1)—
  - (a) subsection (1)(a) does not require the authorised person to make inquiries if it would be unreasonable to make inquiries to find the owner; and
  - (b) subsection (1)(b) does not require the authorised person to make efforts if it would be unreasonable to make efforts to return the thing to its owner.
- (3) Regard must be had to a thing's nature, condition and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and

- (b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.
- (4) On the forfeiture of the thing to the relevant entity—
  - (a) the thing becomes the relevant entity’s property; and
  - (b) it must be dealt with by the administrator for the relevant entity as the administrator considers appropriate.
- (5) Without limiting subsection (4), the administrator for the relevant entity may destroy or dispose of the thing.
- (6) Despite subsection (5), the administrator for the relevant entity must not deal with the thing in a way that could prejudice the outcome of an appeal, relevant to the thing, of which the administrator is aware.
- (7) The *administrator* for a relevant entity is—
  - (a) if the relevant entity is the State—the chief executive; or
  - (b) if the relevant entity is a local government—the chief executive officer of the local government.
- (8) The *relevant entity* for a seized thing is—
  - (a) if the thing was seized by an authorised person appointed by the chief executive—the State; or
  - (b) if the thing was seized by an authorised person appointed by the chief executive officer of a local government—the local government.

## 149 Return of seized things

- (1) If a thing has been seized but not forfeited under this division, the authorised person must return it to its owner—
  - (a) at the end of 6 months; or
  - (b) if a proceeding for an offence involving the thing is started within 6 months, at the end of the proceeding and any appeal from the proceeding.

- (2) Despite subsection (1), unless the thing has been forfeited, the authorised person must immediately return a thing seized as evidence to its owner if the authorised person stops being satisfied its continued retention as evidence is necessary.

## **150 Access to seized things**

- (1) Until a thing that has been seized is forfeited or returned under this division, an authorised person must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

## **Subdivision 6 Miscellaneous provisions**

### **151 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 or by the chief executive officer of a local government 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 appointed by the chief executive may exercise a power under this division using the force that is reasonable in the circumstances.
  - (4) In addition, an authorised person appointed by the chief executive officer of a local government must not use force to enter a place under this division, other than when the place is entered under a warrant that authorises that use of force.

## 152 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.

## 153 Compensation

- (1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an authorised person appointed by the chief executive.
- (2) A person may claim compensation from a local government if the person incurs loss because of the exercise, or purported exercise, of a power by or for an authorised person appointed by the chief executive officer of the local government.
- (3) The compensation may be claimed and ordered to be paid in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an offence against this Act brought against the person claiming the amount.
- (4) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (5) 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 3                      Stop orders

### 154AA Definition for div 3

In this division—

*current entry application*, for a place, means an application—

- (a) to have the place entered in the Queensland heritage register as a State heritage place; and
- (b) in relation to which the council has not made a decision, and is not taken to have made a decision, under section 53 or 55.

### 154      Minister may make stop order

- (1) The Minister may make an order (a *stop order*) requiring a person to stop stated work or an activity, or prohibiting a person from starting stated work or an activity, at a place that is not a State heritage place.
- (2) The Minister may make the order—
  - (a) if the Minister is satisfied on reasonable grounds that—
    - (i) the place is likely to satisfy 1 or more of the cultural heritage criteria; and

- (ii) the work or activity would destroy or substantially reduce the cultural heritage significance of the place; and
  - (b) whether or not there is a current entry application for the place.
- (3) If the Minister makes a stop order in relation to a place for which there is not a current entry application, the chief executive must make an application to enter the place in the register under section 36.
- (4) The Minister may make an order (also a *stop order*) requiring a person to stop stated work or an activity, or prohibiting a person from starting stated work or an activity, at a State heritage place if the Minister is satisfied on reasonable grounds that—
  - (a) the work or activity is not authorised by a development approval; and
  - (b) the work or activity would destroy or substantially reduce the cultural heritage significance of the place.
- (5) A stop order must be served personally or by affixing it in a prominent position in the place.
- (6) However, the Minister must not make a stop order in relation to an excluded place in the period mentioned in section 37 that an application can not be made to have the place entered in the register.

### **154A Form and content of stop order**

A stop order in relation to a place must—

- (a) include enough information to identify the place; and
- (b) state the following—
  - (i) the work or activity to which the order relates;
  - (ii) the name of the owner of the place (if known);
  - (iii) the reasons for making the order;
  - (iv) when the order takes effect;



- (v) if there is a current entry application or application by the chief executive mentioned in section 154(3) for the place—that the order ends on the date stated in the notice, or the day the council makes (or is taken to make) a decision in relation to the application, whichever happens first;
- (vi) if the place is a State heritage place—that the order ends on the date stated in the notice.

### **154B Duration of stop order**

- (1) A stop order takes effect when it is served.
- (2) A stop order in relation to a place for which there is a current entry application or application by the chief executive mentioned in section 154(3) ends on the earlier of the following—
  - (a) the day, not more than 60 business days after the day the order is served, stated in the order;
  - (b) the day the council makes a decision, or is taken to have made a decision, under section 53 or 55 in relation to the application.
- (3) A stop order in relation to a State heritage place ends on the day, not more than 60 business days after the day the order is served, stated in the order.

### **155 Contravention of stop order**

A person must not contravene a stop order.

Maximum penalty—17,000 penalty units.

*Note—*

If a corporation commits an offence against this section, an executive officer of the corporation may commit an offence against section 160.

## **Division 4                      General offences**

### **156      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’.

### **157      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’.

### **158      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.

### **159 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.

### **160 Liability of executive officer—offence committed by corporation against s 155**

- (1) An executive officer of a corporation commits an offence if—
  - (a) the corporation commits an offence against section 155; and

- (b) the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting the offence.

Maximum penalty—the penalty for a contravention of section 155 by an individual.

- (2) In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps for subsection (1)(b), a court must have regard to—
  - (a) whether the officer knew, or ought reasonably to have known, of the corporation’s conduct constituting the offence against section 155; and
  - (b) whether the officer was in a position to influence the corporation’s conduct in relation to the offence against section 155; and
  - (c) any other relevant matter.
- (3) The executive officer may be proceeded against for, and convicted of, an offence against subsection (1) whether or not the corporation has been proceeded against for, or convicted of, the offence against section 155.
- (4) This section does not affect—
  - (a) the liability of the corporation for the offence against section 155; or
  - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against section 155.

### **160A Executive officer may be taken to have committed offence**

- (1) If a corporation commits an offence against a deemed executive liability provision, each executive officer of the corporation is taken to have also committed the offence if—
  - (a) the officer authorised or permitted the corporation’s conduct constituting the offence; or

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- (b) the officer was, directly or indirectly, knowingly concerned in the corporation's conduct.
- (2) The executive officer may be proceeded against for, and convicted of, the offence against the deemed executive liability provision whether or not the corporation has been proceeded against for, or convicted of, the offence.
- (3) This section does not affect either of the following—
- (a) the liability of the corporation for the offence against the deemed executive liability provision;
  - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against the deemed executive liability provision.
- (4) In this section—
- deemed executive liability provision* means any of the following provisions—
- section 84(6)
  - section 104(1)
  - section 164B(4)
  - section 164C(8).

## Part 13 Appeals to Planning and Environment Court against particular decisions

### 161 Who may appeal

- (1) This section applies to the following persons—
- (a) the owner of a place who is given, or is entitled to be given, an information notice under section 54(3) about a decision of the council;

- (b) a person who is given, or is entitled to be given, an information notice under section 56(2) about a decision of the council.
- (2) The person may appeal to the Planning and Environment Court against the decision.
- (3) To remove any doubt, it is declared that—
  - (a) for a decision on a heritage recommendation for an application to enter a place in the Queensland heritage register as a part of a State heritage place, the person may appeal only about the decision relating to the part; and
  - (b) for a decision on a heritage recommendation for an application to remove part of a State heritage place from the Queensland heritage register, the person may appeal only about the decision relating to the part.

## **162 Grounds for appeal**

An appeal by a person mentioned in section 161(1)(a) or (b) may only be made on the ground that the place the subject of the appeal does or does not satisfy at least 1 of the cultural heritage criteria.

## **163 Starting appeal**

An appeal must be started within 20 business days after—

- (a) if the person has been given an information notice about the decision—the day the person is given the notice; or
- (b) if paragraph (a) does not apply—the day the person otherwise becomes aware of the decision.

## **164 Court process for appeal**

The *Planning and Environment Court Act 2016*, part 5, division 1, with any changes the Planning and Environment Court considers appropriate, applies to an appeal under this

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part as if the appeal were a Planning Act appeal under that Act.

## **Part 13A Evidence and particular court orders**

### **164A Evidence**

- (1) In a proceeding for an offence against this Act, a certificate purporting to be signed by the Minister stating any of the following matters is evidence of the matter—
  - (a) a place or thing is in Queensland waters;
  - (b) a place is in a stated protected area.
- (2) In a proceeding for an offence against this Act, a certificate purporting to be signed by the chief executive or the chief executive officer of a local government stating any of the following matters is evidence of the matter—
  - (a) a stated document is—
    - (i) a copy of a part of, or an extract from, the Queensland heritage register or the local government's local heritage register; or
    - (ii) an order, decision or requirement, or a copy of an order, decision or requirement, given or made under this Act; or
    - (iii) a notice, or a copy of a notice, given under this Act; or
    - (iv) a record or document, or a copy of a record or document, kept under this Act;
  - (b) on a stated day, a stated person was given a stated notice, order or requirement under this Act.

### **164B Restoration orders**

- (1) If a person is convicted of an offence, the court may order the person to make good, to the satisfaction of the Minister, any damage caused through the commission of the offence.
- (2) The order must state the period within which the person must comply with the order.
- (3) The order is in addition to the imposition of a penalty and any other order under this Act.
- (4) A person must not fail to comply with an order under this section.

Maximum penalty—17,000 penalty units.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 160A, to have also committed the offence.

- (5) 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.
- (6) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.
- (7) In this section—

*offence* means—

- (a) an offence against this Act; or
- (b) an offence against the Planning Act, section 163(1) or 164 in relation to development on a Queensland heritage place.

### **164C Non-development orders**

- (1) This section applies if the owner of a Queensland heritage place is convicted of an offence involving the destruction of, or damage to, the place.



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- (2) The court may, on application by the prosecution, make an order prohibiting the carrying out of development on the place for the period of not more than 10 years stated in the order.
  - (3) The order is in addition to the imposition of a penalty and any other order under this Act.
  - (4) The registrar of the court must give a copy of an order under this section to the registrar of titles.
  - (5) The registrar of titles must keep records that show the land is subject to the order.
  - (6) The registrar of titles must keep the records in a way that a search of the freehold land register will show the land is subject to the order.
  - (7) An order under this section—
    - (a) attaches to the land; and
    - (b) binds the owner, the owner's successors in title and any occupier of the land.
  - (8) A person must not contravene an order under this section.

Maximum penalty—17,000 penalty units.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 160A, to have also committed the offence.

- (9) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.
- (10) In this section—

***offence*** means—

  - (a) an offence against this Act; or
  - (b) an offence against the Planning Act, section 163(1) or 164 in relation to development on a Queensland heritage place.

## 164D Education and public benefit orders

- (1) If a person is convicted of an offence, the court may, on application by the prosecution, make either or both of the following orders against the person—
  - (a) an education order;
  - (b) a public benefit order.
- (2) The order must state the period within which the person must comply with the order.
- (3) The order is in addition to the imposition of a penalty and any other order under this Act.
- (4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.
- (5) In this section—

***education order*** means an order requiring the person against whom it is made to conduct a stated advertising or education campaign to promote compliance with this Act or the Planning Act, section 163(1) or 164.

***offence*** means—

- (a) an offence against the following—
  - section 76
  - section 84(6)
  - section 89
  - section 90
  - section 91
  - section 104
  - section 155; or
- (b) an offence against the Planning Act, section 163(1) or 164 in relation to development on a Queensland heritage place.

***public benefit order*** means an order requiring the person against whom it is made to carry out a stated activity—

- (a) to restore or enhance a Queensland heritage place; or
- (b) for the public benefit.

## **Part 14                      Miscellaneous**

### **165      Assistance by local governments**

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

### **166      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.

### **168      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.

### **171      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.
- (3) This section does not apply to a person who is a prescribed person under the *Public Sector Act 2022*, section 267.

*Note—*

For protection from civil liability in relation to prescribed persons under the *Public Sector Act 2022*, section 267, see the *Public Sector Act 2022*, section 269.

## **172 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.

## **173 Chief executive may make guidelines**

- (1) The chief executive may, after consultation with the council, make guidelines to provide guidance to persons about any of the following—
  - (a) making an application under part 4;
  - (b) the administration of part 6, division 1, for the carrying out of development on a Queensland heritage place;
  - (c) the giving of an exemption certificate under part 6, division 2 by the chief executive;
  - (d) carrying out an archaeological investigation of a place;
  - (e) another matter relating to the administration of this Act.
- (2) The chief executive may, after consultation with the council and local governments, make guidelines to provide guidance to local governments about identifying or managing local heritage places.
- (3) If the chief executive makes a guideline under this section, the chief executive must publish the guideline, as in effect from time to time, on the department's website.

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## 174 Recording of particular matters

- (1) If—
  - (a) a place is entered in the Queensland heritage register as a State heritage place; or
  - (b) the chief executive, under section 80, enters into a heritage agreement that attaches to land; or
  - (c) the chief executive, under section 80(4), changes a heritage agreement to state that it attaches to the land the subject of the agreement;the chief executive must give the registrar notice of the entry or heritage agreement.
- (2) The notice must include particulars of the land the subject of the entry or heritage agreement.
- (3) The registrar must keep a record of the entry or heritage agreement.
- (4) The registrar must keep the record in a way that a search of the register kept by the registrar under any Act relating to title to land will show the land—
  - (a) is a place entered in the Queensland heritage register as a State heritage place; or
  - (b) is the subject of a heritage agreement.
- (5) If—
  - (a) a State heritage place is removed from the Queensland heritage register; or
  - (b) a heritage agreement that attaches to land ends;the chief executive must give the registrar notice of the removal or ending.
- (6) The registrar must amend the records kept under this section to show the removal or ending.
- (7) While a heritage agreement has effect for a place and is recorded by the registrar under this section, the agreement is binding on—

- (a) each person who is from time to time the owner of the place, whether or not the person signed the agreement or agreed to any change to the agreement; and
  - (b) to the extent the agreement affects the use of the place, the occupier of the place.
- (8) In this section—
- registrar* means the registrar of titles or another person responsible for keeping a register for dealings in land.

### **175 Delegation by Minister or chief executive**

- (1) The Minister may delegate the Minister's functions under this Act to—
  - (a) the chairperson of the council; or
  - (b) a local government; or
  - (c) an appropriately qualified public service officer.
- (2) The chief executive may delegate the chief executive's functions under this Act, other than a function under section 84 or 92(1), to an appropriately qualified public service officer.
- (3) Also, the chief executive may delegate a function of the chief executive under part 6, division 2, other than a function under section 75, to an appropriately qualified person.
- (4) In this section—

*function* includes power.

### **175A Chief executive officer of local government may not delegate power under pt 8**

The chief executive officer of a local government may not delegate the officer's powers under part 8.

### **176 Approval of forms**

The chief executive may approve forms for use under this Act.

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**178 Regulation-making power**

The Governor in Council may make regulations under this Act.

**Part 15 Transitional provisions**

**Division 1 Provisions for Queensland Heritage and Other Legislation Amendment Act 2003**

**179 Assessing and deciding applications made before 28 November 2003**

- (1) Subsection (2) applies for the following—
- (a) an application lodged under section 34 of the previous Act and not decided before 28 November 2003;
  - (b) an application for a review made under section 36 of the previous Act and not decided before 28 November 2003;
  - (c) an appeal to the Planning and Environment Court made under section 36(6) of the previous Act and not decided before 28 November 2003.
- (2) An application or appeal mentioned in subsection (1) must be dealt with under the previous Act.

**180 Compliance with approval given under pt 5 of previous Act**

- (1) Subsection (2) applies for an approval given under part 5 of the previous Act.
- (2) A person must comply with the approval, and any conditions of the approval, as required under the previous Act.

## **Division 2**                      **Provisions for Queensland Heritage and Other Legislation Amendment Act 2007**

### **181**      **Definitions for div 2**

In this division—

*assessor* means a person appointed as an assessor under section 38 of the pre-amended Act.

*commencement* means the day on which the provision in which the term is used commences.

*post-amended Act* means this Act as in force after the commencement.

*pre-amended Act* means this Act as in force before the commencement.

*register* means the heritage register under the pre-amended Act.

### **182**      **Application under s 32**

- (1) This section applies to an application that—
  - (a) was made under section 32(1) of the pre-amended Act; and
  - (b) on the commencement, had not been dealt with by the council under the section.
- (2) The council must deal, or continue to deal, with the application under section 32(1) of the pre-amended Act as if the section had not been amended under the *Queensland Heritage and Other Legislation Amendment Act 2007*.



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**183 Place permanently entered in register taken to be State heritage place**

- (1) This section applies to a place that, immediately before the commencement, was entered in the register on a permanent basis.
- (2) On the commencement, the place is taken to be a State heritage place under the post-amended Act.
- (3) The chief executive must ensure a record of the place is included in the Queensland heritage register as soon as practicable after the commencement.

**184 Dealing with particular application for entry of place in, or removal of place from, register**

- (1) This section applies to an application made under section 35 or 36 of the pre-amended Act to enter a place in, or remove a place from, the register if, immediately before the commencement—
  - (a) for an application to enter the place in the register—the place was under consideration for entry, but was not provisionally entered, in the register; or
  - (b) for an application to remove the place from the register—the place—
    - (i) was entered in the register on a permanent basis; and
    - (ii) the application had not been decided; and
    - (iii) the council had not given any notices as required under section 36(4) of the pre-amended Act in relation to the application.
- (2) The application is taken to be an application to enter the place in the Queensland heritage register as a State heritage place, or to remove the place from the Queensland heritage register, made to the chief executive under section 36 of the post-amended Act.

- (3) For dealing with the application under the post-amended Act, the application is taken to have been received by the chief executive on the commencement.

**185 Dealing with particular places under consideration for entry in, or removal from, register on council's own initiative**

- (1) This section applies to a place that, immediately before the commencement, was under consideration on the council's own initiative for entry in or removal from the register if—
- (a) for a place under consideration for entry in the register—the place has not been provisionally entered in the register; or
  - (b) for a place under consideration for removal from the register—the council has not given any notices as required under section 36(4) of the pre-amended Act in relation to the place.
- (2) On the commencement, the council's consideration of the place for entry in or removal from the register under the pre-amended Act is taken to end.
- (3) Subsection (2) does not limit a person's or other entity's right to apply, under the post-amended Act—
- (a) for entry of the place in the Queensland heritage register as a State heritage place; or
  - (b) for removal of the place from the Queensland heritage register.

**186 Continuing process for dealing with objection under pre-amended Act**

- (1) This section applies if—
- (a) on the commencement, the council is considering—
    - (i) whether a place that is provisionally entered in the register should be permanently entered in the register; or

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- (ii) whether a place that is permanently entered in the register should be removed from the register; and
    - (b) in relation to the proposal to enter the place in or remove the place from the register, an objection has been made under section 37 of the pre-amended Act.
  - (2) If, on the commencement, the council has not referred the objection to an assessor—
    - (a) the council must, under section 39 of the pre-amended Act, refer the objection to an assessor; and
    - (b) the assessor must, under section 40 of the pre-amended Act, enquire into and report to the council on the objection.
  - (3) If, on the commencement, the council has referred the objection to an assessor, the assessor may, under section 40 of the pre-amended Act, enquire into, or continue to enquire into, and report to the council on the objection.
  - (4) For dealing with an objection mentioned in this section—
    - (a) there is to continue to be a panel of expert assessors as provided for under section 38 of the pre-amended Act; and
    - (b) the Minister may, under that section, appoint assessors to the panel; and
    - (c) sections 38, 39 and 40(1) to (3) of the pre-amended Act continue to apply in relation to the panel and the assessors as if the *Queensland Heritage and Other Legislation Amendment Act 2007*, section 17, had not commenced.

## **187 Dealing with assessor's report on objection under pre-amended Act**

- (1) This section applies if, after the commencement and under section 40(3) of the pre-amended Act, an assessor gives the council a report on an objection mentioned in section 186 about a proposal—

- (a) to enter a place in the register on a permanent basis; or
  - (b) to remove a place from the register.
- (2) The council must, within 20 business days after receiving the assessor's report, consider the report and decide whether to proceed with the proposal.
- (3) For a proposal to enter a place in the register on a permanent basis, the council may decide—
- (a) to enter the place, as originally proposed, in the Queensland heritage register as a State heritage place; or
  - (b) to enter the place, as varied from the original proposal, in the Queensland heritage register as a State heritage place; or
  - (c) not to enter the place in the Queensland heritage register.
- (4) For a proposal to remove a place from the register, the council may decide—
- (a) to remove the place from the Queensland heritage register; or
  - (b) to vary the entry of the place in the Queensland heritage register; or
  - (c) to leave the place in the Queensland heritage register.
- (5) Immediately after making a decision mentioned in subsection (3) or (4), the council must advise the chief executive of the decision, the reasons for the decision and the day it was made.
- (6) Within 10 business days after receiving the advice, the chief executive must—
- (a) give public notice of the decision and the day it was made; and
  - (b) give notice of the decision and the reasons for it to—
    - (i) the owner of the place; and

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- (ii) if the owner is not the local government for the area in which the place is situated—the local government.
- (7) If the decision is a decision mentioned in subsection (3)(a) or (b), or (4)(a) or (b), the notice given under subsection (6)(b) to the owner of the place must be accompanied by an information notice about the decision.
  - (8) The owner of a place who is given, or is entitled to be given, an information notice under subsection (7) for a decision may appeal against the decision under part 13 as if the owner were a person mentioned in section 161(1)(a).
  - (9) The chief executive must ensure the entry of a place in, removal of a place from, or variation of an entry in, the Queensland heritage register is recorded in the register as soon as practicable after receiving the council's advice under subsection (5).

## **188 Continuing appointment of assessors**

- (1) This section applies to a person who, immediately before the commencement, was an assessor.
- (2) Despite the repeal of section 38 of the pre-amended Act, the person continues as an assessor—
  - (a) under section 38 of the pre-amended Act for the purposes of inquiring into, and reporting on, objections mentioned in section 186; and
  - (b) on the terms and conditions decided by the Minister.
- (3) Subsection (2) applies to the person until 1 year after the commencement unless the person sooner stops being an assessor.

## **189 Appeals under pre-amended Act**

- (1) Subsection (2) applies if, before the commencement—

- (a) a person has, under section 41 of the pre-amended Act, appealed to the Planning and Environment Court against a decision of the council; and
  - (b) the appeal has not been decided.
- (2) The Planning and Environment Court may hear, or continue to hear, and decide the appeal.
- (3) Subsection (4) applies if—
- (a) immediately before the commencement a person could have appealed to the Planning and Environment Court under section 41 of the pre-amended Act against a decision of the council; and
  - (b) the person has not appealed before the commencement.
- (4) The person may appeal, and the Planning and Environment Court may hear and decide the appeal.
- (5) For subsections (2) and (4), section 41(5) to (7) of the pre-amended Act applies as if the *Queensland Heritage and Other Legislation Amendment Act 2007*, section 17, had not commenced.

## **190 Dealing with particular development applications under repealed Integrated Planning Act 1997**

- (1) This section applies to a development application under the repealed *Integrated Planning Act 1997* if, immediately before the commencement—
- (a) the council is the assessment manager or a referral agency under that Act for the application; and
  - (b) the council has not given the council's decision or referral agency's response under that Act for the application.
- (2) On the commencement, the chief executive is taken to be the assessment manager or referral agency under the repealed *Integrated Planning Act 1997* for the development application.

- (3) The chief executive must deal with the application under section 68 of the post-amended Act.

## **191 Application under s 46**

- (1) This section applies to an application for an exemption certificate made under section 46 of the pre-amended Act and not decided before the commencement.
- (2) The application is taken to have been made to the chief executive under section 72 of the post-amended Act.
- (3) The chief executive must deal with the application under the post-amended Act.
- (4) For sections 73(4) and 74(1) of the post-amended Act, the application is taken to have been received by the chief executive on the commencement.

## **192 Continuing exemption certificates**

- (1) This section applies to an exemption certificate that—
  - (a) is in force immediately before the commencement; and
  - (b) was issued for development mentioned in section 46(5)(a), (b), (c), (e) or (f) of the pre-amended Act.
- (2) The exemption certificate—
  - (a) continues in force; and
  - (b) is taken to be an exemption certificate given under part 5, division 2 of the post-amended Act; and
  - (c) if the exemption certificate was issued for development mentioned in section 46(5)(a), (b), (c) or (f) of the pre-amended Act—the development is taken to be development that will not have a detrimental impact on the cultural heritage significance of the place to which it relates.

### **193 Provision about particular heritage agreements**

- (1) This section applies to a heritage agreement that—
  - (a) was entered into under the pre-amended Act; and
  - (b) is in force on the commencement.
- (2) A record kept by the registrar of titles, under section 52(2) of the pre-amended Act, of a notification about the heritage agreement—
  - (a) must be kept in a way mentioned in section 174(4); and
  - (b) for the purposes of section 174(5) to (7)—is taken to be a record of the agreement under that section.

### **194 Places of cultural heritage significance for local government areas**

- (1) This section applies if, on the commencement, a place is identified in a local government's local planning instrument as a place of cultural heritage significance for the local government's area.
- (2) On the commencement, the place is taken to be a local heritage place for the local government.
- (3) The local government must ensure that, in relation to the place, the information mentioned in section 114 is included in its local heritage register.
- (4) The local government must act under subsection (3) within 2 years after the commencement.
- (5) Section 124 does not apply in relation to the entry of a place on a local government's local heritage register under this section.
- (6) In this section—

*local government* does not include a local government prescribed for section 112 under a regulation.

*local planning instrument* see the repealed *Integrated Planning Act 1997*, schedule 10.



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## Division 3                      Transitional provision for Environmental Protection and Other Legislation Amendment Act 2011

### 195      References to registered place

(1) In an Act or document, a reference to a registered place under the unamended Act is taken to be a reference to a Queensland heritage place under this Act.

(2) In this section—

*unamended Act* means this Act as in force from time to time before the commencement of this section.

## Division 4                      Transitional provisions for Queensland Heritage and Other Legislation Amendment Act 2014

### 196      Definitions for div 4

In this division—

*amending Act* means the *Queensland Heritage and Other Legislation Amendment Act 2014*.

*pre-amended Act* means this Act as in force immediately before the commencement.

### 197      Archaeological place taken to be State heritage place etc.

(1) Subsection (2) applies to a place if, immediately before the commencement—

(a) the place is an archaeological place under the pre-amended Act; and

(b) the entry in the Queensland heritage register for the place includes a statement mentioned in the pre-amended Act, section 31(3)(f) (the *original statement*).

- (2) The place is taken to be a State heritage place.
- (3) As soon as practicable after the commencement, the chief executive must—
  - (a) enter the place in the Queensland heritage register as a State heritage place; and
  - (b) include in the entry for the place the original statement as the statement mentioned in section 31(3)(e).
- (4) However, the place is taken to have been entered in the Queensland heritage register as a State heritage place on the day it was entered in the register as an archaeological place.
- (5) This section applies in relation to the place despite section 34.

**198 Local governments prescribed under the pre-amended Act, s 112**

- (1) This section applies to a local government that, immediately before the commencement, was prescribed by regulation for the pre-amended Act, section 112.
- (2) The requirement under section 112(a) for the local government to identify places of cultural heritage significance in its planning scheme does not apply to the local government until the earlier of the following happens—
  - (a) the local government amends its planning scheme under the Planning Act;
  - (b) the local government reviews its planning scheme under the Planning Act;
  - (c) the local government makes a new planning scheme under the Planning Act.

**199 Non-application of particular provisions to local governments**

- (1) This section applies to a local government if—
  - (a) because of section 198 the requirement under section 112(a) for the local government to identify

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- places of cultural heritage significance in its planning scheme does not apply to the local government; or
- (b) the local government identifies, under section 112(a), places of cultural heritage significance in its planning scheme.
- (2) Section 112B and part 11, divisions 2 to 5 do not apply in relation to the local government.

## **Division 5                      Transitional provisions for Planning (Consequential) and Other Legislation Amendment Act 2016**

### **200      Definitions for division**

In this division—

*amending Act* means the *Planning (Consequential) and Other Legislation Amendment Act 2016*.

*former*, in relation to a provision, means the provision as in force immediately before the provision was amended or repealed under the amending Act.

*repealed Planning Act* means the repealed *Sustainable Planning Act 2009*.

### **201      Existing particular development applications**

- (1) Subsection (2) applies to an existing application for a development approval mentioned in former section 59(3)(b).
- (2) Former section 59 continues to apply in relation to the application as if the amending Act had not been enacted.
- (3) Subsection (4) applies to an existing development application mentioned in former section 68(1).
- (4) Former section 68 continues to apply in relation to the application as if the amending Act had not been enacted.

- (5) Subsection (6) applies to an existing development application mentioned in former section 69(1).
- (6) Former section 69 continues to apply in relation to the application as if the amending Act had not been enacted.
- (7) Subsection (8) applies to an existing development application mentioned in former section 70.
- (8) Former section 70 continues to apply in relation to the application as if the amending Act had not been enacted.
- (9) In this section—  
*existing application for a development approval* or *existing development application* means a development application made under the repealed Planning Act, to which the Planning Act, section 288 applies.

## **202 Existing appeals**

- (1) This section applies if—
  - (a) a person started an appeal to the Planning and Environment Court under former section 111 or former part 13 about a matter; and
  - (b) the appeal had not been decided before the commencement.
- (2) The Planning and Environment Court must hear, or continue to hear, and decide the appeal under former section 111 or former part 13 as if the amending Act had not been enacted and the repealed Planning Act had not been repealed.

## **203 Entries in local government's local heritage register made before commencement**

- (1) This section applies if a place was entered in a local government's local heritage register before the commencement.
- (2) Former section 124 and the repealed Planning Act continue to apply in relation to the entry as if the amending Act had not

been enacted and the repealed Planning Act had not been repealed.

- (3) If a person claims, or claimed, compensation under the repealed Planning Act in relation to the entry, a claim for compensation can not be made in relation to the entry under the Planning Act.

#### **204 Court's power to make particular restoration orders, and their enforcement**

- (1) This section applies if, before or after the commencement, a person is convicted of an offence against the repealed Planning Act, section 578(1) or 580 in relation to development on a Queensland heritage place.
- (2) Former section 164B applies or continues to apply in relation to the offence as if the amending Act had not been enacted.

#### **205 Court's power to make particular non-development orders, and their enforcement**

- (1) This section applies if, before or after the commencement—
  - (a) the owner of a Queensland heritage place is convicted of an offence against the repealed Planning Act, section 578(1) or 580; and
  - (b) the offence involves the destruction of, or damage to, a Queensland heritage place.
- (2) Former section 164C applies or continues to apply in relation to the offence as if the amending Act had not been enacted.

#### **206 Court's power to make particular education and public benefit orders**

- (1) This section applies if, before or after the commencement, a person is convicted of an offence against the repealed Planning Act, section 578 or 580 in relation to development on a Queensland heritage place.

- (2) Former section 164D applies or continues to apply in relation to the offence as if the amending Act had not been enacted.

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# Schedule Dictionary

## section 4

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

*administering executive* means—

- (a) for a person appointed as an authorised person by the chief executive—the chief executive; or
- (b) for a person appointed as an authorised person by the chief executive officer of a local government—the chief executive officer.

*aesthetic significance*, of a place or artefact, includes its visual merit or interest.

*aircraft* includes any marine concretions and accretions that are attached to the aircraft.

*appropriately qualified*, for the exercise of a power or performance of a function under this Act, includes having the qualifications, experience or standing appropriate to exercise the power or perform the function.

*Example of standing*—

a person's classification level in the public service

*approved form* means a form approved under section 176.

*archaeological artefact*—

- 1 *Archaeological artefact* means any artefact that is evidence of an aspect of Queensland's history, whether it is located in, on or below the surface of land.
- 2 *Archaeological artefact* does not include a thing that is aboriginal cultural heritage under the *Aboriginal Cultural Heritage Act 2003* or Torres Strait Islander cultural heritage under the *Torres Strait Islander Cultural Heritage Act 2003*.

3 *Archaeological artefact* does not include an underwater cultural heritage artefact.

*archaeological investigation*, of a place, means a physical investigation of the place carried out by an appropriately qualified person for the purpose of investigating, recording or conserving archaeological artefacts on the place.

*archaeological State heritage place* means a State heritage place in relation to which the statement in the Queensland heritage register about the place's cultural heritage significance relates only to the place's potential to contain an archaeological artefact or underwater cultural heritage artefact.

*artefact*, for part 9, division 2, see section 91A.

*assessor*, for part 15, division 2, see section 181.

*authorised person* means a person appointed under section 125.

*building* includes furniture, fittings and other artefacts—

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

*business day* does not include a day between 26 December in a year and 1 January in the following year.

*change application* means a change application under the Planning Act.

*commencement*, for part 15, division 2, see section 181.

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

*council* means the Queensland Heritage Council.

*criminal history*, of a person, means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986* to the extent the criminal history relates to indictable offences or offences against this Act, other than spent convictions.



***cultural heritage criteria*** means the criteria for entry in the Queensland heritage register stated in section 35(1).

***cultural heritage significance***, of a place or feature of a place, means its aesthetic, architectural, historical, scientific, social, or other significance, to the present generation or past or future generations.

***current entry application***, for a place, for part 12, division 3, see section 154AA.

***decision-maker***, for part 6, division 2, see section 71A.

***destroyed place recommendation***, for a State heritage place, see section 46A(1).

***development*** means development as defined under the Planning Act.

***development application*** means a development application under the Planning Act.

***development approval*** means a development approval as defined under the Planning Act.

***enter***—

- (a) in relation to entering a place in the Queensland heritage register, includes enter the place in the register as part of a State heritage place; and
- (b) in relation to entering a place in a local heritage register, includes enter the place in the register as part of a local heritage place.

***excluded place*** means a place that, under part 4 as applied by section 56B, is excluded from entry in the Queensland heritage register as a State heritage place.

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

***exemption certificate*** means a certificate given under part 6, division 2.

***feature***, in relation to a place, includes the following—

- (a) a building or structure, or part of a building or structure;
- (b) an artefact, including an archaeological artefact and underwater cultural heritage artefact;
- (c) a precinct;
- (d) a natural or landscape feature.

**government entity** see the *Public Sector Act 2022*, section 276.

**heritage agreement** see section 80(1).

**heritage place**, for part 6, division 2, see section 71A.

**heritage recommendation** see section 44(1).

**heritage response** see section 50A(2).

**heritage submission** see section 41(1).

**historic aircraft wreck** means the remains of an aircraft or part of the remains of an aircraft that—

- (a) is in Queensland waters; and
- (b) has been in the waters for at least 75 years.

**historic shipwreck** means the remains of a ship or part of the remains of a ship that—

- (a) is in Queensland waters; and
- (b) has been in the waters for at least 75 years.

**historic underwater article**—

1 **Historic underwater article** means an article—

- (a) that appears to have—
  - (i) formed part of an aircraft or ship; or
  - (ii) been installed or carried on an aircraft or ship; or
  - (iii) been constructed or used by a person associated with an aircraft or ship; and
- (b) that—
  - (i) is in Queensland waters; and

- (ii) has been in the waters for at least 75 years.
- 2 An article is an historic underwater article whether or not the article—
- (a) is attached to the remains of an aircraft or ship, a reef or anything else; or
  - (b) is located in, on or below the surface of a seabed or other land.

***indictable offence*** includes an indictable offence dealt with summarily, whether or not the Criminal Code, section 659, applies to the indictable offence.

***information notice***, about a decision, means a notice stating—

- (a) that the person to whom the notice is given may appeal to the Planning and Environment Court against the decision within 20 business days after receiving the notice; and
- (b) the ground for an appeal; and
- (c) how to appeal.

***interfere with***, for part 9, division 1, see section 88.

***land*** includes Queensland waters and land covered by the waters.

***local heritage agreement*** see section 80(2).

***local heritage place*** means a place that—

- (a) is of cultural heritage significance for a local government area; and
- (b) is identified as a place of cultural heritage significance in the local government's planning scheme or on the local government's local heritage register.

***local heritage register*** see section 112(b).

***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.

**notice** means written notice.

**owner**—

- 1 An *owner* in relation to land, means—
  - (a) for freehold land—the registered owner; or
  - (b) for land the subject of a mining interest—the person who holds the interest; or
  - (c) for land the subject of a GHG authority under the *Greenhouse Gas Storage Act 2009*—the person who holds the authority; or
  - (d) for a road or other land under a local government’s control—the local government; or
  - (e) for land in the area of a geothermal tenure under the *Geothermal Energy Act 2010*—the person who holds the tenure; or
  - (f) for other land held from the State under another Act under an interest less than fee simple and conferring a right to possession of the land—the person who holds the interest; or
  - (g) for land (**licence area**) the subject of a plantation licence or plantation sublicense under the *Forestry Act 1959*—the State, the plantation licensee and any plantation sublicensee for the licence area;
  - (h) for unallocated State land under the *Land Act 1994*, land in a State forest, other than a licence area, or timber reserve under the *Forestry Act 1959*, or other land under the control of the State—the State.
- 2 Also, a mortgagee of land is the *owner* of land if the mortgagee is in possession of the land.

3 The *owner* of an artefact that is not permanently attached to, or under, land means a person legally entitled to possession of the artefact.

*party* to a heritage agreement or local heritage agreement includes any person who is bound by the agreement.

*personal details requirement* see section 140.

*personal information*, of an applicant, means the applicant's name and address, or other information that may identify the applicant.

*place*—

1 *Place* means a defined or readily identifiable area of land, whether or not held under 2 or more titles or owners.

2 *Place* includes—

(a) any feature on land mentioned in item 1; and

(b) any part of the immediate surrounds of a feature mentioned in paragraph (a) that may be required for its conservation.

*place of seizure* see section 143.

*Planning Act* means the *Planning Act 2016*.

*planning chief executive* means the chief executive of the department in which the Planning Act is administered.

*planning scheme* means a planning scheme under the Planning Act.

*post-amended Act*, for part 15, division 2, see section 181.

*pre-amended Act*, for part 15, division 2, see section 181.

*previous Act*, for part 15, division 1, means this Act as in force before 28 November 2003.

*protected area* means an area declared to be a protected area under part 10.

*public notice* means notice published in—

(a) the gazette; and

- (b) in a newspaper circulating generally in the area in which the place or artefact to which the notice relates is situated.

**public office**, of a local government, means the local government's public office under the *Local Government Act 2009*.

**Queensland heritage place** means a State heritage place or a protected area.

**Queensland heritage register** means the register kept under part 3.

**register**, for part 15, division 2, see section 181.

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

**remove**—

- (a) in relation to removing a State heritage place from the Queensland heritage register, includes remove part of the State heritage place from the register; and
- (b) in relation to removing a place from a local heritage register, includes remove part of the place from the register.

**repair and maintenance notice** see 84(2).

**ship** includes—

- (a) any vessel used in navigation by water; and
- (b) any marine concretions and accretions that are attached to the ship.

**State heritage place** means a place entered in the Queensland heritage register as a State heritage place under part 4.

**stop order** see section 154(1) and (4).

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

**underwater cultural heritage artefact** means—

- (a) an historic aircraft wreck; or

- (b) an historic shipwreck; or
- (c) an historic underwater article.