



# Queensland Heritage Act 1992

Reprinted as in force on 1 April 2008

Reprint No. 4

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

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

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in the reprint, including table of renumbered provisions**
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## Queensland

# Queensland Heritage Act 1992

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# Queensland Heritage Act 1992

[as amended by all amendments that commenced on or before 1 April 2008]

## 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 the Queensland heritage register; and
  - (c) keeping local heritage registers; and
  - (d) regulating, in conjunction with other legislation, development affecting the cultural heritage significance of registered places; and
  - (e) providing for heritage agreements to encourage appropriate management of registered places; and
  - (f) 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 provide information to the community to encourage interest in, and understanding of, 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 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.

**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.

**Division 2 Membership****10 Membership of council**

The council consists of the following members—

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

**11 Chairperson and deputy chairperson of council**

- (1) The Governor in Council must appoint a member to be the chairperson, and another member to be the deputy chairperson, of the council.
- (2) A person may be appointed the chairperson or deputy chairperson at the same time the person is appointed a member.

- (3) 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.
- (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.
- (3) In this section—

*spent conviction* means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

#### **14 Vacation of office**

- (1) A member is taken to have vacated office if the member—
  - (a) resigns his or her position on the council by signed notice of resignation given to the Minister; or
  - (b) 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.<sup>1</sup>
- (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.

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<sup>1</sup> See section 9 for the council's power of delegation.

**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.
- (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.
- (4) The interested person must not be present when the committee is considering whether to give a direction under subsection (3).
- (5) If there is another member who must, under subsection (2), also disclose an interest in the matter, the other member must not—

- (a) be present when the committee is considering whether to give a direction under subsection (3) about the interested person; or
  - (b) take part in making the decision about giving the direction.
- (6) Subsection (7) applies if—
- (a) because of this section, a committee member is not present at a meeting for considering or deciding a matter, or for considering or deciding whether to give a direction under subsection (3); and
  - (b) there would be a quorum if the committee member were present.
- (7) The remaining committee members present are a quorum for considering or deciding the matter, or for considering or deciding whether to give the direction, at the committee meeting.
- (8) A disclosure under subsection (2) must be recorded in the committee's minutes.

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

### **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.



- (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 an archaeological place—include a statement about the place related to the archaeological criteria; and
  - (g) for a protected area—include a statement about the cultural heritage significance of the place relevant to the declaration of the protected area.
- (4) 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 for public inspection**

- (1) The chief executive must keep the Queensland heritage register, or a copy of the register, available for inspection, free of charge, by members of the public at—
- (a) the department's head office; and
  - (b) other places the chief executive considers appropriate.
- (2) The chief executive may publish a copy of the Queensland heritage register on the department's website.

### **33 Extracts from register**

- (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, an archaeological place or a protected area; or
  - (ii) is the subject of a heritage agreement.
- (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 registered place if the change—
  - (a) is the addition of an informative note to the entry; or
  - (b) corrects or updates the address or real property description of the place; or
  - (c) is another change to correct an error, or update information, in the entry.
- (2) Despite subsection (1)(c), the chief executive must not, without the written agreement of the owner of a registered place and the council, change a statement mentioned in section 31(3)(e), (f) or (g) for the place.

## **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;
  - (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 statement of how the place satisfies 1 or more of the cultural heritage criteria; and
  - (ii) information about the history of the place to support the statement mentioned in subparagraph (i); and
  - (iii) 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
- (d) for an application to remove a place from the register, be accompanied by—
  - (i) a statement of how the place does not satisfy any of the cultural heritage criteria; and
  - (ii) information to support the statement mentioned in subparagraph (i).
- (3) The applicant may withdraw the application at any time before the council makes a decision on a heritage recommendation for the application.
- (4) 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.
- (5) Subsection (1) is subject to section 37.

### **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 1 year 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 1 year 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) the place where the submission may be given;
    - (vi) 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.

- (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) the place 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) the place where the submission may be given;
    - (v) information about the period in which the submission may be given.

**40 Chief executive to keep applications available for inspection**

- (1) The chief executive must keep a copy of each application available for inspection by members of the public at—
  - (a) the department's head office; and
  - (b) other places the chief executive considers appropriate.
- (2) A copy of an application available for public inspection must not include the applicant's personal information, unless the applicant has given written consent to its inclusion.

**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) The later 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, or removed from, 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.
- (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, ask to make oral representations to the council about the recommendation.

**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 recommendations**

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

**48 Council may seek further information**

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

## **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 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 council and the owner of the place the subject of the recommendation 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; 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.

**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 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.
- (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) 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 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 council and the owner of the place the subject of the recommendation 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.

## **Division 6 Other matters**

### **57 Certificate of immunity**

- (1) The owner of a place, or another person with the written agreement of the owner, may apply to the council for a certificate of immunity from registration of the place under this part.
- (2) Separate applications are required under this section for a place consisting of land comprised in separate titles unless the land forms a single parcel of contiguous land.
- (3) The application must be accompanied by—

- (a) the information prescribed under a regulation; and
  - (b) the fee prescribed under a regulation.
- (4) The applicant must, at the request of the council, give any further information that the council reasonably requires to decide the application.
  - (5) On receipt of the application, the council must, subject to subsection (6), consider the application and, if it appears that the place to which the application relates or part of it does not satisfy the criteria for entry in the Queensland heritage register, must issue a certificate of immunity for the place or the relevant part of the place.
  - (6) The council need not consider the application if the application appears to be frivolous or vexatious.
  - (7) If a certificate of immunity is issued for a place, the place may not be entered in the Queensland heritage register as a State heritage place within 5 years of the date of the certificate.
  - (8) If a certificate of immunity is not issued on the application, the council must provide the applicant with a written statement of the reasons for not issuing the certificate.

## **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 an application is made for a development approval for development on the place, give the chief executive notice of the application.

Maximum penalty—100 penalty units.

- (3) In subsection (2)—
- application* means an application—
- (a) for which the owner is the applicant; or
  - (b) that is supported by the written consent of the owner.

## **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—
    - (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 an application for a development approval for development on the place had been made but not decided under the Planning Act.
- (4) The owner must, within the relevant period, advise the chief executive of the application for the development approval.



- (a) give notice of the proposal to—
    - (i) the owner of the place; and
    - (ii) if the owner is not the local government for the area in which the place is situated—the local government; and
  - (b) within 10 business days after giving the notice under paragraph (a), publish notice of the proposal—
    - (i) in a newspaper circulating generally in the area in which the place is situated; and
    - (ii) on the department’s website.
- (2) The notice of the proposal must—
- (a) include enough information to identify the place; and
  - (b) state the following—
    - (i) whether the chief executive proposes to recommend to the council that the place be entered in, or removed from, the Queensland heritage register;
    - (ii) the reasons for the proposed entry or removal;
    - (iii) that a person or other entity may give the chief executive a written submission (an *archaeological submission*) about the proposal;
    - (iv) the place where the submission may be given and the basis on which it may be given;
    - (v) that the submission must be given within 20 business days after the notice is published.
- (3) An archaeological submission must be made on the basis that the place does or does not satisfy the archaeological criteria.

## **62 Recommendation about entering place in, or removing place from, register**

- (1) The chief executive may make a written recommendation to the council to enter a place in the Queensland heritage register as an archaeological place if the chief executive considers the place satisfies the archaeological criteria.

- (2) In considering whether a place satisfies the archaeological criteria, the chief executive—
  - (a) must have regard to the archaeological submissions given to the chief executive for the place; and
  - (b) may have regard to other information the chief executive considers relevant, including, for example, geographical, historical or archaeological information about the place.
- (3) The chief executive must make a recommendation to the council to remove an archaeological place from the Queensland heritage register if the chief executive considers the place no longer satisfies the archaeological criteria.
- (4) In considering whether a place no longer satisfies the archaeological criteria, the chief executive—
  - (a) must have regard to the archaeological submissions given to the chief executive for the place; and
  - (b) may have regard to other information the chief executive considers relevant, including, for example, information about archaeological investigations of the place or development on the place.
- (5) The chief executive's recommendation must be accompanied by a copy of the archaeological submissions given to the chief executive for the place.

### **63 Notice of recommendation**

- (1) The chief executive must, within 10 business days after giving the council a recommendation, give a copy of the recommendation to each of the following—
  - (a) the owner of the place the subject of the recommendation;
  - (b) if the owner is not the local government for the area in which the place is situated—the local government;
  - (c) any other person or entity, if the person or entity gave the chief executive an archaeological submission for the place.

- (2) The copy of the recommendation given to the owner of the place must be accompanied by a notice stating the owner may, within 10 business days after its receipt, ask to make oral representations to the council about the recommendation.

#### **64 Request to make oral representations about recommendation**

- (1) This section applies if the owner of a place is given a notice under section 63(2).
- (2) The owner may, by notice given to the council, ask to make oral representations to the council before it makes a decision on the recommendation.
- (3) The owner must make the request within 10 business days after receiving the notice mentioned in subsection (1).
- (4) The council must take all reasonable steps to comply with the request.

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

- (1) The council may allow the owner of a place to make oral representations about a recommendation in the way the council considers appropriate.
- (2) Without limiting subsection (1), the council may allow the owner 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 owner's remote location.

#### **66 Council to make decision on recommendation**

- (1) The council must consider each recommendation given to the council about a place and make a decision on the recommendation within 60 business days after receiving the recommendation.
- (2) In making the decision, the council—
  - (a) must have regard to—

- (i) the archaeological submissions accompanying the recommendation; and
  - (ii) if the owner makes oral representations to the council about the recommendation—the oral representations; and
- (b) may have regard to other information the council considers relevant to the recommendation.
- (3) The council may decide to enter the place in the Queensland heritage register only if the council considers it satisfies the archaeological criteria.
- (4) The council must decide to remove the place from the Queensland heritage register if the council considers it no longer satisfies the archaeological criteria.

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

- (1) Immediately after making a decision on a 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) 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 the subject of the recommendation; and
    - (ii) if the owner is not the local government for the area in which the place is situated—the local government; and
    - (iii) any other person or entity, if the person or entity gave the chief executive an archaeological submission for the place.
- (3) If the council's decision was to enter the place in, or remove the place from, the Queensland heritage register, a notice given to the owner of the place must be accompanied by an information notice about the decision.

## **Part 6                                  Development in registered places**

### **Division 1                              Assessing development applications**

#### **68            Assessing development applications under the Planning Act—State heritage places**

- (1) If, under the Planning Act, the chief executive is the assessment manager or a referral agency for a development application for development on a State heritage place, the chief executive must assess the application against the object of this Act.
- (2) If the chief executive is satisfied the effect of approving the development would be to destroy or substantially reduce the cultural heritage significance of a State heritage place, the chief executive must, unless satisfied there is no prudent and feasible alternative to carrying out the development—
  - (a) if the chief executive is the assessment manager for the application—refuse the application; or
  - (b) if the chief executive is a concurrence agency for the application—tell the assessment manager to refuse the application.
- (3) In considering whether there is no prudent and feasible alternative to carrying out the development, the chief executive must have regard to—
  - (a) safety, health and economic considerations; and
  - (b) any other matters the council considers relevant.

#### **69            Assessing development applications under the Planning Act—archaeological places**

- (1) This section applies if, under the Planning Act, the chief executive is the assessment manager or a referral agency for a development application for development on an archaeological place.

- (2) The chief executive must assess the application having regard to the following—
  - (a) the impact of the proposed development on any archaeological artefact on the place;
  - (b) other information the chief executive considers relevant to the application, including, for example, an archaeological investigation of the place.
- (3) If the chief executive is satisfied the development is likely to have a detrimental impact on any archaeological artefact on the place, the chief executive may—
  - (a) if the chief executive is the assessment manager for the application—include in any development approval for the development—
    - (i) a condition requiring the applicant to carry out an archaeological investigation of the place; or
    - (ii) other conditions the chief executive considers necessary to appropriately manage archaeological artefacts on the place; and
  - (b) if the chief executive is a concurrence agency for the application—tell the assessment manager to include in any development approval for the development a condition mentioned in paragraph (a).

## **70 Chief executive may seek council's advice on development application**

If, under the Planning Act, the chief executive is the assessment manager or a referral agency for a development application for development on a registered place, the chief executive may, before giving the chief executive's decision or referral agency's response under that Act for the application—

- (a) refer a matter relating to the application to the council; and
- (b) obtain the council's advice about the matter.

## **71 Development by the State**

- (1) This section applies if the State—

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- (a) proposes to carry out development in relation to a registered 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) If the place is a State heritage place and the council is satisfied the development would substantially affect the cultural heritage significance of the place, 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) the place where the submission may be given;
  - (d) that the submission must be given within 20 business days after the notice is published.
- (5) 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
  - (b) the development may be carried out subject to stated conditions or modifications; or
  - (c) the development should not be carried out.
- (6) If the place is a 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.

- (7) 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.
- (8) The Minister proposing the development must consider the council's recommendation and decide whether to accept or reject it.
- (9) If the development was publicly notified under subsection (4), the Minister proposing the development must also give public notice of the decision under subsection (8) a reasonable time before the development starts.

## **Division 2                      Exemption certificates**

### **72            Application for exemption certificate**

- (1) A relevant person for a registered place may apply to the chief executive 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 chief executive 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 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 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 registered place only if the development—
- (a) is permitted under a heritage agreement for the place; or
  - (b) will not have a detrimental impact on the cultural heritage significance of the place.
- (4) In this section—
- relevant person*, for a registered 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 chief executive may, by notice given to the applicant, require the applicant to give the chief executive further information the chief executive reasonably requires to decide the application.
- (2) The notice must state the applicant is required to give the information to the chief executive 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 chief executive receives the application.

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

- (1) The chief executive must decide the application within 20 business days after the later of the following—
  - (a) the day the chief executive receives the application;

- (b) if, under section 73, the applicant gives the chief executive further information about the application—the day the chief executive receives the information.
- (2) If the chief executive approves the application, with or without conditions, the chief executive must, as soon as practicable after approving the application, give the applicant an exemption certificate.
- (3) If the chief executive refuses the application or approves it with conditions, the chief executive must, as soon as practicable, give the applicant a notice stating the reasons for the refusal or the conditions.

## **75 Chief executive may give exemption certificate without application**

- (1) The chief executive may give a person an exemption certificate to carry out, on a registered place, development mentioned in section 72(3).
- (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 registered places or a class of registered places.
- (3) 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.
- (4) The chief executive may give a general exemption certificate under this section by publishing the certificate on the department's website.

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

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

Maximum penalty—1000 penalty units.

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

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

The purpose of this division is to provide for matters about particular development that is exempt development under the Planning Act, schedule 8, part 1, table 5, item 2.

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

Development is *liturgical development* if the development—

- (a) is in a place, or the precincts of a place, that is a place of public worship and a registered 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**

### **80            Heritage agreements**

- (1) The chief executive may, after obtaining and considering the council's advice, enter into a heritage agreement for a registered 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) A 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.

- (3) 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 registered 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.

## **81 Provisions of heritage agreement**

- (1) A heritage agreement may contain any provision to promote—
- (a) the conservation and appropriate management of the registered place; or
  - (b) public appreciation of the importance of the place to Queensland's cultural heritage.
- (2) A heritage agreement may, for example—
- (a) restrict the use of the registered place; or
  - (b) require specified work or work of a specified kind to be carried out in accordance with specified standards in a registered place; or
  - (c) restrict the nature of work that may be carried out in a registered place; or
  - (d) provide that the registered place is to be available for public inspection at specified times and regulate charges that may be made for admission to the registered place; or

- (e) provide for financial, technical, or other professional advice or assistance to the owner with respect to the maintenance or conservation of the registered place; or
- (f) provide for a review of the valuation of the registered place; or
- (g) specify development that may be carried out in the registered place for which an exemption certificate will be issued.

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

- (1) If—
  - (a) a person fails to comply with a heritage agreement; or
  - (b) there is reason to believe that a party to the agreement may fail to comply with the agreement;
 any party to the agreement may apply to the Planning and Environment Court for an order under this section.
- (2) The court may make such orders as may be necessary to secure compliance with the agreement, remedy the default or deal with any related or incidental matters.

# **Part 8 Interim protection orders and notices about maintaining State heritage places**

## **Division 1 Interim protection orders**

### **83 Chief executive may give interim protection order**

- (1) The chief executive may give the owner of a place an order (an *interim protection order*) in relation to the place if—
  - (a) there is a current application for the place; and

- (b) the chief executive is satisfied on the evidence available to the chief executive when the order is given that—
  - (i) the place is likely to satisfy 1 or more of the cultural heritage criteria; and
  - (ii) the order is necessary to conserve the cultural heritage significance of the place because of development that may be carried out on the place.
- (2) The chief executive may give a copy of the order to any person the chief executive considers is proposing to carry out development on the place.
- (3) In this section—
 

*current 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.

#### **84 Form and content of order**

The interim protection order must—

- (a) be in writing; and
- (b) include enough information to identify the place; and
- (c) state the following—
  - (i) the name of the owner of the place;
  - (ii) the reasons for making the order;
  - (iii) that the place is taken to be a State heritage place when the order is given; and
- (d) include information about the duration of the order.

#### **85 Duration of order**

- (1) The interim protection order—
  - (a) takes effect when it is given to the owner of the place; and

- (b) unless sooner ended by the chief executive, ends on the earliest of the following days—
  - (i) the day that is 60 business days after the day the order is given;
  - (ii) the day the council makes a decision under section 53 in relation to the application mentioned in section 83(1)(a) for the place;
  - (iii) the day the council is taken to have made a decision under section 55 in relation to the application.
- (2) The chief executive may, by notice given to the owner of the place, end the interim protection order at any time.

## **86 Effect of order**

For the purposes of this Act and the Planning Act, the place the subject of the interim protection order is taken to be a State heritage place while the order has effect.

## **Division 2 Notices about maintaining State heritage places**

### **87 Chief executive may give notice about essential maintenance work**

- (1) This section applies if the chief executive reasonably believes—
  - (a) it is necessary to carry out essential maintenance work on a State heritage place; and
  - (b) the work is urgently required to be carried out to protect the place from serious or irreparable damage or deterioration caused by weather, fire or vandalism.
- (2) The chief executive may give the owner of the place a notice (the *maintenance notice*) requiring the owner to carry out the essential maintenance work stated in the notice.
- (3) Before giving the maintenance notice, the chief executive must take reasonable steps to consult with the owner of the

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place about the essential maintenance work the chief executive believes necessary to carry out.

- (4) The maintenance notice must state the following—
- (a) the essential maintenance work the chief executive requires to be carried out on the State heritage place;
  - (b) that the chief executive believes the work is necessary to prevent serious or irreparable damage to, or deterioration of, the place;
  - (c) the reasons for the chief executive'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 maintenance notice.
- (6) The owner of the place must comply with the maintenance notice unless the owner has a reasonable excuse.

Maximum penalty—

- (a) for an individual—100 penalty units;
  - (b) for a corporation—1000 penalty units.
- (7) In this section—

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

*Examples—*

- re-fixing loose roofs or wall boards
- removing potential fire hazards
- maintaining existing fire management systems, or locks on doors and windows
- boarding up insecure openings in an unoccupied building
- shutting down electricity or gas services to an unoccupied building

## **Part 9                      Discovery and protection of archaeological artefacts**

### **Division 1                      Offences relating to archaeological artefacts and shipwrecks**

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

In this division—

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

#### **89            Requirement to give notice about discovery of archaeological artefact**

- (1) A person who discovers a thing the person knows or ought reasonably to know is an archaeological 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—1000 penalty units.

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

#### **90            Offence about interfering with discovery**

- (1) This section applies to a thing 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 thing until at least 20 business days after the giving of the notice.

Maximum penalty—1000 penalty units.

**91 Offence about interfering with shipwreck**

- (1) A person must not, without the chief executive's written consent or unless the person has a reasonable excuse, interfere with a shipwreck.

Maximum penalty—1000 penalty units.

- (2) In this section—

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

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

**Division 2 Provisions about ownership of particular archaeological artefacts****Subdivision 1 Declaration of ownership****92 Declaration about ownership of particular archaeological artefacts**

- (1) The chief executive may, by public notice, declare that an archaeological artefact that is in, or has been removed from, a registered 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 archaeological 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 2 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**

As soon as practicable after deciding the application, the chief executive must give the applicant a notice stating all of the following—

- (a) the decision and the reasons for it;
- (b) if the chief executive decides to pay compensation—
  - (i) details of the amount and how the amount was assessed; and
  - (ii) if the amount is less than the amount claimed—that the applicant may appeal against the decision, and how the applicant may appeal;
- (c) if the chief executive decides not to pay compensation—that the applicant may appeal against the decision, and how the applicant may appeal.

## **Subdivision 3 Appeals**

### **98 Who may appeal**

An applicant for the payment of compensation under this division who is dissatisfied with the chief executive's decision to refuse to pay compensation or about the amount of compensation may appeal against the decision.

### **99 Starting an appeal**

- (1) An appeal may be started at—
  - (a) the Magistrates Court nearest the place where the person lives or carries on business; or
  - (b) a Magistrates Court at Brisbane.

- (2) The notice of appeal under the *Uniform Civil Procedure Rules 1999* must be filed with the registrar of the court within 28 days after—
  - (a) if the person is given notice of the decision under section 97—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.
- (3) The court may, at any time, extend the time for filing the notice of appeal.

## **100 Hearing procedures**

- (1) In hearing the appeal, the Magistrates Court is not bound by the rules of evidence and must comply with natural justice.
- (2) The appeal is by way of rehearing, unaffected by the chief executive's decision, on the material before the chief executive and any further evidence allowed by the court.

## **101 Powers of court on appeal**

- (1) In deciding the appeal, the Magistrates Court may confirm the chief executive's decision or substitute another decision the chief executive could have made for the chief executive's decision.
- (2) The chief executive must give effect to the court's decision.

## **102 Appeal to District Court**

An appeal lies to the District Court from a decision of a Magistrates Court under this subdivision, but only on a question of law.

## **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—1700 penalty units;
- (b) for a corporation—17000 penalty units.

(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.

#### **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
  - (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)—1000 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

(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 Act, chapter 4, part 1, division 12,<sup>3</sup> with any changes the court considers appropriate, applies to the appeal.

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

### **Division 1                      Preliminary**

#### **112      Non-application of pt 11**

- (1) This part does not apply to a local government prescribed for this section under a regulation.
- (2) A local government may be prescribed under subsection (1) only if the chief executive is satisfied—
- (a) the local government has, in its planning scheme, identified places of cultural heritage significance in its area; and
  - (b) the local government's planning scheme satisfactorily provides for the conservation of places of cultural heritage significance in its area.

### **Division 2                      Local heritage registers**

#### **113      Local government to keep register**

- (1) A local government must keep a register (a *local heritage register*) of places of cultural heritage significance in its area.
- (2) A local government—

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<sup>3</sup> Planning Act, chapter 4 (Appeals, offences and enforcement), part 1 (Planning and Environment Court), division 12 (Court process for appeals)

- (a) may keep its local heritage register in the form, including electronic form, it considers appropriate; and
- (b) must keep it available for inspection, free of charge, by members of the public.

#### **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**

#### **115 Chief executive may recommend entering place in local heritage register**

- (1) This section applies if the chief executive is satisfied—
  - (a) a place is of cultural heritage significance for a local government's area; and
  - (b) entry of the place in the local government's local heritage register is necessary to help conserve its cultural heritage significance.
- (2) The chief executive may, by notice given to the local government, recommend that the local government enter the place in its local heritage register.
- (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.

**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.
- (2) A local government must propose to enter a place in its local heritage register if the chief executive, under section 115, recommends that the local government enters it in the register.
- (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) the place 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, under section 115, recommended that the local government enter the place in its register—the information about the place included in the chief executive's recommendation; and
- (b) may have regard to other information the local government considers relevant to the application.

### **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 Code for IDAS for local heritage places****121 Code for IDAS**

- (1) A regulation may prescribe a code for IDAS for development on a local heritage place.
- (2) In this section—

*IDAS* means the system detailed in the Planning Act, chapter 3, for integrating State and local government assessment and approval processes for development.

**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 or updates the address or real property description of the place; or
  - (c) is another change to correct an error, or update information, in the entry.

- (2) Despite subsection (1)(c), the local government must not, without the written agreement of the owner of the place, change a statement mentioned in section 114(b) for the place.

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

- (1) A local government's planning scheme may, under the *Statutory Instruments Act 1992*, section 23, apply, adopt or incorporate its local heritage register.
- (2) This section applies despite the Planning Act, section 2.1.18.

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

- (1) This section applies if a place is entered on a local government's local heritage register under division 3.
- (2) For the purposes of the Planning Act, chapter 5, part 4, the entry of the place on the local heritage register is taken to be a 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 5.4.2, 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 5, part 4, applies in relation to the claim with any necessary changes.

## **Part 12                      Enforcement**

### **Division 1                      Authorised persons**

#### **125      Appointment and qualifications**

- (1) The chief executive may appoint a public service officer or employee as an authorised person.
- (2) However, the officer or employee may be appointed as an authorised person only if the chief executive is satisfied the officer or employee is qualified for appointment because the person has the necessary expertise or experience.
- (3) Subsection (2) does not limit the issues the chief executive may consider when deciding whether to appoint an officer or employee as an authorised person.

#### **126      Functions of authorised persons**

- (1) An authorised person 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 registered place.
- (2) For performing an authorised person's functions under this Act, an authorised person has the powers given under this Act.
- (3) An authorised person is subject to the directions of the chief executive in exercising the powers.

#### **127      Appointment conditions and limit on powers**

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

- (a) the officer's instrument of appointment; or
  - (b) a signed notice given to the officer; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the authorised person or a regulation may limit the authorised person's powers under this Act.
- (3) In this section—  
*signed notice* means a notice signed by the chief executive.

### **128 Issue of identity card**

- (1) The chief executive must issue an identity card to each authorised person.
- (2) The identity card must—
- (a) contain a recent photo of the person; and
  - (b) contain a copy of the person's signature; and
  - (c) identify the person as an authorised person under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the giving of a single identity card to a person for this Act and other purposes.

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

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

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

Maximum penalty—20 penalty units.

## **Division 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<sup>4</sup> 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

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<sup>4</sup> See the schedule for the definition of *place* for this Act.

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.

### **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 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

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- (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 named in a warrant issued under this part for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the authorised person's identity card or other document evidencing the authorised person's appointment;
  - (b) give the person a copy of the warrant or if the entry is authorised by a facsimile warrant or warrant form mentioned in section 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.

#### **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**

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.

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

- (1) This section applies if—
  - (a) an authorised person 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 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.

**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.

#### **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 the State 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 a thing to the State—
  - (a) the thing becomes the State's property; and
  - (b) it may be dealt with by the chief executive as the chief executive considers appropriate.
- (5) Without limiting subsection (4), the chief executive may destroy or dispose of the thing.
- (6) Despite subsection (5), the chief executive must not deal with the thing in a way that could prejudice the outcome of an appeal, relevant to the thing, of which the chief executive is aware.

**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 may help the authorised person exercise powers under this division.

*Examples of persons who may help authorised persons—*

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

### **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 from the State the cost of repairing or replacing property damaged because of the exercise or purported exercise of a power under this division.
- (2) The cost may be claimed and ordered to be paid in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount claimed; or
  - (b) for an offence against this Act brought against the person claiming the amount.
- (3) A court may order an amount be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

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

## **Division 3                      Stop orders**

### **154      Stop orders**

- (1) If the Minister is of the opinion that it is necessary to do so to protect a place of cultural heritage significance, the Minister may make an order (a *stop order*) requiring a person to stop any work or activity, or prohibiting a person from starting any work or activity, that may destroy or reduce the cultural heritage significance of the place.
- (2) The stop order may be served personally or by affixing it in a prominent position in the place.
- (3) The stop order—
  - (a) operates from the time of service; and
  - (b) continues in force, subject to earlier revocation, for 40 business days from the time of service or a shorter period stated in the order.

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

A person must not contravene a stop order.

Maximum penalty—17000 penalty units.

## **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 Executive officers must ensure corporation complies with Act**

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

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

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

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

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

(a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer

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

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

## **Part 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;
- (c) the owner of a place who is given, or is entitled to be given, an information notice under section 67(3) about a decision of the council.
- (2) The person may appeal to the Planning and Environment Court against the decision.

### **162 Grounds for appeal**

- (1) 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 the cultural heritage criteria.

- (2) An appeal by a person mentioned in section 161(1)(c) may only be made on the ground that the place the subject of the appeal does or does not satisfy the archaeological 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 Act, chapter 4, part 1, division 12, with any changes the Planning and Environment Court considers appropriate, applies to an appeal under this part.

## **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.

**167 Evidence**

- (1) In proceedings for an offence against this Act, a certificate of the Minister stating that a place referred to in the certificate is—
  - (a) in Queensland waters; or
  - (b) in a specified protected area;is proof, in the absence of proof to the contrary, of the matters stated in the certificate.
- (2) A document that appears to be a certificate under this section is to be accepted as such a certificate in the absence of proof to the contrary.

**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.

**169 Restoration orders**

- (1) If a person is convicted of an offence, the court may, in addition to imposing a penalty for the offence, order the person to make good, to the satisfaction of the Minister, any damage caused through the commission of the offence.
- (2) A person must not fail to comply with an order under this section.  
Maximum penalty—17000 penalty units.
- (3) If a person fails to comply with the order, the Minister may cause the necessary work to be carried out and recover the cost of doing so, as a debt, from the person in default.
- (4) In this section—

*offence* means—

  - (a) an offence against this Act; or
  - (b) an offence against the Planning Act, section 4.3.1(1) or 4.3.3 in relation to development on a registered place.

**170 Non-development order**

- (1) If the owner of a registered place is convicted of an offence involving the destruction of, or damage to, the registered place, the Minister may by order served on the owner prohibit development of the place for a period (not longer than 10 years) specified in the order.
- (2) Before the Minister makes an order under subsection (1), the Minister must allow the owner a reasonable opportunity to show cause why the order should not be made.
- (3) A copy of an order under this section must be given to the registrar of titles and entered on a file maintained for that purpose.
- (4) An order under this section attaches to the land and is binding not only on the owner and occupier as at the date of the order, but also on any person who becomes an owner or occupier of the land while the order remains in force.
- (5) A person must not contravene an order under this section.  
Maximum penalty—17000 penalty units.
- (6) In this section—  
*offence* means—
  - (a) an offence against this Act; or
  - (b) an offence against the Planning Act, section 4.3.1(1) or 4.3.3 in relation to development on a registered place.

**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.

**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 registered place;
  - (c) the giving of an exemption certificate under part 6, division 2;
  - (d) carrying out an archaeological investigation of a place;
  - (e) another matter relating to the administration of this Act.
- (2) 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.

### **174 Recording of particular matters**

- (1) If—
  - (a) a place is entered in the Queensland heritage register as a State heritage place or an archaeological 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(3), 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.

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- (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 an archaeological place; or
  - (b) is the subject of a heritage agreement.
- (5) If—
  - (a) a State heritage place or an archaeological 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 83, 87 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.

## 176 Approval of forms

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

## 177 Amendment to renumber

- (1) On the commencement of this section, the provisions of this Act are amended by numbering and renumbering them in the same way as a reprint may be numbered and renumbered under the *Reprints Act 1992*, section 43.
- (2) Subsection (1) applies to a provision of this Act enacted or otherwise affected (a *relevant provision*) by a provision of an amending Act enacted but uncommenced when subsection (1) is commenced (the *uncommenced provision*), with the following intent for the relevant provision—
  - (a) if the number of the relevant provision would have changed under subsection (1) had the uncommenced provision commenced—
    - (i) a number is allocated to the relevant provision as if the uncommenced provision had commenced; and
    - (ii) when the uncommenced provision commences, the number of the relevant provision is amended by omitting it and inserting the number allocated to it under subparagraph (i);
  - (b) if the relevant provision would have been omitted or relocated had the uncommenced provision commenced, its number remains the same as it was before the

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commencement of subsection (1) until the omission or relocation takes effect.

- (3) Without limiting the *Reprints Act 1992*, section 43(4), each reference in this Act, and each reference in another Act or a regulation stated in subsection (4) to a provision of this Act renumbered under subsection (1), is amended, when the renumbering happens, by omitting the reference to the previous number and inserting the new number.
- (4) The following are stated for subsection (3)—
  - (a) *Integrated Planning Act 1997*;
  - (b) *Queensland Heritage Regulation 2003*;
  - (c) *Whistleblowers Protection Act 1994*.
- (5) This section expires on the later of the following—
  - (a) the day after the commencement of the last numbering or renumbering of a provision done under the section;
  - (b) 30 June 2008.
- (6) In this section—

***amending Act*** means an Act that amends this Act.

**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*.

## **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
    - (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
    - (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 Planning Act**

- (1) This section applies to a development application under the Planning Act 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 Planning Act 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 Planning Act, schedule 10.

## Schedule                      Dictionary

### section 4

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

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

***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*.

***archaeological criteria*** means the criteria for entry in the Queensland heritage register stated in section 60.

***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 place*** means a place entered on the Queensland heritage register as an archaeological place under part 5.

***archaeological submission*** see section 61(2)(b)(iii).

## Schedule (continued)

*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.

*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.

*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.

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

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

*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;
- (c) a precinct;
- (d) a natural or landscape feature.

## Schedule (continued)

**government entity** see the *Public Service Act 1996*, section 21.

**heritage agreement** means a heritage agreement entered into under this Act, whether before or after the commencement of this definition.

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

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

**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.

**interim protection order** see section 83(1).

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

**local heritage place** means a place entered in a local heritage register.

**local heritage register** see section 113(1).

**maintenance notice** see section 87(2).

**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

## Schedule (continued)

- (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 a road or other land under a local government's control—the local government; or
  - (d) 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
  - (e) for unallocated State land under the *Land Act 1994*, land in a State forest 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 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.

## Schedule (continued)

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 *Integrated Planning Act 1997*.

*Planning and Environment Court* means the Planning and Environment Court under the Planning Act.

*planning scheme* has the meaning given by the Planning Act, section 2.1.1.

*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.

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

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

*registered place* means a State heritage place, an archaeological place or a protected area.

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

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

## Schedule (continued)

*stop order* see section 154(1).

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

## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 April 2008. Future amendments of the Queensland Heritage Act 1992 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

### 4 Table of reprints

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

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

Reprint No.	Amendments to	Effective	Reprint date
1	1992 Act No. 36	21 August 1992	1 August 1992
2	1995 Act No. 57	28 November 1995	5 December 1995
2A	2000 Act No. 26	27 June 2000	19 July 2000
2B	2000 Act No. 26	28 February 2002	28 February 2002

Reprint No.	Amendments included	Effective	Notes
2C	2003 Act No. 32	28 November 2003	
2D	2003 Act No. 32	30 April 2004	
2E	2004 Act No. 20	5 October 2004	
2F	2005 Act No. 53	18 November 2005	
3	—	18 November 2005	Act renumbered
3A	2007 Act No. 50	31 March 2008	
4	2007 Act No. 50	1 April 2008	Act renumbered

## 5 Tables in earlier reprints

Name of table	Reprint No.
Changed names and titles	2

## 6 List of legislation

### **Queensland Heritage Act 1992 No. 9**

date of assent 27 March 1992

ss 1–2 commenced on date of assent

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

amending legislation—

### **Statute Law (Miscellaneous Provisions) Act 1992 No. 36 ss 1–2 sch 2**

date of assent 2 July 1992

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

remaining provisions commenced on date of assent

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

date of assent 27 October 1995

commenced on date of assent

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

date of assent 28 November 1995

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

amending legislation—

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

date of assent 28 November 1995

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

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

date of assent 8 June 2000

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

remaining provisions commenced 28 February 2002 (2002 SL No. 27)

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

date of assent 27 June 2000

commenced on date of assent

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

date of assent 23 May 2003

ss 1–2 commenced on date of assent

s 17 commenced 30 April 2004 (2004 SL No. 40)

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

**Integrated Planning and Other Legislation Amendment Act 2004 No. 20 pts 1, 5**

date of assent 3 September 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 5 October 2004 (2004 SL No. 192)

**Environmental Protection and Other Legislation Amendment Act 2005 No. 53 s 1, pt 10**

date of assent 18 November 2005

commenced on date of assent

**Queensland Heritage and Other Legislation Amendment Act 2007 No. 50 pts 1–2, s 3 sch**

date of assent 25 October 2007

ss 1–2 commenced on date of assent

s 43 (to the extent it ins s 104B) commenced 1 April 2008 (2008 SL No. 75)

remaining provisions commenced 31 March 2008 (2008 SL No. 75)

## 7 List of annotations

This reprint has been renumbered—see tables of renumbered provisions in endnote 8.

**PART 1—PRELIMINARY****Object of this Act****prov hdg** amd 2007 No. 50 s 4(1)**s 2** prev s 2 om RA (see RA s 37)

pres s 2 amd 2003 No. 32 s 4; 2007 No. 50 s 4(2)–(5)

**Non-application to Aboriginal or Torres Strait Islander places etc.****s 3** (prev s 96) renum and reloc 2007 No. 50 s 38**Definitions****s 4** Note—s 4 contained definitions for this Act. Definitions are now located in the schedule (Dictionary).

amd 2003 No. 32 s 5(1)

**Act binds all persons****s 5** sub 2007 No. 50 s 5**PART 2—QUEENSLAND HERITAGE COUNCIL****pt hdg** sub 2003 No. 32 s 6**Division 1—Establishment and functions****div hdg** sub 2003 No. 32 s 6**Establishment of council****s 6** sub 2003 No. 32 s 6**Council's relationship with the State****s 7** sub 2003 No. 32 s 6

**Functions of council**

- s 8 sub 2003 No. 32 s 6  
amd 2007 No. 50 s 6

**Delegation by council**

- s 9 sub 2003 No. 32 s 6  
amd 2007 No. 50 s 7

**Division 2—Membership**

- div hdg sub 2003 No. 32 s 6

**Membership of council**

- s 10 sub 2003 No. 32 s 6

**Chairperson and deputy chairperson of council**

- s 11 amd 1995 No. 40 s 20; 2000 No. 16 s 590 sch 1 pt 2  
sub 2003 No. 32 s 6  
amd 2007 No. 50 s 8

**Term of appointment**

- s 12 sub 2003 No. 32 s 6

**Eligibility for membership**

- s 13 sub 2003 No. 32 s 6; 2007 No. 50 s 9

**Vacation of office**

- s 14 sub 2003 No. 32 s 6  
amd 2007 No. 50 s 10

**When notice of resignation takes effect**

- s 15 sub 2003 No. 32 s 6  
amd 2007 No. 50 s 3 sch

**Leave of absence for a member**

- s 16 sub 2003 No. 32 s 6

**Effect of vacancy in membership of council**

- s 17 sub 2003 No. 32 s 6

**Remuneration of members**

- s 18 sub 2003 No. 32 s 6

**Division 3—Council business**

- div hdg sub 2003 No. 32 s 6

**Conduct of business**

- s 19 sub 2003 No. 32 s 6

**Times and places of meetings**

- s 20 ins 2003 No. 32 s 6  
amd 2007 No. 50 s 11

**Quorum**

- s 21 ins 2003 No. 32 s 6

**Presiding at meetings**

- s 22 ins 2003 No. 32 s 6

**Conduct of meetings**

s 23 ins 2003 No. 32 s 6

**Minutes**

s 24 ins 2003 No. 32 s 6

**Division 4—Council committees**

div 4 (ss 25–26) ins 2003 No. 32 s 6

**Division 5—Disclosure of interests by members and committee members**

div 5 (ss 27–28) ins 2003 No. 32 s 6

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

div hdg ins 2003 No. 32 s 6

**Annual report**s 29 ins 2003 No. 32 s 6  
amd 2007 No. 50 s 12**Excluded matter for Corporations legislation**

s 30 ins 2003 No. 32 s 6

**PART 3—THE QUEENSLAND HERITAGE REGISTER**

pt hdg amd 2007 No. 50 s 3 sch

**The Queensland heritage register**s 31 amd 2003 No. 32 s 3 sch  
sub 2007 No. 50 s 13**Register to be available for public inspection**

s 32 sub 2007 No. 50 s 13

**Extracts from register**prov hdg amd 2007 No. 50 s 14(1)  
s 33 amd 2003 No. 32 s 3 sch; 2007 No. 50 s 14(2)–(3)**Changing entries in register**s 34 ins 2003 No. 32 s 7  
sub 2007 No. 50 s 15**PART 4—MATTERS ABOUT REGISTRATION OF STATE HERITAGE PLACES  
IN QUEENSLAND HERITAGE REGISTER**

pt hdg sub 2007 No. 50 s 3 sch

**Division 1—Criteria for entry in register as State heritage place**

div hdg ins 2007 No. 50 s 3 sch

**Criteria for entry in register**prov hdg amd 2007 No. 50 s 16(1)  
s 35 amd 1995 No. 40 s 21; 2003 No. 32 s 8; 2007 No. 50 s 16(2)–(4)**Division 2—Applications for entry of places in, or removal of places from, register**

div hdg ins 2007 No. 50 s 17

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

s 36 sub 2007 No. 50 s 17

**Particular restriction on application**

s 37 sub 2007 No. 50 s 17

**Initial notice of application**s 38 amd 2003 No. 32 ss 9, 3 sch  
sub 2007 No. 50 s 17**Chief executive to publish notice of application**s 39 amd 2003 No. 32 s 10  
sub 2007 No. 50 s 17**Chief executive to keep applications available for inspection**

s 40 sub 2003 No. 32 s 11; 2007 No. 50 s 17

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

div hdg ins 2007 No. 50 s 17

**When submission about application may be given to chief executive**s 41 amd 2003 No. 32 s 3 sch  
sub 2007 No. 50 s 17**Basis for making submission**s 42 amd 2003 No. 32 ss 12, 3 sch  
sub 2007 No. 50 s 17**Chief executive may seek further information**

s 43 sub 2007 No. 50 s 17

**Division 4—Heritage recommendations**

div 4 (ss 44–46) ins 2007 No. 50 s 17

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

div hdg ins 2007 No. 50 s 17

**Subdivision 1—Preliminary**

sdiv 1 (ss 47–48) ins 2007 No. 50 s 17

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

sdiv 2 (ss 49–50) ins 2007 No. 50 s 17

**Subdivision 3—Decisions on heritage recommendations**

sdiv hdg ins 2007 No. 50 s 17

**Council to make decision on heritage recommendation**

s 51 ins 2007 No. 50 s 17

**Agreement about extending time for making decision**s 52 prev s 52 om 2007 No. 50 s 28  
pres s 52 ins 2007 No. 50 s 17**Council's decision about entering place in, or removing place from, register**s 53 prev s 53 om 2007 No. 50 s 28  
pres s 53 ins 2007 No. 50 s 17**Notice of council's decision**

s 54 ins 2007 No. 50 s 17

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

s 55 ins 2007 No. 50 s 17

**Notice of decision under s 55**

s 56 ins 2007 No. 50 s 17

**Division 6—Other matters**

div hdg ins 2007 No. 50 s 17

**Certificate of immunity**

s 57 amd 2003 No. 32 ss 13, 3 sch; 2007 No. 50 s 18

**Obligation to give notice about proposed development**

s 58 ins 2007 No. 50 s 19

**Obligation to give notice about development approvals**

s 59 ins 2007 No. 50 s 19

**PART 5—MATTERS ABOUT REGISTRATION OF ARCHAEOLOGICAL PLACES IN QUEENSLAND HERITAGE REGISTER**

pt hdg ins 2007 No. 50 s 19

**Division 1—Criteria for entry in register as archaeological place**

div 1 (s 60) ins 2007 No. 50 s 19

**Division 2—Entry of places in, or removal of places from, register**

div 2 (ss 61–67) ins 2007 No. 50 s 19

**PART 6—DEVELOPMENT IN REGISTERED PLACES**

pt hdg sub 2003 No. 32 s 14

**Division 1—Assessing development applications**

div hdg sub 2003 No. 32 s 14

**Assessing development applications under the Planning Act—State heritage places**

prov hdg sub 2007 No. 50 s 20(1)

s 68 sub 2003 No. 32 s 14

amd 2007 No. 50 s 20(2)–(5)

**Numbering and renumbering of Act**

s 68A ins 2003 No. 32 s 21

om R3 (see RA s 37)

**Assessing development applications under the Planning Act—archaeological places**

s 69 prev s 69 om 1995 No. 40 s 23

pres s 69 ins 2007 No. 50 s 21

**Chief executive may seek council's advice on development application**

s 70 prev s 70 om R1 (see RA s 40)

pres s 70 ins 2007 No. 50 s 21

**Development by the State**

s 71 prev s 71 om RA (see RA s 40)

pres s 71 sub 2003 No. 32 s 14

amd 2007 No. 50 s 22

**Division 2—Exemption certificates****div hdg** sub 2003 No. 32 s 14**Application for exemption certificate****s 72** sub 2003 No. 32 s 14  
amd 2004 No. 20 s 39; 2005 No. 53 s 147  
sub 2007 No. 50 s 23**Inquiry about application****s 73** ins 2007 No. 50 s 23**Deciding application for exemption certificate****s 74** sub 2003 No. 32 s 14  
amd 2007 No. 50 s 24**Chief executive may give exemption certificate without application****s 75** sub 2003 No. 32 s 14; 2005 No. 53 s 148; 2007 No. 50 s 25**Compliance with conditions of exemption certificate****s 76** sub 2003 No. 32 s 14  
amd 2005 No. 53 s 149  
sub 2007 No. 50 s 25**Division 3—Development of liturgical purposes****div hdg** prev div 3 hdg om 2003 No. 32 s 14  
pres div 3 hdg ins 2007 No. 50 s 25**Purpose of div 3****s 77** ins 2007 No. 50 s 25**When is development “liturgical development”****s 78** ins 2007 No. 50 s 25**Notice of development****s 79** ins 2007 No. 50 s 25**PART 7—HERITAGE AGREEMENTS****pt hdg** amd 2003 No. 32 s 15**Heritage agreements****s 80** amd 2005 No. 53 s 150  
sub 2007 No. 50 s 26**Provisions of heritage agreement****s 81** amd 2003 No. 32 s 16; 2007 No. 50 s 27**Enforcement of heritage agreement—Planning and Environment Court order****prov hdg** amd 2007 No. 50 s 3 sch  
**s 82** amd 1992 No 36 s 2 sch 2**PART 8—INTERIM PROTECTION ORDERS AND NOTICES ABOUT  
MAINTAINING STATE HERITAGE PLACES****pt hdg** ins 2007 No. 50 s 29**Division 1—Interim protection orders****div 1 (ss 83–86)** ins 2007 No. 50 s 29

**Division 2—Notices about maintaining State heritage places****div 2 (s 87)** ins 2007 No. 50 s 29**PART 9—DISCOVERY AND PROTECTION OF ARCHAEOLOGICAL ARTEFACTS****pt hdg** sub 2003 No. 32 s 17; 2004 No. 20 s 40  
amd 2007 No. 50 s 3 sch**Division 1—Offences relating to archaeological artefacts and shipwrecks****div hdg** sub 2003 No. 32 s 17; 2007 No. 50 s 30**Definition for div 1****s 88** amd 1995 No. 40 s 22  
sub 2003 No. 32 s 17  
amd 2004 No. 20 s 41  
sub 2007 No. 50 s 30**Requirement to give notice about discovery of archaeological artefact****s 89** amd 1995 No. 40 s 22  
sub 2003 No. 32 s 17; 2007 No. 50 s 30**Offence about interfering with discovery****s 90** amd 1995 No. 40 s 22  
sub 2003 No. 32 s 17; 2007 No. 50 s 30**Offence about interfering with shipwreck****s 91** sub 2003 No. 32 s 17; 2007 No. 50 s 30**Division 2—Provisions about ownership of particular archaeological artefacts****div hdg** sub 2003 No. 32 s 17; 2007 No. 50 s 30**Subdivision 1—Declaration of ownership****sdiv hdg** ins 2007 No. 50 s 30**Declaration about ownership of particular archaeological artefacts****s 92** sub 2003 No. 32 s 17; 2007 No. 50 s 30**Subdivision 2—Compensation****sdiv 2 (ss 93–97)** ins 2007 No. 50 s 30**Subdivision 3—Appeals****sdiv 3 (ss 98–102)** ins 2007 No. 50 s 30**Division 3—Protected areas****div hdg** ins 2003 No. 32 s 17  
om 2007 No. 50 s 3 sch**PART 10—PROTECTED AREAS****pt hdg** ins 2007 No. 50 s 3 sch**Division 1—Declaration of, and entry to, protected areas****div hdg** ins 2007 No. 50 s 3 sch**Declaration of protected areas****s 103** sub 2003 No. 32 s 17  
amd 2007 No. 50 s 31

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               sub 2003 No. 32 s 17  
               amd 2007 No. 50 s 32

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**s 105**      sub 2003 No. 32 s 17  
               amd 2004 No. 20 s 42

**Additional information may be required**

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

**s 107**      sub 2003 No. 32 s 17  
               amd 2007 No. 50 s 3 sch

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

**s 108**      ins 2003 No. 32 s 17

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

**s 109**      ins 2003 No. 32 s 17

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

**s 110**      ins 2003 No. 32 s 17

**Division 2—Appeals**

**div hdg**    ins 2007 No. 50 s 3 sch

**Appeals about permit to enter protected area**

**prov hdg**   amd 2007 No. 50 s 33(1)  
**s 111**      ins 2003 No. 32 s 17  
               amd 2007 No. 50 s 33(2)–(3)

**Division 4—Miscellaneous**

**div hdg**    ins 2003 No. 32 s 17  
               om 2007 No. 50 s 3 sch

**PART 11—PROVISIONS ABOUT PLACES OF CULTURAL HERITAGE SIGNIFICANCE IN LOCAL GOVERNMENT AREAS**

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**div hdg**    ins 2007 No. 50 s 34

**Non-application of pt 11**

**s 112**      ins 2007 No. 50 s 34

**Division 2—Local heritage registers**

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**Division 4—Code for IDAS for local heritage places**

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**Division 5—Other matters****div 5** (ss 122–124) ins 2007 No. 50 s 34**PART 12—ENFORCEMENT****Division 1—Authorised persons****div hdg** sub 2003 No. 32 s 18**Appointment and qualifications****s 125** sub 2003 No. 32 s 18**Functions of authorised persons****s 126** sub 2003 No. 32 s 18  
amd 2004 No. 20 s 43; 2007 No. 50 s 3 sch**Appointment conditions and limit on powers****s 127** sub 2003 No. 32 s 18**Issue of identity card****s 128** sub 2003 No. 32 s 18**Production or display of identity card****s 129** ins 2003 No. 32 s 18**When authorised person ceases to hold office****s 130** ins 2003 No. 32 s 18**Resignation****s 131** ins 2003 No. 32 s 18**Return of identity card****s 132** ins 2003 No. 32 s 18**Division 2—Powers of authorised persons****div hdg** ins 2003 No. 32 s 18**Subdivision 1—Entry of places****sdiv hdg** ins 2003 No. 32 s 18**Authorised person's power to enter places****s 133** ins 2003 No. 32 s 18**Subdivision 2—Procedure for entry****sdiv hdg** ins 2003 No. 32 s 18**Entry with consent****s 134** ins 2003 No. 32 s 18**Application for warrant****s 135** ins 2003 No. 32 s 18**Issue of warrant****s 136** ins 2003 No. 32 s 18  
amd 2004 No. 20 s 44; 2007 No. 50 s 3 sch**Special warrants****s 137** ins 2003 No. 32 s 18

**Warrants—procedure before entry**

s 138 ins 2003 No. 32 s 18

**Subdivision 3—General powers of authorised persons on entry to places**

sdiv hdg ins 2003 No. 32 s 18  
amd 2007 No. 50 s 3 sch

**General powers for places**

s 139 ins 2003 No. 32 s 18

**Power to require name and address**

s 140 ins 2003 No. 32 s 18

**Subdivision 4—Power to seize evidence**

sdiv 4 (ss 141–142) ins 2007 No. 50 s 35

**Subdivision 5—Dealing with seized things**

sdiv 5 (ss 143–150) ins 2007 No. 50 s 35

**Subdivision 6—Miscellaneous provisions**

sdiv hdg ins 2003 No. 32 s 18

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s 151 ins 2003 No. 32 s 18

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s 152 ins 2003 No. 32 s 18

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s 153 ins 2003 No. 32 s 18

**Division 3—Stop orders****Stop orders**

s 154 amd 2003 No. 32 s 3 sch

**Division 4—General offences**

div 4 (ss 156–160) ins 2003 No. 32 s 19

**PART 13—APPEALS TO PLANNING AND ENVIRONMENT COURT AGAINST PARTICULAR DECISIONS**

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**PART 14—MISCELLANEOUS****Assistance by local governments**

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**Evidence**

s 167 amd 2003 No. 32 s 3 sch  
amd 2007 No. 50 s 39

**Restoration orders**

s 169 amd 2007 No. 50 s 40

**Non-development order**

s 170 amd 2007 No. 50 s 41

**Donations towards the objects of this Act**

s 172 ins 2003 No. 32 s 20

**Chief executive may make guidelines**

s 173 ins 2007 No. 50 s 42

**Recording of particular matters**

s 174 ins 2007 No. 50 s 42

**Delegation by Minister or chief executive**s 175 ins 2004 No. 20 s 45  
sub 2007 No. 50 s 43**Approval of forms**

s 176 ins 2007 No. 50 s 43

**Amendment to renumber**s 177 ins 2007 No. 50 s 43  
exp 30 June 2008 (see s 177(5))**Regulation-making power**

prov hdg sub 2003 No. 32 s 3 sch

s 178 sub 1995 No. 40 s 23

**PART 15—TRANSITIONAL PROVISIONS**pt hdg prev pt hdg om R1 (see RA s 40)  
pres pt hdg ins 2004 No. 20 s 46  
sub 2007 No. 50 s 3 sch**Division 1—Provisions for Queensland Heritage and Other Legislation Amendment Act 2003**

div hdg ins 2007 No. 50 s 3 sch

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

s 179 ins 2004 No. 20 s 46

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

s 180 ins 2004 No. 20 s 46

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

div 2 (ss 181–194) ins 2007 No. 50 s 44

**SCHEDULE—DICTIONARY**

sub 2003 No. 32 s 22

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

def “**aboriginal land**” reloc 2003 No. 32 s 5(4)def “**aesthetic significance**” ins 1995 No. 40 s 19(2)

reloc 2003 No. 32 s 5(4)

amd 2007 No. 50 s 45(3)

def “**appropriately qualified**” ins 2007 No. 50 s 45(2)def “**approved form**” ins 2007 No. 50 s 45(2)def “**archaeological artefact**” ins 2007 No. 50 s 45(2)def “**archaeological criteria**” ins 2007 No. 50 s 45(2)def “**archaeological investigation**” ins 2007 No. 50 s 45(2)def “**archaeological place**” ins 2007 No. 50 s 45(2)def “**archaeological submission**” ins 2007 No. 50 s 45(2)def “**assessor**” ins 2007 No. 50 s 45(2)

- def **“authorised person”** ins 2003 No. 32 s 5(3)  
 reloc 2003 No. 32 s 5(4)
- def **“building”** sub 2003 No. 32 s 5(2)–(3)  
 reloc 2003 No. 32 s 5(4)  
 amd 2007 No. 50 s 45(4)
- def **“business day”** ins 2007 No. 50 s 45(2)
- def **“commencement”** ins 2007 No. 50 s 45(2)
- def **“conservation”** reloc 2003 No. 32 s 5(4)
- def **“council”** reloc 2003 No. 32 s 5(4)
- def **“Crown”** reloc 2003 No. 32 s 5(4)  
 om 2007 No. 50 s 45(1)
- def **“cultural heritage criteria”** ins 2007 No. 50 s 45(2)
- def **“cultural heritage significance”** sub 1995 No. 40 s 19  
 reloc 2003 No. 32 s 5(4)  
 sub 2007 No. 50 s 45(1)–(2)
- def **“development”** sub 2003 No. 32 s 5(2)–(3)  
 reloc 2003 No. 32 s 5(4)  
 amd 2007 No. 50 s 45(5)
- def **“development approval”** ins 2007 No. 50 s 45(2)
- def **“emergency work”** ins 2003 No. 32 s 5(3)  
 reloc 2003 No. 32 s 5(4)  
 om 2004 No. 20 s 47(1)
- def **“excluded work”** ins 2003 No. 32 s 5(3)  
 reloc 2003 No. 32 s 5(4)  
 om 2004 No. 20 s 47(1)
- def **“exemption certificate”** ins 2003 No. 32 s 5(3)  
 reloc 2003 No. 32 s 5(4)  
 amd 2007 No. 50 s 45(6)
- def **“feature”** ins 2007 No. 50 s 45(2)
- def **“government entity”** ins 2005 No. 53 s 151
- def **“heritage agreement”** ins 2007 No. 50 s 45(2)
- def **“heritage recommendation”** ins 2007 No. 50 s 45(2)
- def **“heritage register”** reloc 2003 No. 32 s 5(4)  
 om 2007 No. 50 s 45(1)
- def **“heritage submission”** ins 2007 No. 50 s 45(2)
- def **“indictable offence”** ins 2007 No. 50 s 45(2)
- def **“information notice”** ins 2007 No. 50 s 45(2)
- def **“interfere with”** ins 2007 No. 50 s 45(2)
- def **“interim protection order”** ins 2007 No. 50 s 45(2)
- def **“land”** ins 2007 No. 50 s 45(2)
- def **“local heritage place”** ins 2007 No. 50 s 45(2)
- def **“local heritage register”** ins 2007 No. 50 s 45(2)
- def **“maintenance notice”** ins 2007 No. 50 s 45(2)
- def **“maintenance work”** ins 2003 No. 32 s 5(3)  
 reloc 2003 No. 32 s 5(4)  
 amd 2004 No. 20 s 47(3)  
 om 2007 No. 50 s 45(1)
- def **“member”** ins 2003 No. 32 s 5(3)  
 reloc 2003 No. 32 s 5(4)
- def **“mining interest”** reloc 2003 No. 32 s 5(4)

- def “**minor repair work**” ins 2003 No. 32 s 5(3)  
 reloc 2003 No. 32 s 5(4)  
 sub 2004 No. 20 s 47(1)–(2)  
 om 2007 No. 50 s 45(1)
- def “**notice**” ins 2003 No. 32 s 5(3)  
 reloc 2003 No. 32 s 5(4)
- def “**object**” reloc 2003 No. 32 s 5(4)  
 om 2007 No. 50 s 45(1)
- def “**other minor work**” ins 2004 No. 20 s 47(2)  
 om 2007 No. 50 s 45(1)
- def “**owner**” amd 1992 No 36 s 2 sch 2; 2000 No. 26 s 12 sch 1  
 reloc 2003 No. 32 s 5(4)  
 sub 2007 No. 50 s 45(1)–(2)
- def “**party**” reloc 2003 No. 32 s 5(4)
- def “**personal details requirement**” ins 2003 No. 32 s 5(3)  
 reloc 2003 No. 32 s 5(4)
- def “**personal information**” ins 2007 No. 50 s 45(2)
- def “**place**” reloc 2003 No. 32 s 5(4)  
 sub 2007 No. 50 s 45(1)–(2)
- def “**place of seizure**” ins 2007 No. 50 s 45(2)
- def “**Planning Act**” ins 2007 No. 50 s 45(2)
- def “**Planning and Environment Court**” ins 2007 No. 50 s 45(2)
- def “**planning scheme**” ins 2007 No. 50 s 45(2)
- def “**post-amended Act**” ins 2007 No. 50 s 45(2)
- def “**pre-amended Act**” ins 2007 No. 50 s 45(2)
- def “**previous Act**” ins 2004 No. 20 s 47(2)  
 amd 2007 No. 50 s 45(7)
- def “**protected area**” reloc 2003 No. 32 s 5(4)  
 amd 2007 No. 50 s 45(8)
- def “**protected object**” ins 2003 No. 32 s 5(3)  
 reloc 2003 No. 32 s 5(4)  
 om 2007 No. 50 s 45(1)
- def “**protected relic**” om from s 4 2003 No. 32 s 5(2)
- def “**public notice**” reloc 2003 No. 32 s 5(4)  
 amd 2007 No. 50 s 45(9)
- def “**Queensland heritage register**” ins 2007 No. 50 s 45(2)
- def “**register**” ins 2007 No. 50 s 45(2)
- def “**registered place**” reloc 2003 No. 32 s 5(4)  
 sub 2007 No. 50 s 45(1)–(2)
- def “**registrar of titles**” reloc 2003 No. 32 s 5(4)
- def “**restricted zone**” om from s 4 2003 No. 32 s 5(2)
- def “**State heritage place**” ins 2007 No. 50 s 45(2)
- def “**stop order**” ins 2007 No. 50 s 45(2)
- def “**territorial waters of the State**” reloc 2003 No. 32 s 5(4)  
 om 2007 No. 50 s 45(1)
- def “**Torres Strait Islander land**” reloc 2003 No. 32 s 5(4)
- def “**waters**” reloc 2003 No. 32 s 5(4)  
 om 2007 No. 50 s 45(1)

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42A .....	44
42B .....	45
42C .....	46

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42G .....	50
42H .....	51
42I.....	52
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43A .....	58
43B .....	59
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43E.....	62
43F.....	63
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43F(1)(c) .....	63(1)(b)
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43H .....	65
43I .....	66
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46.....	72
46A .....	73
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49A .....	77
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58.....	91
59.....	92
59A.....	93
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59C.....	95
59D.....	96
59E.....	97
59F.....	98
59G.....	99
59H.....	100
59I.....	101
59J.....	102
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64.....	107
65.....	108
66.....	109
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68A.....	112
68B.....	113
68C.....	114
68D.....	115
68E.....	116
68F.....	117
68G.....	118
68H.....	119
68I.....	120
68J.....	121
68K.....	122
68L.....	123
68M.....	124
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def "owner", item 1(i) .....	def "owner", item 1(a)
def "owner", item 1(ii) .....	def "owner", item 1(b)
def "owner", item 1(iii) .....	def "owner", item 1(c)
def "owner", item 1(iv) .....	def "owner", item 1(d)
def "owner", item 1(v).....	def "owner", item 1(e)
def "place", item 2(i).....	def "place", item 2(a)
def "place", item 2(ii) .....	def "place", item 2(b)

under the Reprints Act 1992 s 43 as required by the Queensland Heritage Act 1992 s 68A

[Reprint No. 3]

Previous	Renumbered as
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4.....	3
5.....	4
6.....	5
7.....	6
8.....	7
9.....	8
10.....	9
11.....	10
12.....	11
13.....	12
14.....	13

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Previous	Renumbered as
15.....	14
16.....	15
17.....	16
18.....	17
19.....	18
19A.....	19
19B.....	20
19C.....	21
19D.....	22
19E.....	23
19F.....	24
19G.....	25
19H.....	26
19I.....	27
19J.....	28
19K.....	29
20.....	30
21.....	31
22.....	32
22A.....	33
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24.....	35
25.....	36
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27.....	38
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33.....	44
34.....	45
35.....	46
36.....	47
37.....	48
38.....	49
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43.....	54
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47.....	58
48.....	59
49.....	60
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Previous	Renumbered as
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53.....	64
53A.....	65
53B.....	66
53C.....	67
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57.....	72
57A.....	73
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57C.....	75
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57E.....	77
57F.....	78
57G.....	79
57H.....	80
57I.....	81
57J.....	82
57K.....	83
57L.....	84
57M.....	85
57N.....	86
57O.....	87
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58.....	88
59.....	89
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59A.....	90
59B.....	91
59C.....	92
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64.....	99
65.....	100
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