

QUEENSLAND HERITAGE AND OTHER LEGISLATION AMENDMENT BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

The Short Title of the Bill

The short title of the Bill is the *Queensland Heritage and Other Legislation Amendment Bill 2003*.

Policy Objectives of the legislation

The policy objectives of the Bill are:

- to continue the programme of consequential amendments to the *Integrated Planning Act 1997* (IPA) by bringing certain development approval processes in the *Queensland Heritage Act 1992* (QHA) into the Integrated Development Assessment System (IDAS) under the IPA in order to streamline and integrate development approval processes, while maintaining the level of protection for heritage registered places provided in the QHA.
- to improve the administration of the QHA by making technical amendments to clarify some provisions, and to ensure that all provisions reflect current legislative drafting standards.

Reasons for the Bill

These amendments are necessary in order to:

- bring the development approval processes provided in the QHA for privately owned places entered in the Queensland Heritage Register into the IDAS under the IPA. This Bill is a further step in the implementation of the IDAS.
- improve the administration of the QHA by clarifying areas of uncertainty. This includes updating a number of provisions in

line with current cultural heritage conservation practice and legislative drafting standards.

Achieving the objective

1. Development approval powers and *the Integrated Planning Act 1997*

The policy objective of bringing the development approval processes into the IDAS under the IPA, while maintaining the current level of protection for heritage registered places, has been achieved by replacing Part 5 — Development in Registered Places, with a new Part 5.

Many of the amendments are minor and merely translate existing approval processes and requirements into the IDAS format. Minor consequential amendments to the IPA and the *Integrated Planning and Other Legislation Act 2001* are necessary to ensure consistency between the IPA and the QHA.

The *Mineral Resources Act 1989* provides that the IPA does not apply to activities on mining tenements. However, many historic mines and associated infrastructure are entered in the Queensland Heritage Register. A consequential amendment to the *Mineral Resources Act 1989* maintains the existing level of protection for places entered in the Queensland Heritage Register which are located on mining tenements.

(a) Development of privately-owned places entered in the Queensland Heritage Register

The QHA provides separately for development of privately-owned heritage places and development proposed by the State in relation to a heritage place. The IPA does not make this distinction in the consideration of development applications. In order to maintain the distinction between development of privately-owned heritage places and development by the State, and maintain the current level of protection for heritage registered places, the provisions for exemptions from the IDAS have been expanded to include development by the State.

The QHA currently provides that all applications for development of privately owned heritage registered places must be made to the local government in which the place is situated. The local government must refer the application to the Queensland Heritage Council, unless the local government has delegated authority to decide the application. (No local government in Queensland has been delegated this authority because of a defect in section 15 of the QHA which provides for Queensland Heritage

Council delegations, but omits delegations to local government. These amendments also remedy that omission.)

Some developments of registered places are minor, and others involve substantial change or modification to the place. Currently, certain minor works and emergency work, as specified in the *Queensland Heritage Regulation 1992*, may be approved under that Regulation without consideration by the Queensland Heritage Council. These amendments maintain the exemption of minor or emergency work from the development approval process. The definitions of “emergency work”, “maintenance work”, “minor repair work” and “minor work” are included in these amendments to the QHA.

These amendments also provide for an exemption certificate for development that is genuinely required for a place of worship for liturgical purposes development permitted under a heritage agreement, and development that would have no impact on the cultural heritage significance of the registered place. All other developments are subject to the development approval provisions.

If development would have a substantial effect on the cultural heritage significance of the place, the application must be publicly notified, and the Queensland Heritage Council must take into consideration any representations made by the public in response to the public notice. These amendments replace this public notice requirement with IPA public notice provisions.

Section 35 of the QHA provides that the Queensland Heritage Council may approve the application unconditionally, or approve the application with conditions, or refuse the application. However, if the effect of carrying out the proposed development would be to destroy or substantially reduce the cultural heritage significance of the registered place, the Queensland Heritage Council may only approve the application if there is no prudent or feasible alternative.

Under these amendments, developments proposed for privately owned registered places will become assessable development. When a heritage registered place is included in the local government planning scheme for the area in which it is situated, the Queensland Heritage Council will be either a referral agency or the assessment manager. If the Queensland Heritage Council is a referral agency, the local government will be the assessment manager.

*Queensland Heritage and Other Legislation
Amendment Bill 2003*

As a referral agency, the Queensland Heritage Council will exercise concurrence agency powers in respect of privately owned registered places. In these circumstances, if the Queensland Heritage Council finds that the proposed development will destroy or substantially reduce the cultural heritage significance of the registered place, it will instruct the assessment manager that the application must be refused. The assessment manager must comply. In similar circumstances, if the Queensland Heritage Council is the assessment manager, it must refuse the application. The existing level of protection for privately owned registered places is thereby maintained.

The QHA provides that applicants who are dissatisfied with the Queensland Heritage Council's decision on a development proposal, may apply to the Queensland Heritage Council for a review of that decision and, if dissatisfied with the outcome of that review, may appeal to the Planning and Environment Court. Consistent with the objective of bringing QHA development approval processes into the IDAS under the IPA, these amendments bring appeals under the IPA processes.

(b) Development by the State

The QHA provides that a report on development proposed by the State must be given to the Queensland Heritage Council. The Queensland Heritage Council must then publish a public notice of the development proposal. The public notice provisions thus apply to all State development proposals, and not only to those which might have a substantial effect on the cultural heritage significance of the place.

The Queensland Heritage Council must consider objections to the development proposal made in response to the public notice in formulating advice to the Minister responsible for the development. In contrast to development proposals for privately-owned places, there is no provision for representations in support of the proposal. These amendments remove that distinction.

The Queensland Heritage Council does not determine State development proposals. Instead, it provides advice to the Minister responsible for the development that the development should be carried out, or should be carried out subject to specified conditions or modifications, or should not be carried out. If the Queensland Heritage Council finds that the proposed development will destroy or substantially reduce the cultural heritage significance of the registered place, the Queensland Heritage Council may only recommend that the development be carried out if there is no prudent and feasible alternative. The Minister must consider the Queensland Heritage Council's advice and decide whether to accept or reject it, and

must give public notice of the decision to accept or reject the Queensland Heritage Council's advice a reasonable time before the development starts.

The IPA does not provide a separate process for development by the State. In order to maintain the existing distinction in the Heritage Act between the two classes of development and the current level of protection for registered places, these amendments add development by the State to the types of development for which exemption from IPA is provided.

2. The technical amendments

The technical amendments achieve the objective of improving efficiency, procedural fairness and the clarification of the meaning of provisions by:

- reviewing, in the light of the Government's electoral commitments and current practice, a number of technical measures to improve the administration of the Act, which were proposed in the *Queensland Heritage Amendment Bill 1998*, introduced to Parliament in 1998. Due to the 1998 election and the change in government, the amendments did not proceed. Revised amendments are now included.
- improving and clarifying some definitions and other provisions following litigation arising from differences in interpretation of some provisions of the QHA.
- Clarifying the provisions for the entry of a place in the Heritage Register to ensure that places which contribute to a streetscape which satisfies a criterion for entry or places adjacent to a registered place can be entered in the Heritage Register if failure to enter the place would reduce the overall cultural heritage significance of the streetscape or the registered place.
- improving administrative efficiency that has resulted in the replacement of Part 2 of the QHA which deals with Administration. The amendments relate particularly to the appointment of members to the Queensland Heritage Council and the conduct of council business. The requirements of modern standards of corporate governance are also addressed.
- clarifying definitions in the legislation which implement the policy objective to improve administrative efficiency and to ensure that QHA processes are clear, transparent and operate to a high standard of procedural fairness. Other definitions have been replaced to ensure consistency with the IPA. A series of minor

*Queensland Heritage and Other Legislation
Amendment Bill 2003*

amendments will remove discriminatory or archaic terms and expressions.

- improving the administrative efficiency of the administration of the Queensland Heritage Register which has resulted in minor amendments to sections 26-32, which deal with the Heritage Register.
- grouping provisions relating to particular subjects. In some instances, related provisions were not previously grouped in the QHA.
- grouping provisions for the protection of objects of possible cultural heritage significance found on land with those protecting the remains of ships and other objects of possible cultural heritage in Queensland's territorial waters. The replacement of Part 7 in the current Act achieves this grouping, and clarifies the protection the QHA has always provided for objects of possible cultural heritage significance and the areas in which such protected objects are identified. This ensures that objects which draw their significance from the period since European settlement are appropriately protected, and that language, such as use of the term 'relic', which has become out-dated, is replaced.
- consequentially amending the *Cultural Record Act (Landscapes Queensland and Queensland Estate) Act 1987* because Part 7 of the *Queensland Heritage Act 1992* now provides comprehensively for the protection of objects ('items of the Queensland Estate') and areas ('Queensland landscapes') which draw their cultural heritage significance from the period since European settlement and which were previously protected in the *Cultural Record Act (Landscapes Queensland and Queensland Estate) Act 1987*.
- Consequentially amending the *Transport Infrastructure Act 1994* to remove an anomaly which for the purposes of the Queensland Heritage Act treats property owned by Queensland Rail differently from property owned by other Government-owned entities.
- replacing Part 8 which deals with the Enforcement of the legislation to the ensure transparency of process and to reflect current legislative standards.

Alternatives to the Bill

Legislative amendments were considered the only way to achieve the integration of QHA development approval process with the IDAS system under the IPA.

Legislative amendments are also the most effective means to improve the clarity, procedural fairness and transparency of QHA processes.

Taken together, the IPA amendments and the technical amendments will improve the operation of the legislation, enhance the protection of Queensland's cultural heritage and improve access to the legislation.

Administrative costs and savings to government

These amendments will not impose further costs on the EPA, or on other Government departments. Some savings in administrative costs will result from the improved efficiency of process provided by the amendments.

Consistency with Fundamental Legislative Principles

The *Legislation Standards Act 1992* outlines a number of fundamental legislative principles. These principles require that all legislation has sufficient regard to the rights and liberties of individuals and the institutions of Parliament. The Bill is consistent with the fundamental legislative principles.

Consultation

The Bill has been developed following more than eighteen months of consultation with the Queensland Heritage Council, Government departments, organisations representing major religious organisations, the Local Government Association of Queensland, the National Trust of Queensland, and organisations representing property owners and managers.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 Short title

Clause 1 provides that the Act may be cited as the *Queensland Heritage and Other Legislation Amendment Act 2003*.

Clause 2 Commencement

Clause 2 provides that the Act will commence on a date to be fixed by Proclamation.

PART 2—AMENDMENT OF THE QUEENSLAND HERITAGE ACT 1992

Clause 3 Act amended in part 2 and schedule

Clause 3 provides that Part 2 and the schedule of the *Queensland Heritage and Other Legislation Amendment Act 2003* amends the *Queensland Heritage Act 1992*.

Clause 4 Amendment of section 3 (Objects of this Act)

Clause 4 is a minor amendment replacing archaic expressions with expressions now usually used in cultural heritage conservation.

Clause 5 Amendment of section 4 (Definitions)

Clause 5:

- moves section 4 (Definitions) to a schedule to the Act, reflecting current legislative drafting standards;
- omits definitions of “protected relic” and “restricted zone” which are no longer required;

*Queensland Heritage and Other Legislation
Amendment Bill 2003*

- replaces the definitions of “building”, and “development” to ensure consistency with the IPA;
- inserts definitions of “emergency work”, “excluded work”, “maintenance work” and “minor repair work” into the QHA. Previously, these definitions were included in the *Queensland Heritage Regulation 1992*;
- inserts a definition of “exemption certificate” to support the grouping in section 34-36 of all circumstances for which exemption from the development application process can be secured;
- inserts definitions of “authorised person”, “personal details requirement” “protected object” and “notice” as part of the improvements to Parts 7 and 8 of the Act and;
- inserts a definition of member of the Queensland Heritage Council.

Clause 6 Replacement of pt 2 (Administration)

Clause 6 replaces Part 2 which relates to the administration of the QHA. The amendments consist of a new heading for Part 2, insert sections and subsections and amend other sections and subsections as follows:

PART 2—QUEENSLAND HERITAGE COUNCIL

Division 1—Establishment and functions

Establishment of Council

Section 6 establishes the Council. A new section 6(2) creates the Heritage Council as a Corporation, able to sue and be sued. *Section 19K* exempts the Heritage Council from those provisions of the Corporations Law which do not normally apply to similar State bodies.”

Council's relationship with the State

Section 7 has been inserted to state that the Queensland Heritage Council does not represent the State for consistency with legislation providing for similar bodies.

Functions of Council

Section 8 sets out the functions of the Council and adds section (2) to require that the Council must exercise its functions according to the standards of good corporate governance, reflecting current legislative standards.

Delegation by Council

Section 9 sets out the Queensland Heritage Council's power to delegate certain of its functions. New subsections 1(c) and (d) rectify omissions from the Act to provide respectively for delegation to a local government and to an appropriately qualified person. This amendment provides greater flexibility to the Queensland Heritage Council in delegating its powers under the Act, and improve the efficient operation of a range of Queensland Heritage Council functions, including routine administrative matters such as the issuing of certificates of effect.

The provision for delegation to a committee in *section 9(1)(b)* has been amended to provide for the composition of committees to whom functions may be delegated. A definition of "appropriately qualified person" has been added so that persons with delegated power who could, for instance, include officers of the administering agency, will have the capacity to exercise the power, or to be a member of a committee.

Division 2—Membership

Division 2 separates provisions relating to the membership of the Council from provisions relating to the functions and operations of the Council.

Membership of Council

Section 10 simplifies the process for appointing members to the Queensland Heritage Council, and reflects current practice for the appointment of members to similar bodies in Queensland. It clarifies the relationship of particular members of the Council to the organisations specified in (i) to (v). The name of the organisation once known as the “Trades and Labor Council of Queensland” has been replaced with “Queensland Council of Unions”, the current name of that organisation.

Chairperson and deputy chairperson of Council

Section 11 amplifies the provision for chairperson of the Queensland Heritage Council and provides for the office of deputy chairperson of the Queensland Heritage Council. This will enhance the continuity of operations of the Council when the chairperson is absent, and provides for continuity in the Council’s operations, if either or both the chairperson and deputy chairperson are absent. It also specifies that a member resigning the office of chairperson or deputy chairperson may continue to be a member of the Queensland Heritage Council.

Term of appointment

Section 12 relocates the provision for the term of appointment of a member of the Queensland Heritage Council, so that all provisions relating to membership are grouped in the new Division 2.

Disqualification from membership

Section 13 relocates provision for disqualification to the new Division 2 relating to the Queensland Heritage Council membership. Bankruptcy as a reason for disqualification has been removed because the Queensland Heritage Council does not control its own funds, and an expert in cultural heritage conservation could make a valuable contribution to Queensland Heritage Council deliberations, even when affected by bankruptcy. A provision that a person convicted of certain offences is disqualified from membership accords with current practice for the appointment of members to an appointed body.

Vacation of office

Section 14 expands the provisions for vacation of the office of member of the Queensland Heritage Council and relocates them to the new Division 2 relating to Queensland Heritage Council membership.

When resignation takes effect

Section 15 clarifies the time when a notice of resignation takes effect.

Leave of absence for a member

Section 16 provides for approved leave of absence of a member of the Queensland Heritage Council, and, to provide effectively for the continuity of the Queensland Heritage Council's operations, includes provision that the Minister may appoint another person to take the absent member's place during the period of the member's absence, and that another person may be appointed deputy chairperson, if the deputy chairperson is absent on approved leave.

Effect of vacancy in membership of council

Section 17 enhances the continuity of the Queensland Heritage Council's operations by providing that the performance of its functions is not affected by a vacancy in the membership.

Remuneration of members

Section 18 relocates provision for remuneration of Queensland Heritage Council members to the Division relating to the membership of the council.

Division 3—Council business

The new Division 3 groups all provisions relating to the conduct of Queensland Heritage Council business.

Conduct of business

Section 19 relocates provision that the Queensland Heritage Council may conduct its business in the way it considers appropriate to the new Division 3 relating to conduct of business.

Times and places of meetings

Section 19A reduces the current requirement that the Council meet once in each calendar month to at least 10 times per year. This amendment provides greater flexibility for the Queensland Heritage Council. The insertion of a subsection 19C(3) enables the Minister to call a meeting of the Queensland Heritage Council. The insertion of subsection 19A(4) requires that Council members must receive agenda papers at least five days before a meeting so that they have appropriate time members to consider the business of a forthcoming meeting.

Quorum

Section 19B retains the current quorum for a Queensland Heritage Council meeting.

Presiding at meetings

Section 19C provides for the role of deputy chairperson, introduced by these amendments.

Conduct of meetings

Section 19D reflects current practice for the conduct of meetings, including the weight to be given to an abstaining member's vote, and provides that a member can take part in a meeting through technological means. Provision in *section 19D(6)* for the making of a resolution outside Council meetings will enhance the efficiency of the Council's operation.

Minutes

Section 19E ensures that resolutions passed by members voting outside meetings of the Council will be recorded in the minutes. The new *section*

19E(3) ensures that the name of a member who votes against a resolution will be recorded in the minutes, if the member requests it.

Division 4—Council committees

The new Division 4 amplifies existing provisions for Queensland Heritage Council committees in order to clarify their functions.

Committees

Section 19F clarifies that the purposes of establishing committees is to enhance the efficiency of the Queensland Heritage Council and provides for the conduct of committees.

Remuneration of committee members

Section 19G This amendment reflects current practice for the remuneration of members of committees established by appointed bodies, and separates provision for remunerating committee members from remunerating the Queensland Heritage Council members (Section 18).

Division 5—Disclosure by Council members and committee members

Section 19H reflects current practice for disclosure of interest by members of appointed Bodies, and for the procedure which must be followed if a member, or members, of the Council disclose an interest. This provision recognises that interests other than pecuniary interests could conflict with the proper performance of the duties of a member of the Council.

Section 19I reflects current practice for disclosure of interest by members of a committee of an appointed Bodies, and for the procedure which must be followed if a member, or members, of a committee disclose an interest. This provision recognises that interests other than pecuniary interests could conflict with the proper performance of the duties of a member of a committee of the Queensland Heritage Council.

Division 6—Other provisions about the Council

Annual report

Section 19J replaces the original section 19 which provided for the Queensland Heritage Council's annual report. Section 18, which provided for donations towards the objects of the Act, has been removed to *section 67A*.

Excluded matter for Corporations legislation

Section 19K is a minor amendment declaring that the Queensland Heritage Council is excluded from certain provisions of the corporations law in accordance with section 5F of the *Corporations Act (Cwth)* which provides that the corporations legislation does not apply to matters declared by State law to be excluded matters.

Clause 7 Insertion of new section 22A

Clause 7 inserts a new *section 22A*.

Section 22A Changing entries in the Heritage Register

Section 22A is a new provision which allows minor administrative changes to be made to a permanent entry in the Heritage Register to ensure it accurately reflects its current address or Real Property Description, without full reconsideration of the complete process for entry in the Heritage Register, or removal from the Heritage Register. Section 22A(3) allows other minor changes, such as correction of facts, to be made with the written agreement of the owner.

Clause 8 Amendment of section 23 (Criteria for entry in the register)

Section 23 (4) is a new provision which allows for a place to be entered in the heritage register even if part of the place does not fully satisfy a criterion for entry in the register but only if it forms part of a streetscape that satisfies 23(1) or is adjacent to a registered place and failure to enter the part would reduce the overall cultural heritage significance of the streetscape or the registered place.

Clause 9 Amendment of section 26 (Objections)

Section 26(4) replaces the original section 26(4) with a new provision to allow an objection to the entry of a place in the Heritage Register to be withdrawn at any time. This rectifies an oversight in the Act, which did not previously provide that an objection could be withdrawn. The original section 26(4) has been moved to section 30 (see Clause 12).

Clause 10 Amendment of section 27 (Panel of assessors)

Clause 10 replaces section 27(6) with a provision which maintains the conflict of interest provisions of the original section, but permits an assessor to be automatically reinstated to the panel of assessors two months after they complete other work for the Queensland Heritage Council. This will allow the panel of assessors to be maintained viably, while permitting access to this range of experts to both the Queensland Heritage Council and objectors to the entry of a place in the Heritage Register.

Clause 11 Replacement of section 28 (Reference of objection to assessor)

Clause 11 replaces section 28 which is ambiguous, as it can be construed to mean that an objection should be referred to the assessor within 14 days of its receipt by the Queensland Heritage Council, even if this was at the beginning of the 30 day period allowed to receive objections under section 26. The new section 28 clarifies that the reference of an objection to the assessor will take place at the close of the 30 day period for receipt of objections, and not from the receipt of any individual objection. The new section 28(3) will ensure that an assessor will stop work on assessing the objection if the objection is withdrawn.

Clause 12 Amendment of section 30 (Entry in and removal from register)

Clause 12 replaces the first three sections of section 30, and includes the provision, formerly at section 26(4), dealing with removal of a place from the Heritage Register. For logic and clarity, the amended section 30 deals with both the entry, and removal of, places in the Heritage Register. This improved provision splits the original section 26(4) into three subsections which deal, firstly, with the situation where no objection has been received; secondly, with the three courses of action available to the

Council after it has considered the assessor's report; and thirdly, with the courses of action available to the council where an objection has been received to the removal of a place from the Heritage Register. Subsection (2)(b) provides that the Council may alter the original proposal following receipt of the assessor's report.

Clause 13 Amendment of section 32 (Certificate of immunity)

Clause 13, by amending section 32 to include "another person" as an applicant for a certificate of immunity provides an opportunity to prospective purchasers of a property to have the issue of the cultural heritage significance of the place resolved early in the process of purchase, or before a development occurs, which are usually the times when applications are made for Certificates of Immunity. To protect the owner of the property, an application could only be made for a Certificate of Immunity with the owner's written agreement.

Clause 14 Replacement of pt 5 (Development in registered places)

Clause 14 replaces Part 5 dealing with development in places entered in the Heritage Register. The heading for Part 5 is maintained. Sections and subsections are inserted or amended as follows:

Division 1—Assessing development applications

The new Division 1 provides for the consideration of development applications in the IDAS under the IPA.

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

Section 33 provides the criteria that the Queensland Heritage Council will use to assess development applications when acting as either the assessment manager or a referral agency. (The IPA and the IP Regulation will make the Queensland Heritage Council an assessment manager or a concurrence agency). The amendment is consistent with existing powers and maintains the protection of registered places through section 33(2). This section provides that, if the effect of the application would be to destroy or substantially reduce the cultural heritage significance of a

registered place, and there is no prudent and feasible alternative, the Council must refuse the application if it is the assessment manager or, when the Queensland Heritage Council is a concurrence agency, instruct another assessment manager to refuse the application.

Section 34 Development by the State

Section 34 provides for the consideration of development proposals by the State and maintains the power of the Minister proposing the development to decide whether or not the development should proceed, after considering the advice of the Queensland Heritage Council. This is a departure from the IPA, which does not exempt the State from IDAS processes. *Section 34 (4)*, limits the advertisement of a development by the State to developments which would destroy or have a substantial effect on the cultural heritage significance of the place, which is consistent with the public advertisement of development in privately-owned heritage places.

Division 2—Exemption certificates

Division 2 is a new Division providing for certificates of exemption for development to be issued by the Queensland Heritage Council either on application, or on its own initiative. Exemption is currently granted to development excluded from the QHA's development approval processes either under *section 33* (the previous liturgical exemption) or under the *Queensland Heritage Regulation 1992*.

Section 35 Application for exemption certificates

Section 35 consolidates in one section of the QHA the circumstances in which development approval is not required for development on a registered place. These circumstances all exist in the current Act, but are distributed in various sections. A process for application for an exemption certificate is also provided. This amendment will improve the clarity of the legislation. *Section 35(4)(b)*, providing for an exemption certificate for development for liturgical purposes for a place of worship, alters the liturgical exemption, previously in *section 33(2)* by removing the term "precincts of a church" and inserting "place of worship" to clarify the application of the certificate and to remove discriminatory language.

Section 36 Deciding application for exemption certificate

Section 36, setting out the process the Council must use to decide applications for exemption certificates, provides procedural fairness in providing that the Council must provide reasons for refusing an application for an exemption certificate, or for attaching conditions to its approval of an application for an exemption certificate. A decision by the Queensland Heritage Council to refuse an exemption certificate application does not mean that any specific development proposal has been refused. Rather, a refusal to grant an exemption certificate would mean that the applicant's development proposal becomes assessable under the IDAS process. The applicant, if dissatisfied with the decision on an assessable development application is then able to access the IPA appeal provisions.

Section 37 Council may give certificate of exemption without application

Section 37 improves the efficiency of the legislation by providing that the Queensland Heritage Council may give the owner of a registered place an exemption certificate for certain developments at, for instance, the time when the owner's place is entered in the Heritage Register, or at any time after the entry of the place in the Heritage Register.

Section 38 Exemption certificate for liturgical purposes

Section 38 sets out the process by which a religious organisation secures an exemption certificate for development genuinely required for liturgical purposes. A provision that an exemption certificate will not apply to the substantial or total demolition of a place of worship is added. The Christian term "church" has been replaced by "place of worship".

Clause 15 Amendment of pt 6 (Heritage agreements and exemptions)

Clause 15 removes "exemptions" from the heading of Part 6 because "exemptions" are now grouped in Division 2.

Clause 16 Amendment of section 40 (Provisions of heritage agreement)

Section 40(2)(g) is a minor amendment which replaces the provision for exemption from development approval processes for places which are

subject to heritage agreements with a provision that such development will be covered by the exemption certificate provisions.

Clause 17 Replacement of pt 7 (Protection of cultural relics)

Clause 17 replaces Part 7 dealing with the protection of cultural relics with a new Part 7, Discovery and Protection of Objects and Areas, which combines protection for objects of cultural heritage significance recovered from land with protection of objects and remains of ships recovered from Queensland's territorial waters. The new Part 7 also includes provision for studies to identify cultural heritage objects and for the accidental discovery of objects. Sections and subsections are inserted or amended as follows:

Division 1—Studies and discoveries

This Division groups provisions for studies which aim to identify cultural heritage objects with provisions regulating the accidental discovery of cultural heritage objects.

Section 44 Study must be reported

Section 44 provides for cultural heritage studies, whether undertaken for research purposes, or to identify cultural heritage places or objects known or thought to exist on land or in Queensland's territorial waters. In order that the administering agency is aware of such studies, *Section 44 (1) (2)* and (3) provide that the intention to perform a study must be notified and approved so that the results of the study can be assessed against the study proposal, and the appropriate level of protection for identified places and objects provided. *Section 44 (4)* provides for a report of the study to be submitted to the chief executive. The information in such reports can provide valuable knowledge of Queensland's cultural heritage. *Section 44(5)* provides for an extension of time for the report to the chief executive officer.

Section 45 Discovery must be reported

Section 45 provides that objects which are discovered by chance on land or in Queensland's territorial waters must be reported, in order that the cultural heritage significance of the objects may be assessed.

Division 2—Protected objects

Division 2 is a new Division combining protection of objects recovered from land with those recovered from Queensland's territorial waters to improve the logic and clarity of the legislation.

Section 46 Declaration of protected object

Section 46 reduces the period of provisional declaration of a protected object from one year to two months to truncate the period of uncertainty as to whether or not the object or remains of a ship will be a permanently protected object. This will reduce inconvenience to the owner of land on which the object is situated, or to salvagers of maritime objects.

Section 47 Offence to interfere with, damage or dispose of protected object

Section 47 brings the offence provisions relating to protected objects into the Division of the Act dealing only with protected objects. In the current Act, offence provisions relating to protected objects were included with offence provisions relating to restricted zones (now protected areas).

Section 48 Unlawful possession of projected object

Section 48 enhances protection for Queensland's cultural heritage by providing that it is an offence for a person knowingly to have possession of a protected object.

Division 3—Protected areas

Division 3 replaces the term "archaeological interest" with "protected areas", thereby clarifying the purpose of declaring a protected area through use of a more general term.

Section 49 Declaration of protected areas

Section 49 simplifies expression of the reason for declaring a protected area by removing the unnecessary term “archaeological interest” and provides that a protected area may be declared by regulation. Subordinate legislation is necessary in view of the substantial penalties for unlawful destruction of a protected area in *section 51*.

Section 50 Offence to destroy protected area

Section 50 adds to the offence provision in the current Act a provision that a person must not enter a protected area without reasonable excuse or except under a permit. It is possible to damage, destroy or interfere with a protected area by the act of entering it. This amendment improves the current Act by a clear statement of this possibility for the protection of people who may not otherwise realise that by entering a protected area they could damage, destroy or interfere with the protected area.

Section 51 Applying for a permit to enter a protected area

Section 51 separates the process for applying for a permit from the chief executive’s consideration of applications, and clarifies the requirements for submitting a valid application and, for consistency with other provisions for protected objects and protected areas, provides that applications are made to the chief executive, rather than to the Minister.

Section 52 Additional information may be required

Section 52 which enables the chief executive to request additional information, and request that the information be verified, improves administrative efficiency because the chief executive need not refuse outright an application submitted with insufficient information to allow it to be considered.

Section 53 Approving an application for a permit to enter a protected area

Section 53 sets out the steps which occur after the chief executive has approved an application for a permit. For purposes of logic and clarity, this amendment separates these steps from the application process and the consideration of applications and inserts a provision limiting the time

available to the chief executive for issuing a permit for the convenience of applicants. *Section 53* provides for a permit to apply for a specified period to enable entry to a protected area to be carefully regulated according to the level of sensitivity, and potential for damage, of the area.

Section 53A Refusing an application for a permit to enter a protected area

Section 53A adds to the current Act a process for refusing the application, and providing grounds for refusing a permit. The current Act contemplates the refusal of an application for a permit in section 53, but does not specify the process which must be followed.

Section 53B Chief executive may cancel a permit to enter a protected area

Section 53B adds to the current Act a provision for the cancellation of permits to conduct an activity in a protected area. This amendment enhances protection and is consistent with provisions for permits and licences in other environmental protection legislation.

Section 53C Procedure for cancelling a permit to enter a protected area

Section 53C sets out the procedure for cancelling a permit. It provides procedural fairness by requiring that the chief executive must issue a show cause notice, specifying the contents of the notice and setting out the steps which the chief executive must follow in cancelling a permit.

Division 4—Miscellaneous

Section 53D Appeals

Section 53D brings the appeal provisions for refusal to grant a permit, the cancellation of a permit and the imposition of conditions on a permit, under the IPA which is consistent with the policy objectives of these amendments.

Clause 18 Replacement of pt 8, div 1

Clause 18 replaces Division 1 of Part 8 (Enforcement).

Division 1—Authorised person

The new Division 1 expands the provisions for appointment of an authorised person in the QHA to reflect current legislative drafting standards.

Section 54 Appointment and qualifications

Section 54 expands provision for public service officers to be appointed as authorised persons by requiring that such officers must have the necessary expertise or experience to carry out the duties of an authorised person.

Section 55 Functions of authorised persons

Section 55 adds the functions of an authorised person to the QHA to improve clarity.

Section 56 Appointment conditions and limit on powers

Section 56 clarifies the scope of the authorised person's appointment and powers by specifying that the authorised person's office may be conditional and that the powers of the authorised person may be limited.

Section 57 Issue of identity card

Section 57 expands the contents of an identity card for consistency with other legislation providing for identity cards and, for reasons of efficiency, this section provides that a single identity card may be used for purposes in addition to the QHA.

Section 57A Production or display of identity card

Section 57A clarifies the obligations of an authorised person when exercising a power under the QHA in relation to another person by

amplifying the way in which an identity card must be used, and by requiring that the card must be clearly visible to the person to whom a power under this Act is exercised.

Section 57B When authorised person ceases to hold office

Section 57B provides the circumstances under which an authorised person ceases to hold office, in contrast to the current Act which provides only that the identity card must be returned.

Section 57C Resignation

Section 57C improves the logic and clarity of the QHA by providing the mechanism for an authorised person to resign the office and, provides that an authorised person who resigns that office must also resign any other office which is conditional on holding office as an authorised person.

Section 57D Return of identity card

Section 57D improves the current Act's provision that a person who ceases to be an authorised person must return the person's identity card by setting a limit on the time available to return the identity card, and by increasing the penalty for failing to return the card.

Division 1A—Powers of authorised persons

This new Division separates the powers of authorised persons from the appointment of authorised persons to improve the clarity of the legislation.

Section 57E Authorised person's power to enter places

Section 57E specifies the conditions applying to the power of an authorised person to enter certain places, and the way in which the consent of an occupier may be sought, for consistency with modern legislative practice.

Subdivision 2—Procedure for entry

This new subdivision improves procedural fairness by separating the procedure an authorised person must use to enter premises, from the powers of an authorised person.

Section 57F Entry with consent

Section 57F improves procedural fairness by stating the rights of the occupier.

Section 57G Application for warrant

Section 57G sets out the requirements for applying for a warrant, reflecting current legislative standards for Enforcement provisions.

Section 57H Issue of warrant

Section 57H improves the transparency of the Enforcement provisions by stating the conditions under which a warrant may be issued, and the contents of a warrant.

Section 57I Special warrants

Section 57I provides for circumstances, such as emergencies or an authorised person's remote location, in which it is not possible to apply for a warrant using the usual procedure. The amendment maintains procedural fairness by specifying procedures for issuing, regularising and using special warrants.

Section 57J Warrants—procedure before entry

Section 57J improves the transparency of the QHA by setting out the procedure an authorised person is required to follow before entering premises.

Subdivision 3—General powers of investigators on entry to places

This new subdivision details the powers an authorised person may exercise on entering premises for reasons of procedural fairness.

Section Section 57K General powers for places

Section 57K improves the procedural fairness of the QHA by setting out the powers of authorised person on entering a place, and the rights of a person at the place.

Section 57L Power to require name and address

Section 57L is consistent with the procedural fairness standards of similar legislation, in providing procedures for an authorised person to require the name and address of other persons and to require verification of personal details.

Subdivision 4—Miscellaneous provisions

This new subdivision groups miscellaneous provisions relating to the powers and responsibilities of authorised persons.

Section 57M Authorised persons may use help and force in exercising powers

Section 57M is consistent with Enforcement provisions in similar legislation in providing examples of the help available to an authorised person. The current Act provides only for help and force to be available to an authorised person operating under a warrant.

Section 57N Notice of damage

Section 57N improves the procedural fairness of the QHA by providing that a person in possession or control of a property must receive a notice of any damage caused on that property by an authorised person when exercising a power.

Section 57O Compensation

Section 57O improves the procedural fairness of the QHA by providing for a right of compensation for damage caused by the exercise of a power under the Act, and sets out the way in which compensation may be claimed and paid.

Clause 19 Insertion of new pt 8, div3

Clause 19 inserts a new Part 8, Division 3 (General Offences).

Division 3—General offences

This Division, inserted after the existing Division 2—Stop Orders, provides for offences which arise if an authorised person is obstructed in the performance of the powers of the office, and extends compliance to the executive of a corporation.

Section 59A False and misleading statements

Section 59A is consistent with provisions regarding false and misleading statements in enforcement provisions in similar legislation, and also substantially increases the penalty for making false and misleading statements.

Section 59B False or misleading documents

Section 59B is consistent with provisions regarding false and misleading documents in enforcement provisions in similar legislation and also substantially increases the penalty for giving false and misleading documents.

Section 59C Obstructing and impersonating authorised persons

Section 59C reflects current legislative standards for enforcement provisions by amplifying provisions regarding the obstruction and impersonation of authorised persons, and by increasing the relevant penalties. *Section 59C(2)* maintains procedural fairness by providing that an authorised person must give a warning.

Section 59D Failure to comply with personal details requirement

Section 59D provides that it is an offence to fail to provide personal details, and maintains procedural fairness in providing for a reasonable excuse.

Section 59E Executive officer must ensure corporation complies with Act

Section 59E is consistent with modern standards of corporate governance and environmental law regarding the duties of executive officers of corporations.

Clause 20

Clause 20 relocates the provision for donations towards the objects of the QHA.

Section 67A Donations towards the objects of the Act

Section 67A relocates provision for donations to assist the objects of the QHA from Part 2 of the Act which has been replaced and now relates only to the Queensland Heritage Council. This amendment also reflects modern standards of corporate governance.

Clause 21

Clause 21 is a routine provision providing for the numbering and renumbering of amended legislation.

68A Numbering and renumbering of Act

Clause 68A is a routine provision, in accordance with the *Reprints Act 1992*.

Clause 22 Schedule (Transitional provisions)

Clause 22 inserts the Dictionary, previously at section 4, as a schedule to the QHA, and omits the previous schedule. *Clause 22* also inserts provision for the consequential amendment of other legislation.

Clause 23 Act amended in pt 3

Clause 23 provides that Part 3 amends the *Cultural Record Act (Landscapes Queensland and Queensland Estate) Act 1987*.

Clause 24 Insertion of new section 2

Clause 24 provides for a new section 2 to be inserted into the *Cultural Record Act (Landscapes Queensland and Queensland Estate) Act 1987* as follows:

Section 2 Application of Act

Section 2 provides that the *Cultural Record Act (Landscapes Queensland and Queensland Estate) Act 1987* applies to Landscapes Queensland and the Queensland Estate only to the extent they are indigenous.

Clause 25 Act amended in pt 4

Clause 25 provides for the consequential amendment of Part 4 of the IPA, which is necessary to incorporate the development provisions of the QHA.

Clause 26 Amendment of section 1.3.5 (Definition of terms used in “development”)

Clause 26 amends the definition of “building work” in the IPA in order to accommodate provision for places entered in the Queensland Heritage Register.

Clause 27 Amendment of section 4.3.1 (Carrying out assessable development without permit)

Clause 27 replaces section 4.3.1(3) in the IPA with a new provision which maintains the penalty in the QHA for unauthorised development in a place entered in the Heritage Register.

Clause 28 Amendment of schedule 8 (Assessable, self-assessable and exempt development)

Clause 28 inserts a provision in schedule 8 to the IPA to provide that development to a registered place, other than exempted by an exemption certificate or excluded development, or development carried out by the State, is assessable development. This provision is necessary to enable the Queensland Heritage Council to exercise its role as a concurrence agency.

Clause 29 Act amended in part 5

Clause 29 amends the *Integrated Planning and Other Legislation Amendment Act 2001* to ensure consistency between amendments to the QHA and amendments to the IPA.

Clause 30 Amendment of schedule 84 (Replacement of schedule 8 (Assessable, self-assessable and exempt development))

Clause 30 ensures that schedule 8, which was replaced in the 2001 amendments to the IPA, is consistent with these amendments to the QHA.

Clause 31 Amendment of schedule 85 (Replacement of schedule 10 (Dictionary))

Clause 31 ensures that the definition in schedule 10 of the *Integrated Planning and Other Legislation Amendment Act 2001* is consistent with these amendments to the QHA in the definition of “building work”.

Clause 32 Act amended in pt 6

Clause 32 amends the *Mineral Resources Act 1989* in order to maintain protection of heritage registered places located on mining tenements.

Clause 33 Amendment of section 319 (Effect on planning provisions)

Clause 33 provides that the IPA, which does not apply to activities conducted on mining tenements, will apply to activities on mining tenements which affect places entered in the Queensland Heritage Register. This maintains the current level of protection for historic mines, and other

places entered in the Heritage Register, which are located on mining tenements.

Clause 34 Amendment of the Transport Infrastructure Act 1994

Clause 34 amends the Transport Infrastructure Act 1994

Clause 35 omits section 133 of the Transport Infrastructure Act 1994 to remove an anomaly which, for the purposes of the Queensland Heritage Act, treats property owned by Queensland Rail differently from property owned by other Government-owned corporations.

Schedule Minor Amendments

The schedule contains a number of minor amendments correcting the language of provisions in the QHA and removing redundancies. These amendments have no effect on the operation of the legislation.