Queensland Heritage and Other Legislation Amendment Bill 2014

Explanatory Notes

Short title

The short title of the Bill is the Queensland Heritage and Other Legislation Amendment Bill 2014 (the Bill).

Introduction

The Queensland Government is committed to reform of the *Queensland Heritage Act 1992*, which establishes the state's framework for conserving its historic heritage places while also ensuring those places are appropriately managed into the future. Since its introduction with bipartisan support in 1992, when it filled a recognised gap that left Queensland out of step with most Australian jurisdictions, the *Queensland Heritage Act 1992* has achieved a balance between the public good inherent in protecting important heritage places and the rights of owners to enjoy, use and develop their property. Integral to its purpose is recognition that sensitive adaptation, or fitting heritage places to new purposes when necessary, is central to their being safeguarded for future generations of Queenslanders.

A major review of the *Queensland Heritage Act 1992* was last completed in 2008 when legislative amendments: refocussed the Queensland Heritage Council on performing its strategic functions; introduced ground-breaking timeframes and processes for making, assessing and deciding on nominations to the Queensland heritage register; better aligned the identification and protection of historical archaeology with the register and its processes; transferred most responsibility for development assessment to the agency administering the legislation; and mandated that local governments identify and manage places of importance to their areas through local heritage registers, unless prescribed from doing so.

Policy objectives and the reasons for them

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

- Collaborate with the community in promoting the value of Queensland's places of cultural heritage significance.
- Streamline the statutory processes whereby places are considered for entry in, or removal from, the Queensland heritage register**.**
- Reduce unnecessary regulatory burden, particularly on owners of heritage places, and further encourage appropriate development of these places.

- Strengthen protections for the state's most important historic heritage places to ensure they can be appreciated by present and future generations of Queenslanders.
- Provide greater flexibility to local government in carrying out its important role of identifying and protecting places of local heritage significance.

The overarching reasons for these objectives are threefold. Firstly they deliver on the Queensland Government's commitments to significantly reduce the regulatory burden on industry and the community by 2018, to open data reform and promoting the state's heritage as a driver of the economy. Secondly they make the regulatory tools in the *Queensland Heritage Act 1992* more proportionate to the impact of development on the heritage significance of state and locally registered places. And thirdly the objectives of the Bill related to local government and local heritage places respond to changes in the planning and development system into which the *Queensland Heritage Act 1992* and the Queensland heritage register are integrated. They draw on the growing recognition of heritage at a local government level combined with the introduction of Queensland's State Planning Policy (SPP) in December 2013. The SPP delineates the state's interest in relation to cultural heritage matters at all levels of government. In particular, it requires local governments preparing or amending their planning schemes to identify local heritage places in their area, facilitate the conservation and adaptive re-use of these places, and include development requirements that avoid or minimise adverse impacts on their cultural heritage significance.

The objectives distil the results of a recent public review of the *Queensland Heritage Act 1992* initiated with release of the discussion paper 'Our heritage: A collaborative effort', the views of the Queensland Heritage Council and the experience of the Department of Environment and Heritage Protection in administering the Queensland heritage register processes and timeframes and regulating development at places on the register.

Achievement of policy objectives

Collaborate with the community in promoting the value of Queensland's places of cultural heritage significance.

The Bill will achieve its objective of collaborating with the community in promoting the value of Queensland's places of cultural heritage significance by:

- Articulating the function of the Queensland Heritage Council related to encouraging interest in, and understanding of, the state's cultural heritage to emphasise the value of this work.
- Providing access to material associated with nominations to the Queensland heritage register on the Department of Environment and Heritage Protection website to encourage interested members of the community to become involved by making a submission and track progress to its conclusion.
- Allowing for those purchasing property to be alerted to a current nomination affecting it through a standard heritage search undertaken as part of the conveyancing process.
- Including details in the Queensland heritage register of work covered by a heritage agreement for a state-registered place to raise awareness about what this means in terms of doing work to a place and assist new owners.

These amendments and the objective they serve acknowledge that conserving Queensland's cultural heritage significance is achieved not only by responsible proscription and regulation,

but also by helping people—whether they are Queenslanders curious about how their community has evolved, school students doing an assignment or tourists on a driving holiday—to connect with the places that tell the myriad stories of this state's diverse and unique history.

The Queensland Government has committed to providing open access to the information and data it collects. In line with this the Department of Environment and Heritage Protection is redefining how the heritage data collected over more than 20 years of operation of the *Queensland Heritage Act 1992* is captured, maintained and made publicly accessible through the Living Heritage data reform project.

The fairness and transparency of the processes the *Queensland Heritage Act 1992* sets out for places being considered for entry in, or removal from, the Queensland heritage register rely on the Department of Environment and Heritage Protection and the Queensland Heritage Council considering a wide range of viewpoints before a recommendation and decision are made. These changes will enable engagement to be as broad as possible.

New owners and custodians of state-registered places will benefit from the improvements in what information the Queensland heritage register includes when they are purchasing a property and when they are considering their options for developing it. People are often concerned about what the implications of heritage listing are for how they can use and change their property. This apprehension is sometimes fuelled by a number of myths regarding what changes can and cannot be made to these places. These alterations in the *Queensland Heritage Act 1992* will contribute to dispelling these myths and informing people with practical examples.

Streamlining the statutory processes associated with the Queensland heritage register

The Bill will achieve its objective of streamlining the processes associated with the Queensland heritage register by:

- Emphasising the high level of heritage significance a place must demonstrate to be eligible for entry in the Queensland heritage register, to ensure it fits within the accepted framework of world, national, state and local heritage significance.
- Improving the standard of information required of a nomination to the Queensland heritage register and clarifying what happens with nominations that do not comply with these requirements.
- Improving the provisions about changing information in existing entries to ensure the Department of Environment and Heritage Protection can appropriately address those errors or omissions that do not impact on the heritage significance of the place or its heritage boundary.
- Introducing part nominations (to remove parts of a State heritage place or add to one) to help manage changes to complex places involving many owners and ensure matters proceed in a timely and fair manner.
- Removing the discrete archaeological place category and the separate process for assessing these kinds of places for entry in, or removal from, the Queensland heritage register; making the existing 14, State heritage places.
- Introduce a mechanism whereby owners of nominated places can make a considered, written response to a recommendation made to the Queensland Heritage Council by the chief executive about the place's eligibility for entry in the Queensland heritage register.

- Minor and technical amendments to ensure various parts of the nomination assessment process proceed more efficiently.

The Queensland heritage register is the primary instrument by which places of outstanding heritage value to the state are identified and protected. In Australia it is widely accepted that there are four levels of heritage significance—world, national, state and local—and identifying at which level the significance of a particular place resides allows its values to be effectively conserved and managed into the future. This way of thinking about heritage significance reflects the centrality of the concept of place to heritage practice; it being broadly defined as including: 'site, area, land, landscape, building or other work, group of buildings or other works, and may include components, contents, spaces and views' (refer to *The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance*. 1999, p.2.)

This framework for sorting heritage places proposes that different government jurisdictions have at their disposal the most relevant and effective means for acknowledging the value of, and looking after, heritage places. It ultimately achieves a better match between heritage value and the capacity to protect this value. To articulate the level of significance a place demonstrates and thereby have it entered in the appropriate register or list, accepted practice is to assess it in relation to the relevant heritage criteria and then apply a significance threshold.

Today the Queensland heritage register contains nearly 1700 places, ranging from pastoral homesteads to lighthouses, botanic gardens and the remnants of nineteenth century gold mining ventures. The statutory processes and timeframes introduced in 2008 mean new nominations progress in a timely way along a well-defined path. It engages owners, local government and the community from an early stage, gives the Department of Environment and Heritage Protection a clear role in undertaking assessments and recommending on heritage significance to the Queensland Heritage Council and affords all parties an opportunity to put their views directly to the council before it makes a decision.

Given the matters at stake in this process, including the private and government resources expended, the Bill ensures only the best nominations initiate it and sound recommendations and decisions can result from those nominations. The Department of Environment and Heritage Protection provides substantial guidance to applicants about meeting these requirements and will continue to do so. Major changes to existing information about a state-registered place will also be openly and fairly deliberated, highly pertinent given that half the register's place documentation is now approximately 20 years old. The Queensland Heritage Council and the department are committed to regularly reviewing the register to make it a compelling and comprehensive record. Without eroding property rights, these amendments mean register data can be effectively managed; vital if an owner wishes to develop their property and move through the development assessment process efficiently.

Since 2008, the Queensland heritage register has included archaeological places, a category of place shown by skilled evaluation to have outstanding potential to yield important information about Queensland's history through archaeological investigation. The Bill integrates these 14 places into the State heritage place category to guarantee clarity, equity and consistency around the assessment of places of potential heritage significance to the state. These 14 places will be transitioned to satisfy the cultural heritage criterion described in

section 35(1)(c). The Queensland Heritage Council is the ultimate decision-maker in relation to entry of these places in the state register.

In recognising the potential for differences between the applications or nominations received and the recommendations made by the Department of Environment and Heritage Protection's chief executive, the Bill facilitates owners making a written response on the recommendation before the Queensland Heritage Council makes its decision. This resolves an identified deficiency in the current registration process, while not increasing maximum statutory timeframes.

Reducing unnecessary regulatory burden and further encouraging appropriate development

The Bill will achieve its objective of reducing unnecessary regulatory burden, particularly on owners of heritage places, and further encourage appropriate management and development of these places by:

- Allowing the Queensland Heritage Council to have regard for whether certain cultural heritage values of a place that are also natural heritage values are effectively protected via other legislation.
- Increasing the time following a decision of the Queensland Heritage Council from one to five years before which new applications cannot be accepted.
- Expanding the scope of work covered by exemption certificates issued to owners and managers of places entered in the Queensland heritage register to include that which will have a minimal detrimental impact on its significance.
- Giving local government greater flexibility in how it identifies and manages places of local cultural heritage significance in its area, as well as clarifying the application of local heritage provisions in the *Queensland Heritage Act 1992*.
- Providing for local government to also use exemption certificates with local heritage places identified in a planning scheme or entered in the local heritage register established under the *Queensland Heritage Act 1992*.
- Also providing for local governments to enter heritage agreements with owners and custodians of local heritage places to further reduce unwarranted involvement in the development assessment system.

When making its decision about whether to enter a place in the Queensland heritage register, the Queensland Heritage Council may have regard for other relevant matters. The Bill broadens the scope of these other matters to include situations where natural heritage and cultural heritage values coincide, where protections already in place for a place's natural heritage values are equivalent to those provided by the *Queensland Heritage Act 1992*. This will apply to places covered by Queensland and Australian Government legislation.

Before it makes a recommendation to the Queensland Heritage Council, the Department of Environment and Heritage Protection employs a highly-evolved and thorough methodology for assessing the heritage significance of a nominated place. It undertakes expert historical and physical investigations and has access to a large range of source material, including scanned historical documents, which due to the digital revolution have become readily available online. Further informing this assessment of significance, owners, local government and the community make submissions and oral representations. With this Bill, place owners will make written responses to heritage recommendations where necessary. The Queensland Heritage Council considers all relevant material before it makes a decision: meaning that

modern register decisions are highly sound; unlikely to lack input from an important source. Given these factors, the Bill increases from one to five years the time before which new nominations cannot be considered. In exceptional circumstances, when substantial new evidence has come to light and development threatens the potential state heritage significance of the place, the Minister has the power to issue a stop order and initiate a new assessment of the place.

Development of places entered in the Queensland heritage register includes a far broader scope of building and operational work than is normally classified as development under the *Sustainable Planning Act 2009*. Expanding the scope of work covered under an exemption certificate, from that which has no detrimental impact on significance to that which has minimal detrimental impact, will improve the value of these certificates as threshold mechanisms. It keeps minor work, carried out in agreed ways, out of unnecessary involvement in the Integrated Development Assessment System on heritage grounds. For example, with this simple change, it will ensure a fast and more efficient process to adapt state-registered places to meet disability access and fire safety requirements.

This greentape reduction tool will also be available for local governments to use at their discretion with local heritage places, whether these places are included in a local heritage register kept under the *Queensland Heritage Act 1992* or identified in a planning scheme heritage overlay. Local governments will also be able to enter into heritage agreements with owners of local heritage places, again reducing the level of interaction these individuals or organisations have with the Integrated Development Assessment System in relation to heritage.

Strengthening protections for the state's most important historic heritage places

The Bill will achieve its objective of strengthening protections for the state's most important historic heritage places by:

- Integrating the certificate of immunity provision into the registration process to provide certainty to property owners and developers while also ensuring a decision of the Queensland Heritage Council is the culmination of a fair and timely process to which all interested stakeholders have contributed.
- Revising the essential maintenance provisions to ensure a range of minor work that will prevent deterioration of a state-registered place can, in the rare circumstances where no other options have been found, be required of certain owners.
- Establishing a process associated with the discovery of underwater cultural heritage artefacts (these are defined as historic shipwrecks and aircraft wrecks, and the articles associated with them, in Queensland waters for 75 years or more).
- Creating a single 'stop work' order issued by the Minister and clearly aligned with the registration process to reduce confusion and duplication.
- Revising provisions related to appeals against Queensland heritage register decisions to clarify applications about parts of places (adding to existing state-registered places and removing parts from them).
- Refurbishing existing orders (restoration and non-development) following conviction for a serious heritage offence and introducing two new orders—public benefit and education orders—to provide the court a more contemporary and flexible palette of penalties for heritage offences.

Since its commencement in 1992, the *Queensland Heritage Act 1992* has allowed owners to ask the Queensland Heritage Council to afford their property immunity from future consideration for entry in the Queensland heritage register if it was shown to have no state heritage significance. However, keeping this provision separate from the registration process introduced in 2008 has made its current framing anachronistic in terms of transparency, natural justice and timeliness. The Bill addresses this deficiency, making another stream in the registration process whereby owners can obtain this certainty, but the community and other interested parties can also have a say. The places thus excluded from future consideration can then be developed over a period of five years, their owners free from the delays caused by a heritage nomination because proper consideration has been given to heritage significance.

To date only three essential maintenance notices have been issued since the power was introduced in 2008, demonstrating clearly that it is used judiciously. The requirement for consultation with owners, which frequently results in alternate solutions being found, is maintained with the Bill but the kinds of work covered fit better with the objective of the provisions: to repair damage and conduct basic maintenance before the state of a place has deteriorated beyond rectification. The strengthened power will prevent a small number of owners deliberately allowing their state-registered property to fall into ruin because of a misguided belief it will then be quickly removed from the register. It does not present a risk for responsible owners who have mothballed their state-registered properties or those who reasonably cannot maintain their property. The consultation required before a notice is issued will establish if either of these circumstances applies.

Queensland's maritime and underwater heritage is protected and managed under provisions of the *Queensland Heritage Act 1992* and the Commonwealth *Historic Shipwreck Act 1976*. Since 2008, the *Queensland Heritage Act 1992* has contained provisions for protecting historic shipwrecks. The shipwrecks provision was introduced to begin the process of bringing Queensland into alignment with the *Historic Shipwreck Act 1976*, which is currently under review and establishes the meaning of 'historic' as being 75 years or older. In 2010 the Queensland Government became a party to the Australian Underwater Cultural Heritage Intergovernmental Agreement, which was established to clarify the roles and responsibilities of various Australian jurisdictions in relation to the management of Australia's underwater cultural heritage. Its aim is also to meet international standards of best practice for management of Australia's underwater cultural heritage as outlined in the Rules in the Annex to the United Nations Educational, Scientific and Cultural Organisation 2001 *Convention on the Protection of the Underwater Cultural Heritage*, which the Commonwealth of Australia has not yet ratified.

The Bill clarifies the difference between archaeological artefacts and what are termed underwater cultural heritage artefacts, which are historic shipwrecks, historic air craft wrecks and the articles associated with them. It establishes a simple process for discoveries of historic shipwrecks and historic aircraft wrecks to be reported to the chief executive that is separate from the discovery reporting requirements and temporary protection afforded archaeological artefacts. The overarching protection the *Queensland Heritage Act 1992* affords historic shipwrecks, whether reported or not, is extended to historic aircraft wrecks, in time for those wrecks dating from World War II to gain protection around late 2016. The Bill also makes clear that historic shipwrecks and historic aircraft wrecks (and their associated articles) can be considered for entry in the Queensland heritage register if it can be shown they satisfy at least one of the cultural heritage criteria. Requiring the reporting of discoveries

of historic shipwrecks will also assist the Queensland Government in fulfilling its role as delegate under the *Historic Shipwreck Act 1976*.

The Bill merges the two existing orders in the *Queensland Heritage Act 1992* requiring work to be stopped at a place (interim protection order and stop order provisions). Issued by the Minister, the new 'stop work' order covers four different situations where the state heritage significance of a place is in question or work to a State heritage place does not have the appropriate approval or permit. These orders have been used reservedly in the past and this change merely reduces unnecessary duplication. The order's duration is long enough to enable an adequate assessment and recommendation by the Department of Environment and Heritage Protection, a full range of submissions and a decision by the Queensland Heritage Council, while also providing owners and development proponents with a timely result.

The provisions about who may appeal a Queensland heritage register decision of the Queensland Heritage Council are clarified in the Bill in relation to decisions on applications proposing to add to an existing state-registered place, or those proposing to remove part of a place. The references to who may appeal entry of an archaeological place in the register and the grounds for that appeal are removed, given integration of archaeological places into the State heritage place category.

The Bill makes the existing non-development order available to the court along with the restoration order when sentencing those convicted of seriously damaging or destroying a State heritage place, and introduces two new types of order. These are public benefit and education orders, which are contemporary and flexible penalty options on sentencing for certain heritage offences under the *Queensland Heritage Act 1992* and *Sustainable Planning Act 2009*. They complement existing penalty options and will help provide a more effective deterrent for heritage offences.

Providing flexibility to local government in identifying and protecting places of local heritage significance

The Bill will achieve its objective of providing flexibility to local government in identifying and protecting places of local heritage significance by:

- Allowing local government to choose the mechanism appropriate to their circumstances with which to identify and protect places of local heritage significance: either a planning scheme as per the requirements of the *Sustainable Planning Act 2009* or a local heritage register established under the *Queensland Heritage Act 1992*.
- Providing for local governments to issue exemption certificates for minor work to local heritage places thereby reducing unnecessary engagement with Integrated Development Assessment System.
- Providing local governments the option to enter agreements about the future management and development of local heritage places, again reducing unnecessary engagement with Integrated Development Assessment System.
- Creating a system whereby chief executive officers of local government can opt-in to using a last-resort power to issue notices requiring owners to conduct essential repair and maintenance on their local heritage places. This option will be exercised by regulation.

Since 2008, the *Queensland Heritage Act 1992* has mandated that local governments keep a local heritage register unless individual local authorities demonstrated that their planning scheme contained adequate provision for identifying and conserving local heritage places.

Twelve local governments were exempted from the *Queensland Heritage Act 1992* requirement this way. The Bill only changes this arrangement to the extent that it will remove the need for a prescribed list of local governments by establishing an either/or arrangement. Local governments must identify and conserve local heritage places, but they will be given explicit flexibility to decide how they achieve this end: either through establishing local heritage registers under the *Queensland Heritage Act 1992* or via their planning scheme. Transitional provisions ensure that the twelve prescribed local governments are not disadvantaged by this reform. Those local governments that have established local heritage registers and kept them separate from their planning scheme will also not be disadvantaged. The situation for local governments that establish a local heritage register and adopt it in their planning scheme will be clarified. The additional exemption certificate and heritage agreement tools and the essential repair and maintenance power flow out of this change.

The Bill also makes consequential amendments of other Acts listed in Part 3, Schedule 1.

Alternative ways of achieving policy objectives

There are no other viable alternatives to achieving the policy objectives other than amendments to the legislation.

The amendments in the Bill sit inside a larger framework of initiatives aimed at complementing aspects of the policy objectives described earlier, including a grants program to assist owners of State and local heritage places; the Living Heritage data reform project which will create a new heritage information database and data management system to support both state and locally generated heritage data and provide a new online interface for the Queensland heritage register; and finalisation of mid-term review of the *Queensland Heritage Strategy: a ten-year plan*. A revised Strategy will be consistent with government policy to lift the profile and recognise the importance of heritage in the state, and support the vision for cultural heritage places expressed in the Queensland Plan.

Estimated cost for government implementation

Any costs in relation to the amendments will be met from existing departmental resources.

Consistency with fundamental legislative principles

The Bill has been examined for compliance with the fundamental legislative principles outlined in section 4 of the *Legislative Standards Act 1992*, and those generally recognised. It is considered to have sufficient regard for the rights and liberties of individuals and the institution of Parliament. Where fundamental legislative principles are raised by the content of a provision, but not breached, these issues are addressed in the relevant part of the Notes on Provisions.

Consultation

The Department of Environment and Heritage Protection released a discussion paper framed around review of the *Queensland Heritage Act 1992* for six weeks from 8 May to 20 June

2014. It garnered 48 submissions (plus a small number of late responses) from a broad range of respondents, including members of the community, industry groups, heritage professionals, local government and representative organisations. The five themes canvassed by the discussion paper (namely Queensland Heritage Register, Doing work to heritage places, Local government, Archaeology and Enforcement) and the 31 individual questions posed within each theme refer to core aspects of the operation of the *Queensland Heritage Act 1992*. A summary of the outcomes of consultation on the discussion paper is contained in a consultation report published on the Department of Environment and Heritage Protection website.

The Department of Environment and Heritage Protection met with representatives of 11 organisations [Local Government Association of Queensland (LGAQ), Brisbane City Council, Ipswich City Council, City of Gold Coast, National Trust of Australia (Queensland) Ltd, Urban Development Industry Association, Queensland Division of Property Council of Australia, the Government Architect in the Department of Housing and Public Works, and Museum and Gallery Services Queensland and the Abandoned Mines Unit in the Department of Natural Resources and Mines] to collect direct feedback on the discussion paper.

The Queensland Heritage Council has been consulted throughout the review of the *Queensland Heritage Act 1992*; providing detailed recommendations before the Authority to Prepare submission, making a submission on the discussion paper, and commenting on a draft of the Bill prior to the Authority to Introduce submission.

Three individuals made submissions. The community organisations that made responses were the: Far Northern Branch of the National Trust Queensland, National Trust of Australia (Queensland) Ltd, Sunshine Coast Heritage Reference Group, The Corporation of the Synod of the Diocese of Brisbane, Buderim Historical Society, Buderim-Palmwoods Heritage Tramway Inc., Spring Hill Community Group and Royal Historical Society of Queensland.

Eleven industry consultants made submissions (e.g. conservation architects and archaeologists). The industry organisations that made submissions were the: Australian Institute of Architects, Queensland Tourism Industry Council, Australian Institute of Maritime Archaeology, Australasian Society for Historical Archaeology, Queensland Division of Engineers Australia, Urban Design Alliance of Queensland, Urban Development Institute of Australia Queensland, Museum and Gallery Services Queensland, Queensland Division of Property Council of Australia, and Australian International Council on Monuments and Sites.

Twelve individual local governments made responses (Cassowary Coast Regional Council, Brisbane City Council, Cairns Regional Council, Gladstone Regional Council, Ipswich City Council, Logan City Council, Mackay Regional Council, Townsville City Council, City of Gold Coast, Sunshine Coast Regional Council Cultural Heritage Services, Fraser Coast Regional Council and Mareeba Shire Council) as well as the LGAQ on behalf of its members.

The other government agencies or companies that made submissions were the Great Barrier Marine Park Authority, Queensland State Archives, the Department of Natural Resources and Mines, and Queensland Rail.

Further details about the responses on specific questions and related to changes proposed in the Bill are included in the clause-by-clause discussion in Notes on Provisions.

Consistency with legislation of other jurisdictions

All Australian jurisdictions, whether state, territory or Commonwealth, have legislation for the conservation of significant cultural heritage, which is broadly defined to include 'the places, values, traditions, events and experiences'[1] that form an important record of the past and are necessary to keep into the future. What each jurisdiction includes in its definition of cultural heritage differs somewhat; generally the points of divergence involving natural heritage, moveable objects not at a heritage place and Indigenous cultural heritage. The *Queensland Heritage Act 1992* is focussed on places of cultural heritage significance and the objects found and kept at those places. A place can be a house, a bank, a botanic garden, a nineteenth century gold mining site, an historic shipwreck or a site where solid evidence indicates important archaeological artefacts will be found or will be revealed through further investigation. Separate legislation in this state covers places of cultural heritage significance to Aboriginal and Torres Strait Islander peoples solely because they are associated with tradition and custom. These are the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003*, which in 2014 are administered by the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs. The *Queensland Museum Act 1970* provides for the management of natural history, historical and technological collections of moveable items of significance to Queensland.

All Australian jurisdictions establish a statutory body or heritage council and give it functions related to conserving cultural heritage, particularly in relation to a heritage register or inventory of important heritage places or objects, and regulating how these places or objects are developed and changed by their owners. All councils have a statutory relationship with the chief executive of the administering government agency and that agency's Minister. The Queensland Heritage Council does not represent the Queensland Government and performs an important function as an impartial decision-maker and advice-giver.

Each jurisdiction establishes a heritage register, with a number creating more than one for different types of heritage such as archaeological artefacts, moveable objects and historic shipwrecks. Many retain both provisional and permanent entry statuses, meaning some places are given temporary or provisional protection until a final determination is made about whether they demonstrate the appropriate level of heritage significance. Along with the introduction of processes and timeframes within which nominations must be resolved, these dual statuses were removed from Queensland's heritage legislation in 2008 because they were inefficient and did not provide natural justice and certainty to all parties involved, particularly owners. When the 2008 amendments came into effect, the accumulation of places nominated to the register, but not decided on, was processed under the newly introduced processes and timeframes, meaning Queensland no longer has such a backlog. This remains an important achievement and outstanding feature of this state's heritage legislation. Amendments in this Bill will improve these processes.

The other features found consistently between the jurisdictions include provisions to stop work at places where heritage significance is in question, conservation or maintenance orders

[1] Australian Government, Department of the Environment, 'About Australia's heritage', viewed August 2014 at http://www.environment.gov.au/topics/heritage/about-australias-heritage.

to require owners to conduct work that will halt deterioration of a listed place, provisions to exclude places from future applications, and provisions related to authorised officers and entry powers. The heritage legislation of most jurisdictions also provides for the protection of places of local heritage significance, as well on occasion World heritage sites (refer to the discussion about *Clause 4* for more information of the heritage management framework and levels of significance).

Further jurisdictional comparisons are made where necessary in the clause-by-clause discussion Notes on Provisions.

Notes on provisions

Part 1 Preliminary

1 Short title
Clause 1 states that, when enacted, the Bill will be cited as the *Queensland Heritage and Other Legislation Amendment Act 2014.*

2 Commencement
Clause 2 provides for commencement of the *Queensland Heritage and Other Legislation Amendment Act 2014* on a day to be fixed by proclamation.

Part 2 Amendment of Queensland Heritage Act 1992

3 Act amended
Clause 3 cites the Act amended by this part as the *Queensland Heritage Act 1992.*

4 Amendment of s 2 (Object of this Act)
Clause 4 amends how the object of the *Queensland Heritage Act 1992* is achieved by updating the subsections about keeping the Queensland heritage register and local heritage registers, and inserting a new subsection about the requirement to report the discovery of archaeological artefacts and underwater cultural heritage artefacts (which, by *Clause 81*, are defined in the dictionary in the schedule as historic shipwrecks and aircraft wrecks, 75 years or older, and the articles associated with them). *Subclause (2)* then provides for the renumbering of the subsections in section 2(2) after (b).

New section 2(2)(b) emphasises that places and areas are on the Queensland heritage register because they are of cultural heritage significance to Queensland: for example, they represent the very best examples of a well-known type of place, demonstrate a central tenant of our history or are associated with a person who had a profound impact on our society.[2] The cultural heritage criteria in section 35 of the *Queensland Heritage Act 1992* sets out eight different aspects of what it means for a place to be important to Queensland. To demonstrate this level of heritage value and be entered in the state register, a place must illustrate at least one of these aspects in a significant way.

The purpose of new section 2(2)(d) is to give appropriate weight to the part played by local government in identifying and managing places of local cultural heritage significance. This is the largest category of Queensland's heritage places and includes those important to local communities.

These two different levels of cultural heritage significance sit inside a four-tier framework for identification and management of heritage places that is widely accepted in Australia. It correlates the level of significance of a place with how this value is most effectively managed. At the town and city level, local governments create and oversee registers and

[2] Places are entered in the Queensland heritage register by the Queensland Heritage Council, while protected areas are declared by the Governor in Council.

planning overlays for places of local importance; places important to a state or territory as a whole are identified in state heritage registers; and places that are of outstanding heritage value to the nation are identified on the National Heritage List established under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) and administered by the Australian Government's Department of the Environment. The National List features places like the Glasshouse Mountains and Sydney Harbour Bridge. Beyond this is the World Heritage List, managed by the United Nations Educational, Scientific and Cultural Organisation under the World Heritage Convention (ratified by Australia in 1974). It includes places like the Great Barrier Reef and Sydney Opera House in Australia, Stonehenge in southern England and the Statue of Liberty in the United States of America.

Consultation has indicated there is general confusion in the community about the existence and nature of this heritage management framework and where places in the Queensland heritage register fit within it. Solid support was given to more information about this framework being disseminated by such means as guidelines and through the Queensland Heritage Strategy. The Queensland Heritage Council has also observed that the level of heritage significance places must demonstrate to be entered in the state's heritage register is not widely understood, nor is the council's role in ensuring that register is properly representative.

Including a new section 2(2)(c) in how the object of the *Queensland Heritage Act 1992* is achieved, about the requirement to report the discovery of important archaeological artefacts and underwater cultural heritage artefacts, lends appropriate weight to the later provisions that refer to these artefacts. This demonstrates their value in terms of the conservation of Queensland's cultural heritage.

5 Amendment of s 8 (Functions of council)

Clause 5 amends section 8 to elaborate the function of the Queensland Heritage Council in encouraging interest in, and understanding of, Queensland's cultural heritage. This amendment reflects the increased value the council places on collaborating with the community in promoting and celebrating Queensland's diverse heritage places.

6 Insertion of new s 8A

Clause 6 gives the 12-member Queensland Heritage Council the powers necessary or convenient for it to perform its functions under the *Queensland Heritage Act 1992* or any other Act.

7 Amendment of s 13 (Eligibility for membership)

Clause 7 removes subsection (3) from section 13 which defines the term *spent conviction*. The definition is shifted into the dictionary in the schedule by *Clause 81*, for the purposes of the amendment in *Clause 8*.

8 Insertion of new ss 13A and 13B

Clause 8 first inserts new section 13A, providing for the Minister to obtain from the commissioner of the police service a criminal history report on those people nominated to the Queensland Heritage Council who also consent to the check. The report is to include a brief description of the circumstances of a conviction. The new section requires the commissioner to comply and provide all obtainable information. It then requires the Minister to destroy the report as soon as practicable after it is no longer needed in the appointment process.

Clause 8 then inserts section 13B, setting out how this information is to be properly disclosed during the appointment process and making it an offence, with an associated maximum penalty of 50 penalty units, for a person to disclose the details of a criminal history report other than as permitted. The report may be disclosed to perform relevant functions under the *Queensland Heritage Act 1992*, if it is authorised under another Act or permitted by law, or if the person to whom it relates consents.

It is common throughout the Queensland statute book that a criminal history check is carried out on prospective members of statutory bodies. Since 2003, the *Queensland Heritage Act 1992* has required that a person cannot be appointed to, or continue as a member of, the Queensland Heritage Council if they become insolvent, have a conviction for an indictable offence or an offence under the Heritage Act, or are convicted of such offences while in office. However, the Heritage Act has not featured provisions about how information related to criminal history should be obtained, instead relying on the commissioner of the police service to use discretionary powers under section 10.2 (Authorisation of disclosure) of the *Police Service Administration Act 1990*. The Queensland Police Service requested that a change be pursued as these discretionary powers have limitations, which mean not all convictions for indictable offences can be disclosed.

New sections 13A and 13B raise the fundamental legislative principle of whether sufficient regard is had for the rights and liberties of individuals, but does not represent a breach as it sets out a clear process by which criminal history information is obtained and how it is dealt with thereafter. Consideration of this information during the Queensland Heritage Council appointment process, decided by the Governor in Council, is justified given the positions of public trust and responsibility members will hold. To mitigate any adverse impact on the privacy of appointees, new sections 13A and 13B include safeguards about the use of a person's criminal history: it will not include spent convictions, the consent of the person is required before conducting the check, and the resulting document must be destroyed once the appointment process is complete.

The penalty related to unpermitted disclosure of criminal history information in new section 13B also raises the fundamental legislative principle of whether sufficient regard is had for the rights and liberties of individuals in that the consequences of legislation should be proportionate and relevant to the actions to which the consequences are applied. To ensure the privacy of those being considered for appointment is protected, it is appropriate to delineate how criminal history information is handled and proportionate to make it an offence to disclose it improperly. The size of the penalty is commensurate with the seriousness of the offence and corresponds with similar offences and penalties created recently with other legislation such as the *Fair Trading Inspectors Act 2014* and *Queensland Training and Assets Management Authority Act 2014*.

9 Amendment of s 27 (Disclosure of interests of members)

Clause 9 amends section 27(3) to limits the involvement in Queensland Heritage Council business of a member with an interest; that interest being direct or indirect and something conflicting with that person's proper performance of their duties about a particular matter. The insertion means a council member with an interest must not make an oral representation to the council on a heritage recommendation made about an application related to the Queensland heritage register, unless the council directs otherwise. The register process makes provision in part 4 for those involved, including owners, local government and submitters, to speak directly to the council before it makes a decision.

The proscription established in the new subsection (c) in section 27(3)would apply, for example, to a Queensland Heritage Council member commissioned by the owner of an nineteenth century pastoral homestead being considered for entry in the Queensland heritage register to provide an assessment of the cost associated with making it meet current building regulations. Unless directed by the council, the interested member could not speak directly to a meeting of the council when it is considering the matter. However the owner or other of their representatives who are not members of the council may present at a council meeting. It would be possible for the interested member to prepare a report as part of a submission on the owner's behalf, but they could not present a summary of it directly to the council. Copies of submissions are currently provided to all those entitled to receive a copy of the recommendation, including the applicant, local government and submitters. Submissions, along with all the written material associated with the registration process, will be made available at the department's website to ensure the registration process is a transparent as possible.

10 Amendment of s 28 (Disclosure of interests of committee members)

Clause 10 amends section 28(3) and applies the same general prohibition established with the amended 27(3) to committee members with an interest not making an oral representation to the Queensland Heritage Council before it decides on a Queensland heritage register application made under section 36.

Disallowing a Queensland Heritage Council member or a committee member with a declared interest in a matter from making an oral representation to the council in relation to its decision on a heritage recommendation raises the fundamental legislative principle of whether sufficient regard is had for the rights and liberties of individuals. The specific principle relates to natural justice and whether something should be done to a person that will deprive them of some right, interest, or legitimate expectation of a benefit without them being given an adequate opportunity to present their view to the decision-maker. Also, the third principle of natural justice related to procedural fairness is raised. The amendments in sections 27(3) and 28(3) (*Clauses 9* and *10*) do not represent breaches of these principles as, while the capacity of interested council or committee members is curtailed, this is justified because it prevents negative perceptions in the community about how the council conducts its business and whether a council or committee member can use their special knowledge of the council to unfairly persuade it in some way. It helps prevent any questions arising as to whether the council's decisions conform to section 8(2) where it is required to 'act independently, impartially and in the public interest'. The Queensland Heritage Council retains the discretion to allow such a representation if it believes some aspect of natural justice requires one to be made.

11 Amendment of s 31 (The Queensland heritage register)

Clause 11 amends section 31, which describes the Queensland heritage register and the categories of place it contains, by removing reference to archaeological places and the information about them the register must include. Generally, the Bill removes this place category and makes the 14 existing archaeological places into State heritage places (refer *Clauses 31* and *80*).

Clause 11 then inserts a new subsection (3A) allowing that an entry in the Queensland heritage register may include details of the development, work or activities approved under a heritage agreement entered into under part 7 of the *Queensland Heritage Act 1992*. Such a

formal agreement can be entered into by the owner of a State heritage place, or protected area, and the chief executive. Its existence can be recorded on the certificate of title for the land. It is a useful regulatory burden reduction tool as it allows owners to achieve up-front certainty about future plans for a place and can remove the need for further development approvals in relation to heritage. *Subclause (4)* then provides for the appropriate renumbering of sections 31(3A) and 31(4).

Allowing for the development, work or activities covered by a heritage agreement to be part of the register entry for a place, means this information will form part a certified copy of the entry (refer section 33 and *Clause 13*). It will also be available at the department's website where elements of all register entries are publicly accessible. This will assist new owners of heritage places to understand the specific kinds of work that are acceptable in terms of conserving heritage significance. It will also raise community awareness about what heritage listing at the state level means, dispelling some myths about it stopping a property being painted or having minor repairs done to it, or miring simple activities in burdensome red tape.

Information about development, work or activities covered by a heritage agreement being part of the register entry for a place raises the fundamental legislative principle of whether sufficient regard is had for the rights and liberties of individuals in relation to the right to privacy. This is because the owner of a place may consider aspects of what is covered by a heritage agreement to be private information. However, this provision does not represent a breach as the chief executive can exercise discretion about what details are included, and would not include information an owner or custodian considered inappropriate. The purpose of this provision is to raise awareness, not to jeopardize the accord reached. Resolving what aspects of a heritage agreement could be made public would form part of preparatory negotiations.

12 Replacement of s 32 (Register to be available for public inspection)

Clause 12 replaces section 32, changing the form in which the chief executive is required to make the Queensland heritage register available for public inspection. Rather than it being a physical copy available for inspection at the department's head office and elsewhere the chief executive considers appropriate, it will be the online register accessible at these locations.

Changing the requirement for the Queensland heritage register to be available at the department's website rather than as a physical copy raises the fundamental legislative principle of whether sufficient regard is had for the rights and liberties of individuals in relation to access to information held by public authorities. Rather than representing a breach, this change supports this long established right, as well as advancing how the object of the *Queensland Heritage Act 1992* is achieved by improving the availability of meaningful information via the internet.

13 Amendment of s 33 (Extracts from register)

Clause 13 first amends the heading of section 33 to clarify that the provision deals with extracts from the register, which are certified copies of entries in the Queensland heritage register, as well as certificates about certain matters. In legal proceedings, the former can be taken as proof of the entry of a place in the register and the contents of its entry document. *Subclause (2)* removes reference to archaeological places; the category of place integrated into the State heritage place category with the Bill. *Subclause (3)* then inserts the requirement that a certificate about a place (obtained for a fee as a legal document and connected to the parcel or parcels of land involved) will not only indicate whether a place is entered in the

Queensland heritage register or covered by a heritage agreement, but also whether there is a current application for a place to be considered for entry in, or removal from, the register or it has been excluded from entry under new section 56B in division 5A of part 4 (refer *Clause 29*). These are known as Certificates of Affect and result from one of the searches conducted during due diligence on a property purchase or as part of property conveyancing.

14 Amendment of s 34 (Changing entries in register)

Clause 14 amends section 34(2) to clarify that the chief executive can make minor changes to the details in an entry for a place on the Queensland heritage register in order to update it and correct errors or omissions without needing the agreement of the owner or the Queensland Heritage Council. This capacity to make minor changes already exists under section 34(1) and *Clause 14* simply elucidates the difference between a minor change and one of substance. If the latter is proposed—one that alters the extent of the heritage boundary or affects the assessment of significance (why the place is on the register)—the written agreement of the owner or owners and the Queensland Heritage Council is required.

Experience has shown that the agreement of all owners of a State heritage place cannot sometimes be obtained. In this instance, a part application can be made following the full registration process initiated under section 36 of the *Queensland Heritage Act 1992*. These types of register applications are described later in the discussion about *Clause 81*, which inserts definitions for these types of applications into the dictionary in the schedule (see definitions for the terms *enter* and *remove*). There are a number of reasons why written agreement cannot be readily obtained: a heritage-registered place may include many more than one land parcel and all the owners do not agree. Also, the definition of owner in the *Queensland Heritage Act 1992* encompasses many persons or entities with an interest in land, including registered owners and lessees but also beneficial owners and those with a mining interest.

There are now nearly 1700 places entered in the Queensland heritage register and at least half the entries associated with these places were prepared a decade or more ago. Information about places has become far more readily available due to the digital revolution. An entry features location details for a place, a statement of heritage significance that describes why the place fulfils the cultural heritage criteria it was determined to satisfy, a history from which this statement derives, a description of what features and qualities about the place are significant and a heritage boundary map that shows the area of land affected by the listing. Photographs and other drawn material can be part of the entry, including scaled plan and section drawings. An example of a minor change in a register entry would be adding an additional paragraph to its history that reflects a new use to which the place has been put after it was entered. This new paragraph might describe how a school, entered in the register because it demonstrates some key aspects of how school design changed over time in Queensland, is closed and becomes part of a residential development. An example of a change of substance in a register entry is when a review of the significance of a place shows a reduced boundary will more appropriately encompass what is important about a place at a state level. A revision of the statement related to why a place is on the Queensland heritage register in the first place would constitute a change of substance.

15 Amendment of s 35 (Criteria for entry in register)

*Clause 1*5 introduces an example for the cultural heritage criterion set out in section 35(1)(c). This example is a vestige of the separate criterion the *Queensland Heritage Act 1992* had made it necessary for a place to satisfy for it to be entered in the Queensland heritage register

as an archaeological place. The new Example in subsection (c) makes clear that the phrase 'potential to yield important information' covers archaeology[3] and artefacts as important sources of information about Queensland's history. This change represents part of the way the archaeological place category is being integrated into that of State heritage places. The example does not exclude other ways a place may satisfy this criterion, such as when it houses an extensive collection of rare material from which further study will uncover new details about an aspect of Queensland's history.

Consultation generated strong support for integrating archaeological places into the State heritage place category to remove unnecessary process duplication and increase clarity about assessing all aspects of heritage significance, including that related to historical archaeology. The places currently on the Queensland heritage register as archaeological places, but as a consequence of amendments in this Bill would satisfy the cultural heritage criterion in section 35(1)(c), were entered for two interconnected reasons. Firstly, expert research and examination showed there was strong potential for them to provide information about our past through further archaeological investigation. Secondly, the information these places could yield was determined to be important in revealing some aspect of Queensland's history not well documented in any other way. So these places represent a research resource, the destruction of which would remove the prospect of understanding some key element of the state's history. These places are determined by the Queensland Heritage Council to provide information on people, events and activities often overlooked in, or absent from, the documentary record and investigation of them may provide insight into key historical processes and themes.

16 Amendment of s 36 (Applying to enter place in, or remove place from, register)

Clause 16 inserts further detail into section 36 about the information that must accompany a heritage application, whether it is an application proposing the entry of a place in the Queensland heritage register, or one proposing the removal of a State heritage place from the register (or parts thereof). In terms of the first type of application the details inserted will ensure a well-researched and evidenced case is made that a place may be of significance to Queensland before the registration process is initiated. With regard removal, the details ensure a similarly evidenced case is made. *Subclause (2)* provides for the renumbering of subsections in section 36.

Amendment of the approved forms and guidelines will ensure these requirements are clearly articulated to potential applicants. These changes will improve transparency and assist applicants, as well as cutting administrative burden by eliminating inadequately documented applications from the registration process.

Experience administering the statutory processes and timeframes since 2008 has shown what information must be part of an application to enable the chief executive to provide the Queensland Heritage Council with a sound recommendation, upon which it can base a sound decision. The amended section 36 details that an application proposing entry of a place in the Queensland heritage register must include a statement about why the place is significant that refers to the cultural heritage criteria the applicant believes apply. This statement must be supported by a researched history, references or copies of the historical material used to

[3] Archaeology is the scientific study of the material remains of the past through the application of archaeological techniques, including historical research, excavation, collection of artefacts and analysis.

prepare the history, and a considered description of the place and the features that make it important. There must also be a plan showing the features of the place as compared to the cadastral boundaries and the proposed heritage boundary. This visual illustration is key to ensuring the soundness of the notification aspects of the registration process as it clearly depicts what land is affected and allows the Department of Environment and Heritage Protection to involve all affected owners from the beginning. The requirements are slightly different for an application proposing removal of a place from the register, as an entry explaining the significance of the place already exists. An application proposing to remove part of a state-registered place requires a plan to show exactly what area of land and features are proposed for removal.

Concern was expressed by some submitters that adding these kinds of requirements into section 36 of the *Queensland Heritage Act 1992* would exclude certain people from making applications; those without ready internet access or without skills in historical research. This raises the fundamental legislative principle of whether sufficient regard is had for the rights and liberties of individuals, in particular the specific principle of natural justice and whether something should be done to a person that will deprive that person of some right without them being given an adequate opportunity to present their view to the decision-maker. The amendments in section 36 do not represent a breach of this principle. The Department of Environment and Heritage Protection provides guidance and direct assistance to applicants about the material required with an application and will continue to do so. However, given the effort and expense of undertaking the registration process, and the consequences of the resulting decision for property owners, a heightening of initial application requirements is considered reasonable and appropriate.

17 Insertion of new s 36A

Clause 17 inserts new section 36A (Non-complying application) that explains what happens with an application that does not comply with the requirements set out in section 36. New section 36A requires the chief executive to notify the applicant within 10 business days of receiving the application that it does not meet the requirements of new sections 36(2) and 36(3), give reasons why and explain how to have a future application meet the required standard. This insertion corresponds to the business practice followed since 2008 when the registration processes and timeframes were introduced into the *Queensland Heritage Act 1992*.

18 Amendment of s 37 (Particular restriction on application)

Clause 18 amends section 37 to increase the period—from one year to five years—before which a new application can be made for a place after the Queensland Heritage Council makes a decision about it. So, if the council decides not to enter a place in the Queensland heritage register, no new applications can be accepted by the chief executive until five years after the date of the decision. Only if substantial new information comes to light about the State heritage significance of the place and development threatens to destroy that significance, does the Minister have discretion to issue a stop order and initiate a new application under section 154 as amended by *Clause 67*. Similarly, if the council decides not to remove a place from the Queensland heritage register another application seeking to remove the place cannot be made for five years.

Increasing the moratorium period on new applications raises the fundamental legislative principle of whether sufficient regard is had for the rights and liberties of individuals. The specific principle relates to natural justice and whether something should be done to a person

that will deprive that person of some right without them being given an adequate opportunity to present their view to the decision-maker. It was a matter that raised concern amongst some submitters, a number of whom suggested a shorter moratorium period be applied. This increase to five years is justified given the quality and breadth of the recommendations made by the chief executive, and the careful consideration given to register matters by the Queensland Heritage Council, and that if substantial new evidence comes to light, the Minister has the power under the stop order provisions to intervene. In relation to applications about removing places from the Queensland heritage register, the interaction between the increased moratorium period and stop order provision will not provide any mechanism for substantial new information about why the place should be removed to be investigated. This is appropriate given the comprehensiveness of a council decision on these matters (and the assessment that has led to that decision) and because there are other mechanisms for removing places that are totally or substantially destroyed by fire, natural disaster, or through approved development (refer sections 46A and 56A of the *Queensland Heritage Act 1992* and *Clause 24*).

19 Amendment of s 38 (Initial notice of application)

Clause 19 makes minor amendments to section 38(1)(c) about how the notices distributed to owners when a heritage application is received explain the owner's capacity to make submissions. These adjustments provide clearer ground for electronic submissions, as well as physical ones. *Clause 19* also amends section 38(1)(c) to add the requirement that the notice sent to the place owner alerts them to their capacity to make a heritage response on the recommendation and the associated timeframes for this, as established with new subdivision 2A in division 5 of part 4 (refer new sections 50A and 50B created by *Clause 25).*

20 Amendment of s 39 (Chief executive to publish notice of application)

Clause 20 makes minor amendments to rephrase 39(2)(b)(ii) and (iv), removing reference to the place where an application or submission can be viewed. This reflects the amendments in *Clause 12* and *Clause 21* allowing the chief executive to make the Queensland heritage register and heritage application copies available on the department's website. It recognises that the material produced through the course of the application process should be available on the department's website or received and distributed electronically.

21 Replacement of s 40 (Chief executive to keep applications available for inspection)

Clause 21 replaces section 40 for the same reason *Clause 12* replaces section 32. *Clause 21* provides that, instead of having to make physical copies of applications made under section 36 of the *Queensland Heritage Act 1992* available at the department's head office, the chief executive can publish them on the department's website. The chief executive must also provide for those interested in viewing this online material at the department's head office and anywhere else the chief executive deems appropriate.

22 Amendment of s 41 (When submission about application may be given to chief executive)

Clause 22 makes a minor amendment to section 41 to clarify that, if agreed between the chief executive and the person or entity wishing to make a submission, the period in which they can do so can be extended twice. This means an initial time extension does not have to reach the 40 business day limit and there is scope for the process to respond to the circumstances of each place and each person wishing to make a submission about whether it does or does not

satisfy the cultural heritage criteria. *Subclause (3)* provides for the renumbering of subsections in section 41.

23 Amendment of s 46 (Notice of heritage recommendation)

Clause 23 amends section 46 to ensure the notice about the heritage recommendation made by the chief executive, and given to the owner, includes details about their right to make a heritage response under new sections 50A and 50B (refer *Clause 25*). The notice also must say that this increases the Queensland Heritage Council's period for making a decision on the recommendation to allow for the extra time such a response requires. This will allow owners to efficiently direct their efforts and resources to responding to the key document regarding heritage significance relied upon by the Heritage Council when deciding registration matters. Consultation revealed widespread support for this proposal.

The *Queensland Heritage Act 1992* registration process gives early notice to owners, local governments and other interested parties about a Queensland heritage register application and allows them to make submissions to the department. These submissions often provide useful historical information and can be an indication of the community attitude to the prospect of listing, so are valuable at this initial stage in the assessment of significance. However this process affords owners little time after the chief executive makes a recommendation to prepare a response that can be considered by the Heritage Council, an issue that has been raised by a number of owners. The situation has created negative perceptions of the natural justice afforded to owners in the process. It is most acute when there is substantial variation between the application made and the department's recommendation. Owners sometimes commission consultants to prepare a submission on their behalf, whereas their resources would be more efficiently directed at addressing the recommendation, the expert assessment of heritage significance done by the Department of Environment and Heritage Protection and the basis for a future entry in the register.

The introduction of a heritage response process does mean that only one owner of a place can affect an increase in the period in which the Queensland Heritage Council must make a decision. Currently all owners must agree to the extension of this timeframe. This raises the fundamental legislative principle of whether sufficient regard is had for the rights and liberties of individuals. This is in relation to the principle of natural justice that something should not be done that will deprive a person of some right or interest without that person having an opportunity to present their case to the decision-maker. The amendment in section 46 is justified given that the timeframe is not extended indefinitely and more information will be considered before a final decision is made by the Heritage Council.

24 Amendment of s 46A (Chief executive may give destroyed place recommendation)

Clause 24 first makes a minor amendment to section 46A to clarify that no application is required to prompt the chief executive to make a destroyed place recommendation. This recommendation is made on the basis that a place entered in the Queensland heritage register has been completely or substantially destroyed by fire or natural disaster, or as a result of approved development. It represents a fast and efficient way of removing places from the register that no longer have State cultural heritage significance. *Subclause (2)* updates the reference in section 46A(1)(a)(ii) to section 71(7), renumbered with the Bill and wherein the Queensland Heritage Council makes a recommendation on development on a State heritage place, other than an archaeological State heritage place, proposed by a Queensland Government agency.

25 Insertion of new pt 4, div 5, sbdiv 2A

Clause 25 inserts a new subdivision (2A) in division 5 of part 4 that sets out how a heritage response can be made by an owner about the heritage recommendation made by the chief executive regarding the eligibility of a place for entry in the Queensland heritage register. New section 50A establishes that the owner can elect to make a heritage response, and new section 50B states that it must be provided within 20 business days after the owner notifies the Queensland Heritage Council. This period can be extended to a maximum of 30 business days from the notice if agreed between the owner and the council. These timeframes correspond closely to those for making submissions, however, the extension timeframe is an additional ten business days rather than 20. To ensure this new step in the registration process fits inside the overarching, maximum timeframe the council has in which to make a decision on a register matter, a ten business day extension is appropriate. By this stage in the process an owner has long been aware of the application, having had adequate time to commission a heritage consultant, if one is required, and provide for them to visit the place in question. This is a prime reason for providing for a 20 business day extension to the standard 20 business day time period for heritage submissions. Restricting the extent to which the heritage response timeframe can be extended ensures it is feasible for the Heritage Council to first consider the matter at a scheduled meeting (of which there are generally eight a year), defer the decision to seek further information and then reconsider and decide on the matter at the next scheduled meeting.

26 Amendment of s 51 (Council to make decision on heritage recommendation)

Clause 26, through *Subclauses (1)* and *(2)*, amends section 51 to increase the Queensland Heritage Council decision period from 60 to 100 business days (from the date on which the recommendation was made) if an owner elects to make a heritage response (refer *Clause 25*). This conforms to the current maximum timeframe the Heritage Council has in which to make a decision; the increase having otherwise to be agreed with the owner or owners of the place.

Subclause (3) inserts a new section 51(4) to include another matter the Queensland Heritage Council may have regard to before making a decision on a heritage recommendation. Without limiting existing section 51(2(b), which relates to any other information the council considers relevant to its decision of a heritage application, the council may consider whether a place's cultural heritage significance is chiefly because of its natural features and protected under other legislation. For example, if the place is a national park under the *Nature Conservation Act 1992* (Qld) or included in the National Heritage List under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth), the Heritage Council can consider whether its heritage values need additional protection under the Heritage Act.

The way historic heritage values are identified in Queensland corresponds with the methodology current nationally and internationally. This means different types of places are protected in the Queensland heritage register, including some landscapes which have both natural and historic heritage values, such as Cook's Landing Place at the Town of Seventeen Seventy. This results in potential overlap between protection regimes for natural and heritage values (where for example the place, or part of it, is within a national park or world heritage area). To reduce the regulatory burden sometimes created by this overlap, the *Queensland Heritage Act 1992* will recognise equivalence in other legislative protections and management systems which achieve its protection objectives: the purpose achieved with new section 51(4).

27 Amendment of s 55 (When council is taken to have made decision)

Clause 27 amends section 55(5)(b) and the definition of the term *relevant period* to include reference to an extension of the period in which the Queensland Heritage Council must decide on a heritage recommendation agreed because the owner wishes to make a heritage response as established by *Clause 25*.

28 Amendment of s 56A (Council to make decision on destroyed place recommendation)

Clause 28 updates the reference in section 56A(2)(a)(ii) to section 71(7), renumbered with the Bill and wherein the Queensland Heritage Council makes a recommendation on development on a State heritage place, other than an archaeological State heritage place, proposed by a Queensland Government agency.

29 Insertion of new pt 4, div 5A

Clause 29 inserts division 5A in part 4 about excluded places, or those the Queensland Heritage Council decides should be excluded from entry in the Queensland heritage register for a period of five years, without the Minister having the discretion to later issue a stop order as provided for in new section 154(1) [refer *Clause 67*]. An owner (or someone acting with the owner's consent) may apply to the chief executive to have a place excluded and this is treated as if it were an application to have a place removed from the register, given the case is essentially the same—the place does not satisfy any of the cultural heritage criteria set out in section 35 of the *Queensland Heritage Act 1992*.

This provision integrates the certificate of immunity into the registration process (refer *Clause 30*); matching the certainty it provides to owners and development proponents about the future of a place while also ensuring the final decision is made openly and informed by a wide spectrum of views. The immunity provision has not been reviewed since 1992 and never been linked with the *Queensland Heritage Act 1992* best practice registration processes, despite both processes culminating in a decision about whether or not a place is of state-level heritage significance. This disconnect has led to circumstances where both processes are running simultaneously, resulting in duplication of resources, as well as frustration and confusion among owners and the community about the Queensland Government's role in conserving heritage places.

30 Omission of s 57 (Certificate of immunity)

Clause 30 omits section 57 which provided for owners or those acting with their written agreement, to apply for a certificate of immunity. If issued by the Queensland Heritage Council, this gave a place 'immunity' from future applications for a period of five years. This provision works in tandem with section 3 of the *Queensland Heritage Regulation 2003,* which sets out what information must accompany a certificate of immunity application. The capacity provided by a certificate of immunity for a place is created as a new process through new section 56B (refer *Clause 29*).

The shift and reframing of the 'immunity from registration' provision affected in *Clauses 29* and *30*, raise the fundamental legislative principle of whether sufficient regard is had for the rights and liberties of individuals. The specific principle in question is that of natural justice and whether something should be done to a person that will deprive that person of some right without them being given an adequate opportunity to present their view to the decision-maker. Submitters were largely supportive of this proposal and urged increased transparency.

The previous concern about these certificates being issued without the adequate involvement of others with an interest in conserving Queensland's state-registered heritage places is resolved by integration into the registration process wherein submissions can be made and considered by the Queensland Heritage Council. It is asserted that excluding certain places is still justified and the new process strikes a good balance between the rights of property owners and those of people with an interest in the conservation of Queensland's cultural heritage.

31 Omission of pt 5 (Matters about registration of archaeological places in Queensland heritage register)

Clause 31 omits part 5 of the *Queensland Heritage Act 1992* which set out the processes by which archaeological places were proposed for entry in the Queensland heritage register as a separate category of place. The provision for these types of places to be entered in the register as State heritage places is chiefly achieved through this omission and sections 31, 35 and 69, as amended by this Bill (*Clauses 11, 15* and *34)*. The existing 14 archaeological places will be transitioned into the State heritage category with replaced section 196 and new section 197 (*Clause 80*).

This change will provide clarity, equity and consistency around the assessment of all places of potential State heritage significance. Since 2008 when this category was introduced, 14 archaeological places have been entered in the Queensland heritage register. Experience with a number of these places has shown that a separate place category is not necessary to achieve the policy objectives of protecting Queensland's historical archaeological resource. Consultation strongly concurred that the change was necessary and would reduce confusion in the community created by the separate place category. This integration of the categories and their registration processes also simplifies the *Queensland Heritage Act 1992* and removes unnecessary duplication. As one submitter noted, the change will *'allow the history and heritage values to be incorporated into the stories of the places'* and *'to some extent alleviate the issues in managing archaeological sites'*.

32 Amendment of pt 6, hdg (Development in Queensland heritage places)

Clause 32 amends the heading of part 6 to include reference to development in local heritage places. This reflects the change in new section 112 provided for in *Clause 56*, whereby local government is given capacity to choose whether it identifies and conserves places of local heritage significance through a local heritage register kept under part 11 of the *Queensland Heritage Act 1992* or through its planning scheme established under the Planning Act. *Clause 32* also allows for the later provision in part 6 of exemption certificate, heritage agreement and essential maintenance powers to local government for use with local heritage places; powers modelled on those used with places on the Queensland heritage register.

33 Amendment of s 68 (Assessing development applications under the Planning Act—State heritage places)

Clause 33 amends section 68 to exclude its application to what are termed *archaeological State heritage places*, or those that only satisfy the cultural heritage criterion described in section 35(1)(c) about a place having potential to yield important information that will contribute to an understanding of Queensland's history through archaeological investigation. These were previously archaeological places or places with the same significance characteristics as them. The amendment of section 68 links with that in *Clause 34* and resolves how to merge the archaeological and State heritage place categories without losing connection to the different development assessment provisions, which have been designed to

ensure the values that make these places important can be appropriately managed when they are being developed.

34 Amendment of s 69 (Assessing development applications under the Planning Act—archaeological places)

Clause 34 amends section 69 to make reference to *archaeological State heritage places* instead of archaeological places. It otherwise remains unchanged to ensure the specific development assessment provisions relating to the appropriate investigation and management of archaeological potential still associate with places significant solely for the historical archaeology they may contain, and are used to mitigate detrimental impact on the archaeological values proposed by development. The intention of the archaeological place category was to provide for a situation where the value of investigating archaeological potential could be balanced against the capacity to progress development plans for a place that would ultimately have a detrimental impact on the artefacts believed to be there. The amendment of section 69 in *Clause 34* achieves this end without the retention of the separate place category.

35 Amendment of s 71 (Development by the State)

Clause 35 amends section 71 to have it refer to *archaeological State heritage places* and means if an agency of the Queensland Government owns such a place, when it proposes to develop it, the same development provisions as set out in section 69 can apply: namely a development approval can be conditioned to require archaeological investigation and artefact management. The amendment also means the no prudent and feasible alternative test is only applicable to development of listed places, other than *archaeological State heritage places*, that proposes demolition or substantial demolition. Section 71 otherwise sets out how a development proposal by the state is put before the Queensland Heritage Council for a recommendation to the relevant Minister, and how it is advertised and submissions invited if its impact on heritage significance is regarded as substantial. It connects with detail in section 4 of the *Queensland Heritage Regulation 2003* about what a State development application must include. This amendment corrects a shortcoming in the original construction of the provision, where it did not allow for the possibility that the state might own an archaeological place. *Subclause (5)* provides for the renumbering of the subsections in section 71 after subsection (4).

36 Insertion of new s 71A

Clause 36 establishes two definitions for *heritage place* and *decision-maker*, which apply to the operation of division 2 of part 6 and exemption certificates. The first term includes Queensland heritage places (which are State heritage places and protected areas) and local heritage places (refer *Clauses 56* and *81*), while the second establishes the relevant decision-maker for each kind of place. For a Queensland heritage place, it is the chief executive, and for a local heritage place, it is the chief executive officer of the relevant local government. These definitions are necessary to support amendments effected by *Clauses 37* to *41*.

37 Amendment of s 72 (Application for exemption certificate)

Clause 37 amends section 72 to insert the terms defined in new section 71A with *Clause 36* as necessary to also allow the owner, or a person acting with the permission of the owner, to apply for an exemption certificate for a local heritage place. Through division 2 of part 6, the *Queensland Heritage Act 1992* provides for certain development on state-registered places to be exempted from the Integrated Development Assessment System in relation to the level of impact it has on a place's heritage significance, or if they are covered by a heritage

agreement. This is an important greentape reduction tool because, under the *Sustainable Planning Act 2009*, the definition of building and operational work for a place entered in the Queensland heritage register is far broader than generally applies. Application of this tool means minor, low-impact work on a heritage place, or that provided for under a heritage agreement, does not have to unnecessarily be approved through Integrated Development Assessment System. This does not affect the need to get approval or certification for other aspects of development of the place under either the *Sustainable Planning Act 2009* or the *Building Act 1975*. The amendments in *Clauses 36* to *41* also extend the use of this tool to local governments managing local heritage places.

Subclause (4) of *Clause 37* expands the scope of work that can be covered by an exemption certificate, whether it is one issued for a Queensland heritage place or one issued for a local heritage place. By its very nature, all work undertaken at a place will have some impact on significance. Revising the wording of the exemption certificate provisions to reflect this gives more scope for minor impacts to be exempted rather than the work being treated as development and put through the Integrated Development Assessment System process. This will significantly cut the regulatory burden for owners of State and local heritage places who will be able to undertake a greater range of activities without unnecessary development approval in relation to heritage matters.

38 Amendment of s 73 (Inquiry about application)

Clause 38 amends section 73 by exchanging the term 'chief executive' with *decision-maker* to allow local government to have the same capacity to make enquiries of an exemption certificate applicant for a local heritage place as does the chief executive in relation to a Queensland heritage place. These enquiries are about further information reasonably required to decide the application.

39 Amendment of s 74 (Deciding application for exemption certificate)

Clause 39 amends section 74 to insert the term *decision-maker* in the place of 'chief executive', thereby establishing how both a local government working with a local heritage place and the chief executive working with a Queensland heritage place must decide an exemption certificate application. Both type of decision-maker has 20 business days to decide the application, unless more information is requested under amended section 73, which extends the timeframe. If the application is approved, the exemption certificate must be issued. If the decision-maker refuses the application, reasons or conditions must be provided to the applicant in a notice.

40 Amendment of s 75 (Chief executive may give exemption certificate without application)

Clause 40 revises the heading of section 75 to remove reference to the chief executive due to the changes established with *Clause 36*. This change gives the chief executive officer of a local government the power to issue an exemption certificate without application, in particular to make a general exemption certificate that applies to all places entered in a local heritage register or identified in the relevant planning scheme for its local heritage value. This power mirrors the power exercised by the chief executive with Queensland heritage places. *Subclause (4)* provides that the local government can publish a notice in a newspaper distributed in its area stating that the general exemption exists, where it can be viewed, and some brief detail about it.

The general exemption is an essential greentape reduction tool that helps owners, occupiers and custodians to conserve heritage places by providing upfront approval supported by clear guidance about how to carry out maintenance and minor works without harming heritage values. The local government submitters were generally supportive of additional tools to streamline their interactions with the owners of local heritage places in relation to regulating development of them. However, a number expressed concern about the capacity and resources of some local governments to use the tools effectively given they do not have staff with heritage expertise or training. This concern has been addressed with the change set out in *Clause 76* in relation to the chief executive having the power to make guidelines for local government.

41 Amendment of s 76 (Compliance with conditions of exemption certificate)

Clause 41 amends section 76 to ensure it covers exemption certificates issued for a local heritage place as well as a Queensland heritage place. It creates the offence of not complying with the conditions of an exemption certificate issued for a local heritage place.

The maximum penalty associated with the local heritage offence introduced with *Clause 41* is 100 penalty units, one tenth the rate of the state heritage penalty. The offence and its penalty raises the fundamental legislative principle of whether sufficient regard is had for the rights and liberties of individuals in that the consequences of legislation should be proportionate and relevant to the actions to which the consequences are applied. The offence in a local heritage context is warranted as is the offence of non-compliance with an exemption certificate issued for a place on the Queensland heritage register. These certificates set out in detail what work is allowed without further approval on heritage grounds and are a benefit to place owners. They are the result of an iterative process wherein both parties agree on the work to be carried out and there is ample opportunity to resolve concerns. The scope to act under the general exemption is broad and in essence sets out a range of self-assessable work. These certificates rely in part on the honesty of the applicant in carrying out the work as described. The size of the local penalty is commensurate with the seriousness of the offence in that context; given that while local heritage places are important to a local community, many other places like them may exist in other local government areas unlike places entered in the Queensland heritage register. These places have been determined to be rare or are exemplars, from around the state.

42 Amendment of pt 7, hdg (Heritage agreements)

Clause 42 adds to the heading of part 7 the term *local heritage agreements*, reflecting provision of this power to local governments for use with owners of local heritage places. This change corresponds to the objective of the Bill to provide local government more flexibility in how it manages the development of local heritage places, whether entered in a local heritage register kept under the *Queensland Heritage Act 1992* or identified in a planning scheme, managed via the *Sustainable Planning Act 2009*.

43 Amendment of s 80 (Heritage agreements)

Clause 43 follows on from the amendment provided for in *Clause 42*. *Subclause (1)* amends the heading of section 80 to include reference to local heritage agreements. *Subclause (2)* amends section 80(1) to set the term 'heritage agreement' apart from that of 'local heritage agreement. *Subclause (3)* inserts a new subsection into section 80 to provide for the chief executive officer of the relevant local government to enter a local heritage agreement with the owner of a local heritage place or someone acting with the owner's consent. This mirrors how heritage agreements for state-registered places are established and the level at which those

agreements are made. *Subclause (4)* inserts the term local heritage agreement into section 80(2) allowing for these agreements to attach to land, or not if agreed between parties. *Subclause (5)* provides for the ending or change of a local heritage agreement by agreement with the owner, and/or the person acting with the owner's consent, depending on which party entered the agreement. This replicates the process for heritage agreements about state-registered places. *Subclause (6)* provides for the renumbering of subsections in section 80.

44 Replacement of s 81 (Provisions of heritage agreement)

Clause 44 replaces section 81, inserting throughout mention of local heritage agreements and the local heritage places to which they apply. New section 81(1) sets out what things both kinds of agreements can cover, including provision to promote the conservation and appropriate management of heritage places, as well as public appreciation of their state or local heritage values.

New section 81(2) then provides a range of examples of how these purposes may be achieved. Agreements can restrict the use and work carried out at a place, whether it is a Queensland heritage place or a local heritage place. Similarly, they can require specified work to be carried out at a place, to a specified standard; provide for technical and professional assistance to the owner of the place in relation to its conservation and provide for a review of the valuation of the property. All agreements, whether for state or local heritage places, do not have to include provisions reflecting all the examples provided. A definition of the term *heritage place* that is relevant only to section 81 is established in new section 81(3) and is taken to mean a Queensland heritage place or a local heritage place.

Specific development provided for in an agreement, for either a State heritage or local place, can be done under an exemption certificate (refer section 72 and *Clause 37*). Exemption certificates issued in relation to agreements place no restrictions on the level of impact development can have on the heritage significance of the place. This is because the development covered in them fits within the framework for managing the future of the heritage place established by the agreement.

45 Amendment of s 82 (Enforcement of heritage agreement—Planning and Environment Court order)

Clause 45 inserts reference to local heritage agreements into section 82, which provides for either party to an agreement to seek redress for non-compliance or suspected non-compliance through an order of the Planning and Environment Court.

Clause 45 and the expansion of the jurisdiction of the Planning and Environment Court raises the fundamental legislative principle of whether sufficient regard is had for the rights and liberties of individuals in that the consequences of legislation should be proportionate and relevant to the actions to which the consequences are applied. The expansion is justified as it provides a mechanism for redress for both local governments and local heritage place owners in relation to local heritage agreements. A similar method of redress is already available to the chief executive and owners of Queensland heritage places who have entered into heritage agreements. Given that an agreement is between the chief executive or the chief executive officer and a heritage place owner (or someone acting with their consent), it is necessary that a third, independent party be given a role to adjudicate a dispute. Any order made thereafter is at the discretion of the court. No matters related to a dispute about compliance with a heritage agreement for a Queensland heritage place have been brought before the Planning and Environment Court. It is not anticipated that this situation will change a great deal in the

local heritage context given the positive spirit with which agreements are entered into and the mechanism for making changes if circumstances change.

46 Replacement of pt 8 (Interim protection orders and notices about maintaining State heritage places)

Clause 46 replaces part 8 to remove reference to interim protection orders, as the operation of these orders are now subsumed into a single stop work order, which covers a number of different circumstances (refer to *Clause 67*). *Clause 46* begins by changing the part 8 heading to refer to notices about essential repair and maintenance and local heritage places. The changes effected by *Clause 46* expand slightly the scope of work covered by such a notice, reduce the emphasis on the urgency with which the work is required to prevent damage, and provides the refurbished power to certain prescribed local governments.

Since 2008, the chief executive of the department administering the *Queensland Heritage Act 1992* has been empowered to require, in certain limited circumstances, that essential maintenance is undertaken at a State heritage place to protect it from damage and deterioration caused by weather, fire, vandalism and insects. This damage is sometimes caused by neglect resulting from the erroneous belief that it will provide for the eventual demolition of the place; being regarded as an alternate route to removal of the place from the Queensland heritage register.

With *Clause 46*, new section 83 is renamed 'Application to pt 8' and explains that the provisions about essential repair and maintenance also apply to local governments prescribed under the regulation. A local government may be prescribed under regulation to issue essential repair and maintenance notices if it can satisfy the Minister it has appropriate procedures in place for exercising the power. New section 84 then sets out what the relevant decision-maker must do before issuing an essential repair and maintenance notice to the owner of a State or local heritage place. New section 84 otherwise corresponds very closely to the section that had previously set out this detail. It differs only in so far as the scope of work that can be covered by a notice issued for a State heritage place or a local heritage place is clarified to include minor repair and maintenance. This could increase in a limited way the obligation on an owner issued with such a notice to carry out the work described in a specified period. New section 85 requires that local governments approved by regulation to issue essential repair and maintenance notices must report annually to the chief executive on its use.

The state and local jurisdictions for this power is achieved using definitions, namely for *heritage place*, meaning a State or local heritage place for part 8, and *decision-maker*, meaning the chief executive for State heritage places and the chief executive officer for local heritage places. The nature of the offence for an owner failing to comply with a notice and the associated penalty is unchanged for State heritage places. For local heritage places the penalty rates are smaller in the new section 84(6)(b), commensurate with the context in which that new power will operate.

The substantive changes effected by *Clause 46*—not those related to extending the power to local government for use with local heritage places—comprise: including the term 'repair' in the order's title; removing the terms 'urgently' and 'serious or irreparable' from new section 84(1)(b); minor change to the definition of the term *essential repair and maintenance* and the inclusion of two new examples to support it [refer new section 84(7)]. The purpose of these changes is to give the chief executive or chief executive officer discretion to intervene with

the owner of a place before the damage caused by neglecting standard repair and maintenance works becomes too serious and expensive to be feasibly rectified. The two new examples introduced relate to repairing damaged wall or roof framing, and cleaning and repairing gutters and downpipes. The first is included because if neglect of a property has damaged the material that clads a building or structure, it may well have damaged the framing that supports that cladding. It is impractical to require that cladding be repaired if there is no requirement for it to be fixed to sound framing. The second example relates to the effects of weather on the structural integrity of a building or structure. If gutters and downpipes are not repaired when damaged or simply not maintained, water may enter a building's weatherproof envelope and cause damage inside to entirely unrelated features. Uncontrolled stormwater, particularly that not entering the stormwater system but flowing over the ground will undermine foundations, potentially causing serious damage and require great expenditure to repair. If the chief executive of the department or chief executive officer has more capacity to intervene in some circumstances, serious consequences can be averted and the scope of work required greatly reduced.

The essential repair and maintenance power cannot be delegated below the chief executive of the department and the chief executive officer of a local government (refer *Clause 79* and new section 175A). Notices can only be issued after all reasonable steps have been taken to consult with an owner. This aspect of new section 84 remains unchanged. The chief executive's record of having only issued three such notices in the six years since the power was introduced into the *Queensland Heritage Act 1992*, clearly underlines its last resort nature. Because a notice is about minor work that is needed to prevent a State or local heritage place from being damaged, no appeal recourse has been provided. However the *Judicial Review Act 1991* applies. The definition of essential repair or maintenance work and the examples provided show the work under consideration is minor and not outside the standard range of work an owner would need to undertake on a non-heritage listed property.

Consultation showed strong support for the strengthening of the state's power to issue such notices to owners neglecting the upkeep of their state-registered property. This did not extend to owners unable to maintain their property because of financial constraints. A general concern was expressed about the impact of this provision on owners. It was suggested this impact should be offset by providing assistance to them in the form of grant funding and putting checks in place to ensure owners were not required to do work that was beyond their means. These prospects are accounted for through the current grant scheme and as part of the pre-notice consultation period. Of those in support, a good number of submissions implied or stated outright that some owners purposefully neglected their heritage-listed properties with a view to arguing these properties could not be salvaged and should therefore be demolished. Some indicated these strategies were understood to be in operation by the community at large and that strengthening essential maintenance requirements would be a deterrent.

The expanded scope of the essential repair and maintenance notice provision in *Clause 46* raises the fundamental legislative principle of whether sufficient regard is had for the rights and liberties of individuals in relation to ordinary activities not being unduly restricted and the right to use and enjoy property. The expansion does not represent a breach of these principles. Some submitters were concerned the strengthened power could be used against an owner who decides to mothball a building covered by state or local heritage listing. This is not the case, as the power is clearly set out to prevent deterioration caused by neglect. Mothballing a building involves making it weather, insect and vandal proof so its use can be revived in the future. These are not the instances in which an essential repair and maintenance

notice would be issued, as is clearly demonstrated in the reserved way the power has been used since it was introduced in 2008. Only those local governments prescribed by regulation and able to demonstrate there are procedures in place to use the power appropriately, will be approved to use it, meaning the last resort nature of the power will be maintained in a local heritage context.

This also raises the issue of whether consequences imposed by legislation are proportionate and relevant to the actions to which they are applied. The strengthening of this power is intended to better encompass the circumstances in which it is intended to intervene, and is not considered a breach of this fundamental legislative principle. The last resort nature of the strengthened power, evidenced by the reserved way it has been used, and the consultation required before a notice is issued, ensures sufficient regard is had for the rights and liberties of individuals.

47 Amendment of pt 9, hdg (Discovery and protection of archaeological artefacts)

Clause 47 amends the heading of part 9 to include the term 'underwater cultural heritage artefacts'. This is necessary given the amendments in *Clauses 48* to *55*, which seek to improve the protection for Queensland's historic shipwrecks and introduce protection of its historic aircraft wrecks (historic means the wreck occurred 75 years or more ago).

48 Amendment of pt 9, div 1, hdg (Offences relating to archaeological artefacts and shipwrecks)

Clause 48 amends the heading of division 1 of part 9 to also include the term 'underwater cultural heritage artefacts'.

49 Amendment of s 89 (Requirement to give notice about discovery of archaeological artefact)

Clause 49 first amends the heading of section 89 to refer to the general requirement to report a discovery. *Subclause (2)* then establishes the requirement that the discovery of underwater cultural heritage artefacts, as well as archaeological artefacts, be reported to the chief executive. The definition of underwater cultural heritage artefact established with *Clause 81* and its amendment of the dictionary in the schedule includes historic aircraft wrecks, historic shipwrecks and historic underwater articles associated with these wrecks. *Subclause (3)* provides for the renumbering a subsections in section 89(2), while *Subclause (4)* inserts into section 89(2) the requirement that a discovery be reported using the approved form. Using an approved form, designed to require the information essential to assessing the importance of an artefact, will streamline the discovery reporting and assessment processes.

Amended section 89 creates a new offence and penalty associated with not reporting the discovery of an underwater cultural heritage artefact a person might reasonably believe is an important source of information about Queensland's history. This raises the fundamental legislative principle of whether sufficient regard is had for the rights and liberties of individuals in that the consequences of legislation should be proportionate and relevant to the actions to which the consequences are applied. The offence is warranted given the overarching objective of the Bill to improve protection of the state's underwater cultural heritage resource and facilitate greater understanding of where these artefacts are located. The level of the penalty, a maximum of 1000 penalty units, matches that already ascribed to the offence of not reporting the discovery of an archaeological artefact and is commensurate with the seriousness of the new offence.

50 Amendment of s 90 (Offence about interfering with discovery)

Clause 50 amends section 90 to clarify the offence about interfering with an archaeological artefact reported as discovered without the permission of the chief executive. This is opposed to the offence about interfering with an underwater cultural heritage artefact which is provided for in the amendment of section 91.

51 Amendment of s 91 (Offence about interfering with shipwreck)

Clause 51 amends section 91 and replaces the term *historic shipwreck* with *underwater cultural heritage artefact*, which, with the amendment in the dictionary in the schedule, is taken to mean an historic shipwreck, historic aircraft wreck and the articles associated with them. This change introduces the offence of interfering with an historic aircraft wreck, matching the proscription against interfering with a historic shipwreck.

The offence created with *Clause 51*, and its penalty, raises the fundamental legislative principle of whether sufficient regard is had for the rights and liberties of individuals in that the consequences of legislation should be proportionate and relevant to the actions to which the consequences are applied. The offence is warranted given the objective to extend protection to aircraft wrecks in Queensland waters for 75 years or more, which will cover in a short time aircraft wrecked during World War II. The level of the penalty, a maximum of 1000 penalty units, matches that already ascribed to the offence of interfering without permission with an historic shipwreck and is commensurate with the seriousness of the offence of interfering with an historic aircraft wreck.

52 Amendment of pt 9, div 2 hdg (Provisions about ownership of particular archaeological artefacts)

Clause 52 amends the heading of division 2 of part 9 to remove the term *archaeological*. This connects with the division-specific definition of artefact introduced with *Clause 53*.

53 Replacement of pt 9, div 2, sdiv 1, hdg (Declaration of ownership)

Clause 53 amends the heading of subdivision 1 of division 2 of part 9 from 'Declaration of ownership' to 'Preliminary' and provides for the insertion of a definition of *artefact* for division 2 that includes archaeological artefacts and underwater cultural heritage artefacts. This change reflects that the general definition of archaeological artefact has been limited to specifically exclude historic shipwrecks and historic aircraft wrecks; thereby allowing different periods of non-interference (refer *Clause 81* and amendment of the dictionary in the schedule).

54 Amendment of s 92 (Declaration about ownership of particular archaeological artefacts)

Clause 54 amends section 92 to remove the word archaeological from the section heading, again carrying through the implications of the change to the definition of archaeological artefact.

55 Renumbering of pt 9, div 2, sdivs 1A to 3

Clause 55 provides for the renumbering of subdivisions 1A to 3 in division 2 of part 9.

56 Replacement of pt 11, div 1 (Preliminary)

Clause 56 replaces division 1 of part 11; with its heading referring to identifying places of local cultural heritage significance. It then replaces section 112 so that a local government is

taken to fulfil its obligation to identify places of local cultural heritage significance in a relevant area if it either manages these places in its planning scheme, keeps a local heritage register outside its planning scheme under the *Queensland Heritage Act 1992*, or first establishes a local heritage register under the Heritage Act and then adopts or incorporates that register into its planning scheme. New section 112(2) means the requirement in relation to local heritage places being identified in a planning scheme applies despite section 88(1)(a) of the Planning Act, which requires that a planning scheme appropriately reflects the standard planning scheme provisions (these are also called the Queensland Planning Provisions).

Currently local governments are required to keep a local heritage register under the provisions of part 11 of the *Queensland Heritage Act 1992* unless they are prescribed from doing so in the regulation. Twelve local governments have been prescribed because they demonstrated they had identified places of local cultural heritage significance and appropriately managed the conservation of these places in their planning schemes. The replacement of section 112 makes this prescription unnecessary and gives all local governments the chance to choose the approach to identifying and conserving places of local heritage significance that suits their circumstances. The effect of *Clause 56* links with the transitional provisions created in new sections 198 and 199 by *Clause 80*, which removes any doubt that the 12 prescribed local governments are taken to comply with the new requirement in section 112.

Clause 56 then creates new division 1A in part 11 containing two new sections. The first, section 112A, describes the chief executive's power, if satisfied a place is of local cultural heritage significance for a local government area, to recommend that local government take the action it considers appropriate to conserve the heritage significance of the place. The new section then sets out the information a notice about this recommendation must contain: information to identify the location and boundaries of the place, a statement about its cultural heritage significance and information to support that statement. The second, section 112B, requires that the local governments that manage local heritage places in a local heritage register kept under the *Queensland Heritage Act 1992*, act on the recommendation to the extent that it proposes the place for entry in the local heritage register and follows the Heritage Act process for notifying owners and inviting public submissions.

The new division 1A is in part a restructure of existing provisions (refer *Clauses 58* and *59*). This adds clarity to the legislation about what happens if the chief executive recommends a potential local heritage place to a local government. If a place is nominated to the Queensland heritage register, it may be determined through the assessment and decision-making process that it does not have state-level heritage values but may have local heritage values. If this occurs and the relevant local government keeps a local heritage register, the chief executive can recommend the place be proposed for entry in it. A place recommended this way does not ultimately have to be entered in a local heritage register, as that decision is made by the local government decision-maker (frequently a vote of the council) having considered all submissions. Where a local heritage register has been adopted into a planning scheme or the planning scheme alone is used to identify and conserve local heritage, the chief executive informs the local government that a place may have local heritage values. The local government would then address that recommendation when it next amends or makes its planning scheme under the *Sustainable Planning Act 2009* and the State Planning Policy.

57 Replacement of s 113 (Local government to keep register)

Clause 57 replaces section 113 to set out the requirement for a local government to keep its local heritage register in the form it considers appropriate, including electronic form, and revise in a minor way the further requirement about how that register is made available for public inspection. This change allows for the register, or a copy, to be made available for public inspection, leaving the precise form of that copy to the discretion of the local government. So if the local government wishes to keep a physical copy available it can, or it can make an electronic copy available if it is able.

58 Omission of s 115 (Chief executive may recommend entering place in local heritage register)

Clause 58 omits section 115 and its requirements about the chief executive recommending a place to the relevant local government for inclusion in its local heritage register. This requirement has been shifted by *Clause 56* into the new section 112A.

59 Amendment of s 116 (Local government to propose entry of place in, or removal of place from, local heritage register)

Clause 59 omits section 116(2), which had required a local government to act on the recommendation of a place by the chief executive. This requirement has been shifted by *Clause 56* into the new section 112B.

60 Amendment of s 117 (Notice of proposal)

Clause 60 makes a minor amendment to remove the words 'the place' from section 117(2)(b)(iv); suggesting a submission can be made by electronic means such as email. It does not preclude submissions being made by other means.

61 Amendment of s 118 (Local government to consider submissions and other information)

Clause 61 makes a minor amendment in section 118(a)(ii) to reflect that the requirement previously contained in section 115 has been shifted into section 112A(2) by *Clause 56*. This requirement relates to the information the chief executive must give the local government about a place recommended as having potential local heritage values.

62 Replacement of pt 11, div 4, hdg (Code for IDAS for local heritage places)

Clause 62 amends the heading of division 4 in part 11 to include the term local heritage registers. The purpose of this change is to restrict the application of the Integrated Development Assessment System code for local heritage places (contained in the *Queensland Heritage Regulation 2003*) to those kept in registers established under the *Queensland Heritage Act 1992*.

63 Amendment of s 121 (Code for IDAS)

Clause 63 amends section 121(1) to ensure the Integrated Development Assessment System code contained in the *Queensland Heritage Regulation 2003* only applies to those local heritage places solely identified in a local heritage register kept under the *Queensland Heritage Act 1992* but not then applied, adopted or incorporated into a planning scheme. This necessary is given the change to the definition of local heritage place effected with the Bill (refer *Clauses 56* and *81*).

64 Amendment of s 122 (Changing entries in register)

The three subclauses of *Clause 64* make changes in section 122, about changing entries in a local heritage register, that correspond to those made in section 34 by *Clause 14*. The purpose

of these minor revisions is to clarify how to make minor changes in entries for places in a local heritage register, which do not change the statement of significance for a place, or the extent of its heritage boundary. This will make clearer when a major change requires the written agreement of the owner.

65 Amendment of s 124 (Provision about entitlement to claim compensation)

Subclause (1) of *Clause 65* makes minor amendments to section 124, subsections (1) and (2), to replace the word 'on' with 'in'. This change corresponds to the construction used elsewhere in the *Queensland Heritage Act 1992* in relation to the Queensland heritage register to refer either to: how entry in the register affects a place or a place being on the register. *Subclause (2)* inserts new section 124(5), which prevents an owner of a place entered in a local heritage register who has claimed compensation under section 704 of the *Sustainable Planning Act 2009* from also claiming compensation under section 124(3) of the Heritage Act.

66 Insertion of new s 154AA

Clause 66 inserts new section 154AA, which contains a definition for *current entry application* necessary for division 3 of part 12. It is an application to have a place entered in the Queensland heritage register that has not been decided on by the Queensland Heritage Council.

67 Replacement of s 154 (Stop orders)

Clause 67 replaces section 154 and follows it with two new sections 154A and 154B; all about stop orders. An objective of the Bill is to strengthen protections for the state's historic heritage places and this is partly achieved with this change as it provides for a streamlined mechanism for the Minister to stop work at a place (or stop it from starting) to ensure either its potential state cultural heritage significance is properly investigated or illegal work to a Queensland heritage place is halted.

A stop order provision has been part of the *Queensland Heritage Act 1992* since its commencement; its purpose being to halt work that could damage or substantially reduce the state cultural heritage significance of a place. Since 2008, when the current registration processes were introduced, the Heritage Act has empowered the chief executive of the department to issue an interim protection order for a place for which a heritage application had been received but not decided by the Queensland Heritage Council (refer *Clause 46*). The effect of that order was to temporarily treat the place as if it were already entered in the Queensland heritage register and prevent demolition while the State heritage significance was being assessed but before it was protected under the Heritage Act. For the duration of the order, any development at these places was considered unapproved and an offence under the *Sustainable Planning Act 2009*. The same end is achieved through the amendments in *Clause 67*, although the offence is contravention of a stop order, not unapproved development of a Queensland heritage place under the *Sustainable Planning Act 2009*.

This scope of the power under the interim protection order provisions is transferred into sections 154, 154A and 154B with *Clause 67*. However, only the Minister can issue a stop order to halt work in three different circumstances: for a place entered in the Queensland heritage register, but believed to be threatened by unapproved work; one for which a current application is being processed but has not yet been decided on by the Queensland Heritage Council; and one for which no application has been received but a person or entity argues has potential state heritage significance.

Clause 67 also provides that stop orders cannot be issued for places excluded under new division 5A of part 4 introduced with *Clause 29*. Given the general moratorium on applications for places being remade before five years after a decision of the Queensland Heritage Council, the Minister will only issue a stop order for a place considered in the previous five years and not entered I, or removed from, the Queensland heritage register if convinced substantial new evidence had come to light raising the question that the place might have state heritage significance. Given the nature of a stop order, this significance would also have to be threatened with destruction or substantial diminution by work being carried out there or about to be carried out.

If the Minister issues a stop order for a place for which there is no current application, new section 154(3) requires the chief executive to make an application under section 36 to have the place considered for entry in the Queensland heritage register. According to new sections 154A, a stop order must contain enough information to identify the place, what work or activity it relates to, the name of the owner, the reason for making the order and when it will end. Under new section 154B, the stop order takes effect when it is served and its duration is a maximum of 60 business days. It ends at the date stated in the order or, for a place being considered by the Heritage Council, when the council makes its decision to enter or not enter the place in the Queensland heritage register.

The penalty associated with not complying with a stop order remains unchanged at 17,000 penalty units. This is the same as the penalty that was associated with non-compliance with an interim protection order and the penalty in section 578 of the *Sustainable Planning Act 2009* in relation to carrying out assessable development on a Queensland heritage place without a permit. The size of the penalty raises the fundamental legislative principle of whether sufficient regard is had for the rights and liberties of individuals in that the consequences of legislation should be proportionate and relevant to the actions to which the consequences are applied. The size of the penalty reflects the seriousness of contravening an order of the Minister, who has exercised this extraordinary power to deal with an extreme situation where the fulfilment of the object of the *Queensland Heritage Act 1992* is in question. Very few stop orders have ever been issued and this reflects how infrequently they are requested or required. This demonstrates the careful balance struck between the disadvantage caused to an owner or developer when an order halts work at a place and the need to ensure state-level cultural heritage significance is appropriately protected from unwarranted destruction. In this regard the penalty and its maximum size do not represent breaches of fundamental legislative principles.

68 Amendment of s 160A (Executive officer may be taken to have committed offence)

Clause 68 makes a minor update in section 160A subsequent to the changed section numbers for restoration and non-development orders resulting from the amendments effected by *Clauses 71 and 73*. It does not change the content of section 160A.

69 Amendment of s 161 (Who may appeal)

Subclause (1) of *Clause 69* omits section 161(1)(c), which refers to owners who receive a notice about the entry of their property as an archaeological place in the Queensland heritage register. The place category is otherwise removed by the Bill from the *Queensland Heritage Act 1992*. *Subclause (2)* then inserts new subsections (3)(a) and (3)(b) into section 161. The first removes doubt that an appeal related to an application about having a place entered in

the Queensland heritage register as an addition to a State heritage place, relates only to the addition. The second removes doubt that an appeal related to an application about having part of a State heritage place removed from the Queensland heritage register, relates only to the removal of the part.

70 Amendment of s 162 (Grounds for appeal)

Clause 70 makes a minor amendment to section 162(1) related to a place having to satisfy at least one of the cultural heritage criteria set out in section 35 to be considered for entry in the Queensland heritage register. *Clause 70* then removes subsection (2) as it refers to the grounds for an appeal against the entry of a place as an archaeological place in the Queensland heritage register.

71 Insertion of new pt 13A

Clause 71 inserts a new part 13A containing two new divisions with new sections 164A and 164C [new section 164B is inserted here with *Clause 73*]. With new division 1 and section 164A, it establishes evidentiary matters in a proceeding for an offence against the *Queensland Heritage Act 1992*. This is an amendment and shift of section 167, which is omitted by *Clause 72*, and allows for a certificate to be tendered to the court as proof that, for example, the chief executive issued an essential repair and maintenance notice, rather than having to call the chief executive as a witness. This raises the fundamental legislative principle of whether sufficient regard is had for the rights and liberties of individuals and whether reversing the onus of proof in criminal proceedings is justified. The matter of whether an essential repair and maintenance notice was issued by the chief executive is considered uncontentious, but to include an appropriate safeguard the defendant is still able to provide evidence to the contrary. The change in the *Queensland Heritage Act 1992* corresponds to parts of section 490 of the *Environment Protection Act 1994* and improves the progress of legal proceedings without disadvantaging the defendant.

With *Clause 71*, new section 164C replaces the existing non-development order currently contained in section 170 (which is omitted by *Clause 74*). Rather than being an order issued by the Minister, it becomes an order available to the court in penalising an offence against the *Queensland Heritage Act 1992* or sections 578 or 580 of the *Sustainable Planning Act 2009*. The provision allowing for an owner to show cause to the Minister as to why the order should not be imposed is removed. The non-development order can be applied by the court to an owner convicted of any of the offences described above involving the destruction of, or damage to, a Queensland heritage place. Most features of this order are transferred into new section 164C: the order must be provided to the registrar of titles and entered in the file kept for that purpose; the order attaches to the land and binds not only the owner to which is given, but also successive owners of the property for its duration; and the maximum penalty rate.

The size of the penalties for contravening the restoration and non-development orders remains unchanged [new sections 164B and 164C]. When introduced in 2008, they raised the fundamental legislative principle that consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation. However, the Scrutiny Committee did not draw Parliament's attention to them (Alert Digest No. 9 of 2007). The size of the penalties correspond to those applying to the most serious offences under both the *Queensland Heritage Act 1992* and the *Sustainable Planning Act 2009* and are necessary as disincentives the very high commercial rewards to be gained from non-compliance.

New section 164D introduces two new court orders (public benefit and education orders) following prosecution for certain offences under the *Queensland Heritage Act 1992* and the *Sustainable Planning Act 2009*. These orders would be applicable to offences under both pieces of legislation because of Queensland's integrated development assessment system. The offences under the Heritage Act for which these orders could be imposed on conviction are: section 76 (contravention of the conditions of an exemption certificate), section 87(6) (non-compliance with an essential maintenance notice), section 89 (requirement to report discovery of an archaeological artefact and underwater cultural heritage artefact), section 90 (interference with a discovered archaeological artefact without permission), section 91 (interference with a discovered archaeological artefact without permission), section 104 (destruction of a Protected area), and section 155 (contravention of a stop order). The offences under the *Sustainable Planning Act 2009* relate to carrying out assessable development on a Queensland heritage place without a permit (section 578) and contravening a development approval or its conditions respectively (section 580).

The new public benefit and education orders are to be issued at the discretion of the court, do not limit the court's powers under the *Penalties and Sentences Act 1992*, and can be imposed in addition to or in lieu of any fine. Public benefit orders can require a person to carry out a stated project to restore or enhance heritage in a public place or for the public benefit, and make a donation to a volunteer heritage organisation. An education order can require a person to conduct an advertising or education campaign to promote compliance with the provision that person was convicted of contravening.

The introduction of these new court orders following prosecution raises the fundamental legislative principle that consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation. However sufficient regard to this principle is demonstrated. The amended legislation does not require the imposition of these orders but leaves it to the court's discretion to determine whether the order is proportionate and relevant to the actions which the consequences are applied. The orders have a reasonable connection to the type and severity of the breach for which they are imposed and only apply to offences where the maximum penalty rate is between 1000 and 17,000 penalty units. The court will have increased flexibility to make orders that are appropriate to the circumstances of the offence and tailored to achieve the objectives of the Heritage Act more effectively.

The new education order raises another fundamental legislative principle of whether sufficient regard is had for the rights and liberties of individuals in relation to privacy, as it suggests that those convicted of certain offences might be required to advertise the fact of their offence and conviction for it through some kind of public education campaign. Again, it is argued this does not represent a breach as application of the order is left to the discretion of the court, where these matters can be appropriately decided against the nature of the offence committed, the level of damage caused and the role application of the order would have in serving as a disincentive.

72 Omission of s 167 (Evidence)

Clause 72 omits section 167, as it is replaced with the new evidentiary provision in new section 164A by *Clause 71*.

73 Amendment, relocation and renumbering of s 169 (Restoration orders)

Clause 73 amends the existing restoration order to reflect contemporary drafting practice and relates to offences against the *Queensland Heritage Act 1992* or sections 578 or 580 of the *Sustainable Planning Act 2009*, which relate to carrying out assessable development on a Queensland heritage place without a permit and contravening a development approval or its conditions respectively. It provides for the court, having found a person guilty of an offence that causes damage to a Queensland heritage place, to restore that damage. Application of this order can be requested by the prosecution. The order must state the time within which the remedial action must be taken and is in addition to any other penalty applied by the court. *Clause 73* then relocates this provision in part 13 as new section 164B. It does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law. The maximum penalty rate for the offence and that it is a deemed executive liability provision has not been changed from the original construction.

74 Omission of ss 170 (Non-development order)

Clause 74 omits section 170, which relates to the non-development order, as it is remade in new section 164C by *Clause 71*.

75 Amendment of s 171 (Immunity)

Clause 75 amends the existing immunity provision to remove unnecessary duplication of the enhanced protection from civil liability extended to State employees under the *Public Service Act 2008* as amended by the *Public Service and Other Legislation (Civil Liability) Amendment Act 2014*. Protection from civil liability is still provided for the Minister, members of the Queensland Heritage Council, members of a committee of the council, and those instructed to act by officers authorised under the *Queensland Heritage Act 1992* for an act or omission honestly and without negligence in the performance of their functions under the Act. The liability attaches to the State. It is not considered appropriate for an individual to be made personally liable in these circumstances as a consequence of carrying out their responsibilities under the Heritage Act.

The fundamental legislative principle raised relates section 4(3)(h) of the *Legislative Standards Act 1992* and the prescription that legislation does not confer immunity from proceeding or prosecution without adequate justification. *Clause 75* provides protection from liability for an official. However, the immunity only applies to an act done, or omission made, honestly and without negligence. The conferral of immunity is balanced by the fact where any civil liability would otherwise be attached to a designated person instead it attaches to the State.

76 Amendment of s 173 (Chief executive may make guidelines)

Subclause (1) of *Clause 76* clarifies that the chief executive can make guidelines about exemption certificates issued by the chief executive for state-registered places under part 6 division 2. This clarification is made necessary by *Clauses 36* to *41*, which create local exemption certificates for use by local government with local heritage places. *Subclause (2*) provides for the chief executive to make guidelines, after consultation with the Queensland Heritage Council and local government providing guidance to local governments about identifying or managing local heritage places. This will support local government to use its powers under the *Queensland Heritage Act 1992*. *Subclause (3)* provides for the renumbering of subsections in section 173.

77 Amendment of s 174 (Recording of particular matters)

Clause 77 removes the reference to archaeological places from section 174, given the removal of this category of place affected through other clauses.

78 Amendment of s 175 (Delegation by Minister or chief executive)

Clause 78 amends section 175 to remove reference to the power of the chief executive to issue an interim protection order. This power has been transferred to the Minister as part of the amended stop order provisions in sections 154, 154A and 154B created with *Clause 67*. It also updates the section reference in relation to essential repair and maintenance notices, from section 87 to 84; while ensuring that power cannot be delegated and remains one of last resort.

80 Insertion of new s 175A

Clause 80 inserts a new section 175A to ensure that the chief executive officer of a local government cannot delegate the power to issue an essential repair and maintenance notice to the owner of local heritage place under part 8 of the *Queensland Heritage Act 1992*. This proscription against delegating the power below the position of chief executive officer matches the proscription applying to the state power [refer section 175(2)], maintaining the last resort nature of this power in the local context.

The provision of the essential repair and maintenance power to the chief executive officer of local governments for use with local heritage places in the relevant area raises the fundamental legislative principle of whether sufficient regard is had for the rights and liberties of individuals. The same point at issue for the state power applies to the local context. The power *Clause 46* extends to local government in new section 84 is not considered to breach either the principles discussed above as it carries the same safeguards against misuse. The rights and liberties of individuals are further protected by the prescription process by which local governments will have to demonstrate they have the capacity and skill required to use the power appropriately. It is further protected by the requirement that prescribed local governments report on its use to the chief executive as per new section 85. This process, overseen by the chief executive, will also ensure there is consistency between different local governments in how the power operates.

80 Insertion of new pt 15, div 4

Clause 80 inserts new division 4 in part 15 about transitional provisions related to passage of the *Queensland Heritage and Other Legislation Act 2014*. A new section 196 is created, which sets out the necessary definitions for the division. A new section 197 is created to provide for the re-establishment of the 14 existing archaeological places as State heritage places. As soon as practicable the chief executive must enter the place in the Queensland heritage register and transfer the statement related to the archaeological criteria into a statement related to the criterion set out in section 35(3)(c) about the potential of the place to yield important information about Queensland's history. The date of entry of the place in the register will be the date it was entered as an archaeological place. The provision applies despite section 34 related to changing entries in the register.

A new section 198 is established to state that the requirement in new section 112(1)(a) to identify places of cultural heritage significance in a planning scheme does not apply to any of the 12 prescribed local governments until it amends or reviews its planning scheme under the *Sustainable Planning Act 2009*. New section 199 clarifies that new sections 112B and

divisions 2 to 5 of part 11 do not apply to the 12 local governments previously prescribed under the regulation.

81 Amendment of sch (Dictionary)

Subclause (1) of *Clause 81* removes a number of definitions from the dictionary in the schedule. Those for *archaeological criteria*, *archaeological place*, and *archaeological submission* relate to the extinguished archaeological place category. The definition for *interim protection order* is removed as is the separate order of that name (refer *Clauses 46* and *67*).

The definitions for *heritage agreement*, *local heritage place*, *maintenance notice* and *stop order* are replaced with *Subclause (2)*. A number of the definitions inserted with *Subclause (2)* of *Clause 81* do not simply refer to the parts, divisions or sections to which they specifically apply. These are discussed here, while the other definitions have been discussed above under the clause that establishes them.

A number of new terms and definitions are required by the changes in part 9 related to the protection afforded underwater cultural heritage artefacts. These are *aircraft*, *historic aircraft wreck*, *historic underwater article*, *ship* and *underwater cultural heritage artefact*. The term *historic shipwreck* has simply been shifted into the dictionary in the schedule. There is a new definition of *local heritage place*, which recognises the revised scheme established for part 11 with *Clause 56* in particular. The new term *archaeological State heritage place* has been introduced and means a State heritage place that has in its entry in the Queensland heritage register a statement about its cultural heritage significance that only relates to its potential to contain an archaeological artefact or underwater cultural heritage artefact that is an important source of information. This term is used to keep the alternate development assessment provisions in section 69 (refer *Clause 34*) available when deciding development applications that will have a detrimental impact on any archaeological artefacts at a State heritage place.

The definition of *criminal history* relates to new sections 13A and 13B and is consistent with the *Criminal Law (Rehabilitation of Offenders) Act 1986* that includes indictable offences or offences against the *Queensland Heritage Act 1992* other than spent convictions. The definition for *spent conviction* is relocated into the dictionary in the schedule because of the omission of section 13 (refer *Clause 7*).

Definitions for the terms *enter* and *remove* are included in the dictionary in the schedule and encompass applications to have places consider for entry in the Queensland heritage register and local heritage registers, as well as application to have places considered for removal from these registers. These definitions make it clear that applications proposing an addition to an existing register entry or removal of part of an already entered place are treated like applications to enter or remove. These kinds of applications will be the mechanism by which changes to complex places on the Queensland heritage register, with multiple owners that do not agree about the changes can be decided as a result of the full registration process. A definition of *public office* for a local government is also included to mean the local government's public office under the *Local Government Act 2009*.

Subclause (3) of *Clause 81* affects a minor change in the existing definition of the term *archaeological artefact* to have it exclude *underwater cultural heritage artefacts*. The definition of feature is changed with *Subclause (4)* to insert *underwater cultural heritage artefacts*. *Subclause (5)* changes the reference to section 113(1) to section 112(1)(b) in the

definition for *local heritage register* (reflecting *Clauses 56* and *57*). *Subclause (6)* makes a minor change in the definition of *heritage agreement* to include reference to local heritage agreements. *Subclause (7)* removes archaeological places from the definition of *Queensland heritage place*.

Part 3 Consequential amendments

82 Acts amended in sch 1

Clause 82 provides for Schedule 1 to amend the Acts listed there.

Schedule 1 Consequential amendments

The definition for local heritage place contained in section 54(3) of the *Airport Assets (Restructuring and Disposal) Act 2008* is updated to include only those places entered in a local heritage register kept under the *Queensland Heritage Act 1992*. This ensures no change is made to the purpose of section 54(3) given the change in the definition of *local heritage place* effected with the Bill.

The term *registered place* in section 73(2)(c) of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* is replaced with *Queensland heritage place*, reflecting current terminology in the *Queensland Heritage Act 1992* and removal of the archaeological place category.

Schedule 2 of the *Public Interest Disclosure Act 2010* is updated with the appropriate section reference for restoration orders.

The definition of *building work* contained in section 10(1) of the *Sustainable Planning Act 2009* is updated to include reference to underwater cultural heritage artefacts, given they have been excluded from the definition of *archaeological artefact*. The definition of *local heritage place* in Schedule 3 is replaced to refer only to a local heritage place entered in a local heritage register. This is necessary given that the *Queensland Heritage Act 1992* definition has been expanded to include local heritage places identified in a planning scheme.