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# Amending Queensland's Cultural Heritage Protection Legislation: the Queensland Heritage and Other Legislation Amendment Bill 2007 (Qld)

*The Queensland Heritage and Other Legislation Amendment Bill 2007 (Qld) ('Bill') proposes significant amendment to the Queensland Heritage Act 1992 (Qld). Its introduction in the Queensland Legislative Assembly on 23 August 2007 was the culmination of a review of cultural heritage protection in Queensland that commenced in 2004.*

*This Research Brief provides some background information on the Bill, including the review. It also considers the concept of 'cultural heritage' by providing a selection of some of the meanings that have been attributed to the term.*

*A detailed discussion of the current framework of the Act follows, together with the key amendments proposed by the Bill.*

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Research Brief No 2007/25

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**ISSN 1443-7902**

**ISBN 978-1-921056-55-0**

**OCTOBER 2007**

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## **EXECUTIVE SUMMARY**

On 23 August 2007, the Hon L Nelson-Carr MP, then Minister for Environment and Multiculturalism, introduced the Queensland Heritage and Other Legislation Amendment Bill 2007 (Qld) ('**Bill**') into the Queensland Legislative Assembly.

This Research Brief provides some background information on the Bill, including the review of cultural heritage protection in Queensland which commenced in 2004 (**pages 2-4**). It also considers what 'cultural heritage' is by providing a selection of some of the meanings that have been attributed to the term (**pages 5-9**).

A detailed discussion of the current framework of the *Queensland Heritage Act 1992* (Qld) follows, together with the key amendments proposed by the Bill (**pages 9-51**). Some of the key changes are:

- a more strategic role for the Queensland Heritage Council ('**QHC**'), through the transfer of a range of functions to the Environmental Protection Agency (**pages 9-14**);
- more timely and accountable administrative processes for entering places in, and removing places from, the heritage register (**pages 14-31**);
- a new system of 'interim protection orders' to replace the current provisional entry of places in the heritage register (**pages 24-25**);
- an ability for notices to be issued requiring the owners of heritage places to carry out essential maintenance work (**page 29**);
- a new category, 'archaeological places', in the heritage register (**pages 30-31**);
- extending heritage agreements beyond owners to other entities with an interest in a place, and removing the mandatory requirement for such agreements to attach to land and bind successive owners (**pages 32-33**);
- an ability for 'general exemption certificates' for development to be issued to all registered places or particular classes of registered places, and for development for liturgical purposes to be exempt development under the *Integrated Planning Act 1997* (Qld) (**pages 38-39**);
- new provisions for the protection of 'archaeological artefacts' including allowing the State, in limited circumstances, to declare ownership of such artefacts that are important to Queensland (**pages 40-45**);
- some new penalties and the increase of some existing penalties under the Act (**discussed throughout the Research Brief**);
- additional powers to, and appropriate processes for, authorised persons who enter places to seize evidence (**pages 45-49**); and
- improved protection of local heritage through the introduction of 'local heritage registers' (**pages 50-51**).



## 1 INTRODUCTION

On 23 August 2007, the Hon L Nelson-Carr MP, then Minister for Environment and Multiculturalism,<sup>1</sup> introduced the Queensland Heritage and Other Legislation Amendment Bill 2007 (Qld) ('**Bill**') into the Queensland Legislative Assembly. The Bill is the culmination of a review into the protection of Queensland's cultural heritage which commenced in 2004.<sup>2</sup>

The Bill proposes extensive amendment to the *Queensland Heritage Act 1992* (Qld) ('**Act**').<sup>3</sup> Some of the key changes are:<sup>4</sup>

- a more strategic role for the Queensland Heritage Council ('**QHC**'), through the transfer of responsibility for the day-to-day administration of the heritage register and the management of development on registered places to the Environmental Protection Agency ('**EPA**');
- more timely and accountable administrative processes for entering places in, and removing places from, the heritage register, through the early involvement of owners and the community and clear timeframes within which decisions must be made. Owners will also have an ability to make oral representations directly to the QHC before final decisions are made;
- replacing the current system of provisional entry in the heritage register with 'interim protection orders', which may be issued if the circumstances warrant;
- an ability for notices to be issued to the owners of heritage places requiring essential maintenance work to be carried out in order to prevent serious or irreparable damage to, or deterioration of, those places;

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<sup>1</sup> The Hon L Nelson-Carr MP was Minister for Environment and Multiculturalism to 13 September 2007. The Hon A McNamara MP was sworn in as the Minister for Sustainability, Climate Change and Innovation on 13 September 2007.

<sup>2</sup> This review process is discussed in part 2 of this Research Brief.

<sup>3</sup> The Bill also proposes consequential amendments to the *Integrated Planning Act 1997* (Qld), and to other legislation, which are not considered in this Research Brief.

<sup>4</sup> For a discussion of these changes, see Hon L Nelson-Carr MP, Minister for Environment and Multiculturalism, 'Neglect of heritage buildings tackled in proposed new laws', *Ministerial Media Statement*, 23 August 2007 (a copy is included in **appendix A** of this Research Brief) and Hon D Boyle MP, Minister for Environment, Local Government, Planning and Women, 'New future for Queensland's cultural heritage', *Ministerial Media Statement*, 20 July 2006 (a copy is included in **appendix B** of this Research Brief).

- the inclusion of a new category, ‘archaeological places’, in the heritage register. Archaeological investigation may be required as a condition of any development at those places;
- extending heritage agreements beyond owners to, in appropriate circumstances, other entities with an interest in a place, and removing the mandatory requirement that heritage agreements attach to land;
- an ability for ‘general exemption certificates’ to be issued for all registered places or particular classes of registered places. Development for liturgical purposes will be exempt development under the *Integrated Planning Act 1997* (Qld);
- new provisions for the protection of ‘archaeological artefacts’ generally, including aligning the protection of shipwrecks in Queensland waters with the Commonwealth provisions, and allowing the State, in limited circumstances, to declare ownership of archaeological artefacts that are important to Queensland;
- the introduction of some new penalties and the increase of some existing penalties under the Act;
- the provision of additional powers to, and appropriate processes for, authorised persons who enter places to seize evidence; and
- improved protection of local heritage through the introduction of ‘local heritage registers’.

This Research Brief considers the notion of Queensland’s ‘cultural heritage’. It then provides a detailed discussion of the current framework of the Act, together with the key amendments proposed by the Bill.<sup>5</sup>

## **2 BACKGROUND TO THE INTRODUCTION OF THE BILL**

The Act was assented to in March 1992 and the substantive provisions commenced in August 1992. An earlier Research Bulletin of the Queensland Parliamentary Library provides an insight into the events leading to its enactment:

*Queensland was the last mainland State to enact substantial heritage legislation, around 15 years after the equivalent Commonwealth legislation. This was the Heritage Buildings Protection Act 1990, an interim Act which was replaced by the Queensland Heritage Act 1992. Prior to this legislation, Queensland was regarded by some heritage experts as having the worst heritage record in Australia. Public interest in the preservation of Queensland cultural heritage was intensified in the 1980s by the demolition of three buildings of sentimental value in Brisbane, the*

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<sup>5</sup> Due to time constraints, comparative legislation in the other Australian jurisdictions is not discussed in this Research Brief.

*BelleVue Hotel, the Cloudland Ballroom and the Commonwealth Bank in Queen Street.*<sup>6</sup>

In introducing the Bill, the Hon L Nelson-Carr MP said the following of the process leading to its introduction:

*[A]fter 15 years, the [Act] was in need of review to reflect changing community expectations. The heritage review process, which commenced in 2004, was generated by concerns that the current system is too reactive, has the potential to cause delays to development and does not provide the community with enough certainty about which places are of heritage value.*<sup>7</sup>

The review process, referred to by the then Minister, involved:<sup>8</sup>

- a report on the functions and responsibilities of the QHC and the EPA, in respect of which the then Minister said:

*This report highlighted the need for a more strategic approach to the Queensland Heritage Register as the current system is characterised by nominations from the community delivering no certainty that Queensland's most important heritage places have been properly identified. The report's recommendations resulted in the Government providing \$2.725 million over five years to complete a State-wide survey of Queensland's cultural heritage places* (discussed in more detail below).<sup>9</sup>

- a Ministerial advisory committee, comprising representatives of the government, the development industry and heritage interest groups, which was established to consider heritage management in Queensland. The then Minister said the following regarding the report<sup>10</sup> of this committee:

*This committee recommended a more strategic approach to heritage, including expanding local government's heritage responsibilities, transferring development assessment to the EPA, developing heritage management principles for State-owned*

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<sup>6</sup> Queensland Parliamentary Library (Charlotte Grigg), 'Protecting Queensland's cultural heritage: the regulatory framework', *Research Bulletin*, No. 7/96, July 1996, p 13.

<sup>7</sup> Hon L Nelson-Carr MP, Minister for Environment and Multiculturalism, Queensland Heritage and Other Legislation Amendment Bill 2007 (Qld), Second Reading Speech, *Queensland Parliamentary Debates (Hansard)*, 23 August 2007, pp 2865-2867, p 2866.

<sup>8</sup> Second Reading Speech, p 2866.

<sup>9</sup> Second Reading Speech, p 2866. For media articles on this report see, for example, Brian Williams, 'State grilled on heritage changes', *Courier Mail*, 17 July 2004 and Brian Williams, 'Minister refuses to scrap council', *Courier Mail*, 30 June 2004.

<sup>10</sup> Cultural Heritage Ministerial Advisory Committee, Final Report, 28 February 2005, [http://www.epa.qld.gov.au/publications/p01587aa.pdf/Cultural\\_Heritage\\_Ministerial\\_Advisory\\_Committee\\_final\\_report.pdf](http://www.epa.qld.gov.au/publications/p01587aa.pdf/Cultural_Heritage_Ministerial_Advisory_Committee_final_report.pdf), downloaded on 28 September 2007 (note that this is a link to the body of the report only, which does not include a copy of the attachments to the report).

*heritage places and reintroducing a heritage grants program to balance regulatory measures with assistance for owners.*<sup>11</sup>

- the release of a discussion paper on the review of the Act, which generated 108 submissions. The then Minister said:

*The majority of respondents supported reform to the heritage system including more transparency and improved community involvement in the nomination process, as well as opportunities for affected parties to engage directly with the decision-maker.*<sup>12</sup>

The then Minister said:

*The [Bill] is the culmination of this review process, and is part of a comprehensive package of initiatives designed to implement a proactive and strategic approach to heritage management in Queensland. These include the comprehensive survey of Queensland's cultural heritage which is currently underway, and a \$5 million heritage grants program, Living Buildings and Places, which is providing resources to assist owners of heritage places.*<sup>13</sup>

**Appendix C** of this Research Brief includes a copy of the then Minister's *Ministerial Media Statement* discussing the heritage survey to identify Queensland's heritage places.<sup>14</sup>

**Appendix D** of this Research Brief includes a copy of the then Minister's *Ministerial Media Statement* discussing the assistance available to owners in maintaining heritage-listed properties.<sup>15</sup>

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<sup>11</sup> Second Reading Speech, p 2866.

<sup>12</sup> Second Reading Speech, p 2866. See also Hon D Boyle MP, Minister for Environment, Local Government, Planning and Women, 'Update will bring QLD heritage system into 21<sup>st</sup> century', *Ministerial Media Statement*, 14 March 2005.

<sup>13</sup> Second Reading Speech, p 2866.

<sup>14</sup> Hon L Nelson-Carr MP, Minister for Environment and Multiculturalism, 'State aims to protect heritage places with \$2.7 million project', *Ministerial Media Statements*, 1 March 2007.

<sup>15</sup> Hon L Nelson-Carr MP, Minister for Environment and Multiculturalism, 'Hip pocket relief for owners of heritage properties', *Ministerial Media Statements*, 30 November 2006. See also Brian Williams, 'In heritage we can trust again after a win for owners – fund restored to glory', *Courier Mail*, 1 December 2006.

### 3 CONSERVING QUEENSLAND'S CULTURAL HERITAGE

The object of the Act is to make provision for the conservation of Queensland's 'cultural heritage'.<sup>16</sup> Throughout the Act, extensive reference is made to the concept of places and objects of 'cultural heritage significance'.

'Cultural heritage' is not defined in the Act, however 'cultural heritage significance' is. Both terms are considered below.

#### 3.1 WHAT IS OUR 'CULTURAL HERITAGE'?

Various meanings have been ascribed to the term 'cultural heritage'. A selection of these follows.

The Queensland Government's EPA/Queensland Parks and Wildlife Service website describes 'cultural heritage' as follows:

*Cultural heritage is based on aspects of our past that we want to keep, appreciate and enjoy today and to pass on to future generations. Those aspects of our past might evoke special meaning for us as individuals or as members of a community, and reflect particular customs or beliefs.*<sup>17</sup>

A recent text, *Heritage Law in Australia*, states:

*[P]opular conceptions of cultural heritage relate primarily to the built environment, and then generally to structures that are relatively old. In the Australian context, ... the built environment relates to those structures erected by the colonists from 1788 onwards, first in New South Wales and then in other parts of Australia. Until relatively recently, most attention was given to the older, mainly sandstone government buildings, salubrious housing in the 'better' suburbs, bridges, and other public infrastructure. In the past 30 years or so, largely as a result of much greater awareness ... the celebration and protection of built heritage in Australia has begun to recognise the much broader history of colonial settlement, and post-colonial development.*

*A perusal of [various cultural heritage registers] indicates that there are many thousands of buildings and structures that are recognised as part of the Australian heritage at national, State and local level. These registers not only record the products of the grand visions of the colonial governors, such as the buildings of Lachlan Macquarie and his convict architect Francis Greenway, or the mansions*

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<sup>16</sup> Act, s 2(1). Clause 4(2) proposes a minor amendment to this provision by stating that the object of the Act is to provide for the conservation of Queensland's cultural heritage *for the benefit of the community and future generations* (emphasis added).

<sup>17</sup> Queensland Government. EPA/QPWS website, 'Cultural heritage', [http://www.epa.qld.gov.au/cultural\\_heritage/](http://www.epa.qld.gov.au/cultural_heritage/), downloaded on 5 September 2007.

*and churches of colonial entrepreneurs in metropolitan areas, but also include the humble cottages, shops, and streetscapes of suburban and small-town Australia.*<sup>18</sup>

In considering the question of what ‘cultural heritage’ is, the earlier Research Bulletin of the Queensland Parliamentary Library said:

*There are many different definitions of the term cultural heritage. Heritage experts may often use alternative terminology, including cultural property, cultural resources, heritage places, etc. While there are common themes and similar definitions in the different pieces of legislation ... there is little overall consistency in terminology in them, which can be confusing. In its broadest sense, cultural heritage can include all the manifestations of humanity: buildings, landscapes, artefacts, literature, language, art, music, folk traditions and cultural institutions. However, much of the legislative framework for the protection of cultural heritage focuses on those types of cultural heritage which are represented in identifiable places or which are moveable objects.*

*Places and items of cultural heritage are a scarce and non-renewable resource. Once destroyed they cannot be regenerated, reintroduced or duplicated. Their value to society has been recognised in different ways throughout the history of civilisation.*<sup>19</sup>

The Queensland Government’s recent discussion paper on the review of the Act contained the following explanation of ‘cultural heritage’:

*Cultural heritage sites and places are those parts of our landscape which are important to the community, or to sections of the community, because of their cultural heritage significance or value. They are places which contribute to an understanding of who we are and where we came from; they contribute to our sense of identity as individuals and our sense of continuity as a community. They are the places which we would like to keep.*<sup>20</sup>

The final report of the Cultural Heritage Ministerial Advisory Committee made the following statement about ‘cultural heritage’:

*Queensland’s cultural heritage places are rich and diverse, consisting not only of buildings, structures and landscapes that survive from the past, but also the histories of the communities who have made their home in this country. Our cultural heritage places are central to how we see ourselves, and to our identity as individuals, communities, and as a State and Nation. They reinforce our sense of local and*

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<sup>18</sup> Ben Boer and Graeme Wiffen, *Heritage Law in Australia*, Oxford University Press, Victoria, 2006, p 18.

<sup>19</sup> Protecting Queensland’s Cultural Heritage: The Regulatory Framework, pp 1-2.

<sup>20</sup> This statement was quoted as having been taken from the Environmental Protection Agency’s *Guidelines for Cultural Heritage Management*, February 2001.

*regional identity. They help enhance the quality of our lives, improve our sense of well being, and are a catalyst for social and economic change.*<sup>21</sup>

### **3.2 MEANING OF ‘CULTURAL HERITAGE SIGNIFICANCE’**

The Act defines ‘cultural heritage significance’ as follows:

*‘Cultural heritage significance’, of a place or object, includes its aesthetic, architectural, historical, scientific, social or technological significance to the present generation or past or future generations.*<sup>22</sup>

The ‘aesthetic significance’, of a place or object, is defined to include “its visual merit or interest”.<sup>23</sup>

The Bill proposes replacing this meaning of ‘cultural heritage significance’ with the following definition “to improve the clarity of the definition and to make it more consistent with the definition used in the Commonwealth legislation”.<sup>24</sup>

*Cultural heritage significance, of a place or feature of a place, means its aesthetic, architectural, historical, scientific, social, or other significance, to the present generation or past or future generations.*<sup>25</sup>

### **3.3 EXCLUSION OF INDIGENOUS CULTURAL HERITAGE**

The Act does not apply to:

- a place that is of cultural heritage significance solely through its association with Aboriginal tradition or Island custom; or
- a place situated on Aboriginal or Torres Strait Islander land unless the place is of cultural heritage significance because of its association with Aboriginal tradition or Island custom and with European or other culture, in which case this Act applies to the place if the trustees of the land consent.<sup>26</sup>

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<sup>21</sup> Cultural Heritage Ministerial Advisory Committee Final Report, p 1.

<sup>22</sup> Act, schedule.

<sup>23</sup> Act, schedule.

<sup>24</sup> Explanatory Notes, p 31. See *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s 528 (definition of ‘heritage value’) and *Australian Heritage Council Act 2003* (Cth), s 3(2).

<sup>25</sup> Cl 45, amendment of schedule.

<sup>26</sup> Act, s 96.

Since April 2004, Indigenous cultural heritage has been administered under the *Aboriginal Cultural Heritage Act 2003* (Qld) and the *Torres Strait Islander Cultural Heritage Act 2003* (Qld).

The current exclusion of the application of the Act to Indigenous cultural heritage is located in the ‘miscellaneous’ provisions of the Act, towards the end of the Act. The Bill proposes relocating the exclusion to the front of the Act, thereby making it more “visible”, in order to “improve the general understanding of how [the] Act relates to Aboriginal and Torres Strait Islander heritage”.<sup>27</sup>

### 3.4 ACHIEVING THE OBJECT OF THE ACT

The Act currently states that, in order to achieve the object of providing for the conservation of Queensland’s cultural heritage, it:

- provides for the establishment of the QHC;
- provides for the maintenance of a register of places of significance to Queensland’s cultural heritage;
- regulates development of registered places;
- provides for heritage agreements to encourage the conservation of registered places;
- provides for the protection and conservation of submerged objects of significance to Queensland’s cultural heritage;
- regulates the excavation of sites that contain, or may contain, objects of significance to Queensland’s cultural heritage; and
- provides appropriate powers of protection and enforcement.<sup>28</sup>

The Minister, the QHC and other bodies and persons concerned with the administration of the Act are required, in exercising powers under the Act, to endeavour to achieve:

- the retention of the cultural heritage significance of the places and objects to which it applies; and
- the greatest sustainable benefit to the community from those places and objects consistent with the conservation of their cultural heritage significance.<sup>29</sup>

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<sup>27</sup> Explanatory Notes, p 29. Cl 38, proposed new s 2A.

<sup>28</sup> Act, s 2(1).

<sup>29</sup> Act, s 2(2).

The Bill seeks to amend the ‘enabling’ provisions for the achievement of the object of the Act in a way which reflects the broader amendments proposed to the Act.<sup>30</sup> Specifically, the Bill proposes that it be stated that:

*The object is to be primarily achieved by-*

- (a) establishing the Queensland Heritage Council; and*
- (b) keeping the Queensland heritage register; and*
- (c) keeping local heritage registers; and*
- (d) regulating, in conjunction with other legislation, development affecting the cultural heritage significance of registered places; and*
- (e) providing for heritage agreements to encourage appropriate management of registered places; and*
- (f) providing for appropriate enforcement powers to help protect Queensland’s cultural heritage.*<sup>31</sup>

## **4 THE QUEENSLAND HERITAGE COUNCIL**

The QHC is established under the Act.<sup>32</sup> The Act provides that the QHC does not represent the State.<sup>33</sup>

### **4.1 COMPOSITION OF THE QHC**

The QHC consists of 12 ‘members’, all of whom are appointed by the Governor in Council. Membership includes a representative of each of the following entities:

- the National Trust of Queensland;
- the Local Government Association of Queensland Inc.;
- the Queensland Council of Unions;
- an organisation representing the interests of property owners and managers in Queensland; and
- an organisation representing the interests of rural industries in Queensland.<sup>34</sup>

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<sup>30</sup> These proposed amendments are discussed in the following parts of this Research Brief.

<sup>31</sup> Cl 4, proposed new s 2(2).

<sup>32</sup> Act, part 2.

<sup>33</sup> Act, s 6.

<sup>34</sup> Act, s 9(a).

A further seven persons with ‘appropriate knowledge, expertise and interest in heritage conservation’ are also appointed as members of the QHC.<sup>35</sup>

Members are appointed for up to three years,<sup>36</sup> and are paid the fees and allowances decided by the Governor in Council.<sup>37</sup>

In order to “ensure wide and evolving community representation” on the QHC,<sup>38</sup> the Bill proposes to make a person ineligible for:

- appointment as a member if they have been a member for at least six consecutive years and their appointment would occur within one year of them last being a member; and
- reappointment as a member if their reappointment would result in them continuing as a member for more than six consecutive years.<sup>39</sup>

A chairperson and deputy chairperson, drawn from the membership of the QHC, are also appointed by the Governor in Council.<sup>40</sup> The Bill seeks to clarify that the terms of appointment to these positions cannot exceed three years (although this amendment will not prevent chairs and deputy chairs from being reappointed).<sup>41</sup>

## 4.2 FUNCTIONS OF THE QHC

The Bill proposes substantial amendment to the functions of the QHC. Most significantly, this will involve transferring responsibility for the day-to-day administration of the heritage register and the management of development on registered places to the EPA. The intended result is that the QHC will retain a more strategic role as the key advisor to the Queensland Government on matters relating to Queensland’s cultural heritage significance.<sup>42</sup>

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<sup>35</sup> Act, s 9(b).

<sup>36</sup> Act, s 11.

<sup>37</sup> Act, s 17.

<sup>38</sup> Explanatory Notes, p 13.

<sup>39</sup> Cl 9, proposed new s 12.

<sup>40</sup> Act, s 10.

<sup>41</sup> Cl 8(2), proposed new s 10(3).

<sup>42</sup> Explanatory Notes, p 2.

#### **4.2.1 Current functions**

Currently, the functions of the QHC are to:

- advise the Minister on matters relating to Queensland’s cultural heritage, particularly the measures necessary to conserve that heritage for the benefit of the present community and future generations;
- administer the heritage register;
- encourage public interest in, and understanding of, issues relevant to the conservation of Queensland’s cultural heritage;
- encourage and assist the appropriate management of places and objects of cultural heritage significance;
- keep, and encourage the keeping of, appropriate records of places and objects of cultural heritage significance;
- cooperate and collaborate with federal, State and local authorities in the conservation of places and objects of cultural heritage significance; and
- undertake any other functions assigned to the QHC.<sup>43</sup>

The QHC must act independently, impartially and in the public interest in performing its functions.<sup>44</sup>

#### **4.2.2 Proposed new functions**

The Bill seeks to “give greater emphasis to the [QHC’s] strategic and policy functions” and to “simplify and clarify the [QHC’s] functions”.<sup>45</sup> One substantial aspect of the proposed changes to give effect to this will be the transfer of responsibility for administering the heritage register to the chief executive of the EPA.

The proposed new functions of the QHC will be:

- providing strategic advice to the Minister about matters relating to Queensland’s cultural heritage including, for example, measures necessary to conserve that heritage;
- providing information to the community to encourage interest in, and understanding of, Queensland’s cultural heritage;

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<sup>43</sup> Act, s 7(1).

<sup>44</sup> Act, s 7(2).

<sup>45</sup> Explanatory Notes, p 12.

- advising entities about conserving Queensland’s cultural heritage including, for example, government entities and community organisations;
- encouraging the appropriate management of places of cultural heritage significance; and
- performing other functions given to the QHC under the Act or by the Minister.<sup>46</sup>

In introducing these proposed amendments, the then Minister said:

*[The QHC will] play a more strategic role as the key adviser to the Government on heritage. The [QHC] will be able to focus its attention on strategic projects which advance the conservation of Queensland’s cultural heritage.*<sup>47</sup>

### 4.3 DELEGATION OF QHC FUNCTIONS

Currently, the QHC may delegate its functions under the Act to:

- a member of the QHC;
- a committee of the QHC consisting of ‘appropriately qualified persons’, one of whom must be a member of the QHC;
- a local government; or
- an ‘appropriately qualified person’.<sup>48</sup>

An important exception to this is that the QHC cannot delegate its function to enter places in, or remove places from, the heritage register.<sup>49</sup>

The Bill proposes limiting delegation by the QHC to:

- a member of the QHC;
- a committee of the QHC consisting of ‘appropriately qualified persons’, one of whom must be a member; or
- an ‘appropriately qualified public servant’.<sup>50</sup>

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<sup>46</sup> Cl 6, proposed new s 7.

<sup>47</sup> Second Reading Speech, p 2866.

<sup>48</sup> Act, s 8. This provision also defines ‘appropriately qualified person’ to mean a person with the qualifications, experience or standing appropriate to perform the function.

<sup>49</sup> Act, s 8(2).

<sup>50</sup> Cl 7, proposed new s 8. Clause 45 proposes a definition for ‘appropriately qualified’ to include having the qualifications, experience or standing (eg classification level in the public service) appropriate to exercise the power or perform the function.

Significantly, the Bill proposes removing the current restriction on the QHC delegating its function of entering places in or removing places from the heritage register. This change is explained as follows:

*This will allow the [QHC] to establish more efficient decision-making processes needed to meet its statutory responsibility to deliver timely decisions. Delegation to an appropriately qualified public service officer has been inserted to allow for delegation to the Environmental Protection Agency to rapidly process applications that clearly do not meet the requirements for entry in the register.*<sup>51</sup>

The ability to delegate to a local government or an appropriately qualified person is removed as this, to date, has been required to allow for the delegation of development matters which, under the amendments, will be transferred to the chief executive.<sup>52</sup>

#### **4.4 MEETINGS OF THE QHC**

Currently, the QHC meets at least ten times each year.<sup>53</sup> For there to be a quorum, at least six members must be present.<sup>54</sup>

The Bill proposes reducing the number of meetings required of the QHC to a minimum of six each year.<sup>55</sup> It is anticipated that the change will “allow the [QHC] greater flexibility in how it carries out its functions”.<sup>56</sup>

#### **4.5 ANNUAL REPORT**

Currently, the required content of the QHC’s annual report is limited to a report on the administration of the Act during the relevant financial year together with a statement of any donations of money accepted by the Minister to assist the objects of the Act and the application of such donations.<sup>57</sup>

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<sup>51</sup> Explanatory Notes, p 13. See part 7 of this Research Brief.

<sup>52</sup> Explanatory Notes, p 13.

<sup>53</sup> Act, s 19.

<sup>54</sup> Act, s 20.

<sup>55</sup> Cl 11, proposed new s 19.

<sup>56</sup> Explanatory Notes, p 13.

<sup>57</sup> Act, ss 28 and 103.

Under the proposed changes, the requirement regarding donations will be deleted<sup>58</sup> and the annual report must provide:

- information, required by the Minister, relating to the performance of the QHC's functions under the Act;
- information about the timeliness of the QHC's dealings with applications for the entry of places in, or the removal of places from, the heritage register; and
- a statement about the measures the QHC considers necessary to conserve Queensland's cultural heritage.<sup>59</sup>

## 5 THE HERITAGE REGISTER

The Bill proposes significant amendments to the existing heritage register and to the process of nominating entries in, or removals from, the register.

### 5.1 CURRENT PROVISIONS

#### 5.1.1 Establishment of the heritage register

Currently, the Act establishes a 'heritage register' which is a record of:

- 'registered places' and 'heritage agreements' relating to registered places;
- 'protected areas';
- orders or permits made or granted under the Act; and
- orders made or granted under the *Integrated Planning Act 1997* (Qld) ('IPA') relating to registered places.<sup>60</sup>

The heritage register is maintained by the QHC<sup>61</sup> and is open for public inspection.<sup>62</sup> Extracts from the heritage register are available for a fee.<sup>63</sup> An

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<sup>58</sup> As explained, this requirement has been deleted as the provision regarding donations (s 103) applies to the Minister and not the QHC (Explanatory Notes, p 14).

<sup>59</sup> Cl 12, proposed new s 28(2).

<sup>60</sup> Act, ss 30(1)-(2).

<sup>61</sup> Act, s 30(3).

<sup>62</sup> Act, s 31.

<sup>63</sup> Act, s 32.

example of utilisation of the register by members of the public is when potential purchasers of property undertake various searches of the property, including a search of whether it is entered in the heritage register.

Entries of registered places in the heritage register must:

- adequately identify the place;
- contain a description of the place;
- contain a statement of the history of the place; and
- contain a statement of the cultural heritage significance of the place.<sup>64</sup>

Entries in, and removals from, the heritage register are notified to the registrar of titles.<sup>65</sup>

In the financial year to 30 June 2006, the QHC received 57 nominations to the heritage register and entered 38 new places, bringing the total number of places in the register to 1,478.<sup>66</sup>

### **5.1.2 ‘Registered places’**

#### *Criteria for entry as a registered place*

A place may be entered in the heritage register if it is of ‘cultural heritage significance’<sup>67</sup> and satisfies one or more of the following criteria:

- it is important in demonstrating the evolution or pattern of Queensland’s history;
- it demonstrates rare, uncommon or endangered aspects of Queensland’s cultural heritage;
- it has potential to yield information that will contribute to an understanding of Queensland’s history;
- it is important in demonstrating the principal characteristics of a particular class of cultural places;
- it is important because of its aesthetic significance;

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<sup>64</sup> Act, s 30(4).

<sup>65</sup> Act, s 42.

<sup>66</sup> QHC, *Annual Report 2005-2006*, pp 18-19 at p 18.

<sup>67</sup> ‘Cultural heritage significance’ is discussed in part 3.2 of this Research Brief.

- it is important in demonstrating a high degree of creative or technical achievement at a particular period;
- it has a strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
- it has a special association with the life or work of a particular person, group or organisation of importance in Queensland's history.<sup>68</sup>

'Place' means a defined or readily identifiable area of land, and includes:

- a building<sup>69</sup> and such of its immediate surrounds as may be required for its conservation;
- a natural feature of historical significance and such of its immediate surrounds as may be required for its conservation.<sup>70</sup>

Importantly, a place:

- should not be excluded from the heritage register simply because places with similar characteristics have already been registered;
- will not satisfy the criteria for entry in the register if there is no prospect of the cultural heritage significance of the place being conserved; and
- may still be entered in the register even if part of the place does not fully satisfy a criterion in the above list provided it forms part of a streetscape that satisfies a criterion or is adjacent to a registered place, exhibits the characteristics of the registered place and failure to enter the place would reduce the overall cultural heritage significance of the streetscape or the registered place.<sup>71</sup>

### ***Nominations of places for entry in, or removal from, the heritage register***

Currently, the QHC considers whether a particular place should be entered in, or removed from, the heritage register. This may occur either on the initiative of the QHC or by application from any person.<sup>72</sup>

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<sup>68</sup> Act, s 34(1).

<sup>69</sup> 'Building' includes furniture, fittings and objects that are associated with the building and contribute to the building's cultural heritage significance (Act, schedule).

<sup>70</sup> Act, schedule.

<sup>71</sup> Act, ss 34(2)-(4).

<sup>72</sup> Act, ss 35(1) and 36(1).

The QHC may invite written submissions in relation to a place it has under consideration for entry in or removal from the register. Submissions may be sought from:

- any person or body with special knowledge of, or interest in, the place; or
- any person or body with a special interest in Queensland's cultural heritage.<sup>73</sup>

If the QHC believes a place meets the requirements for entry in the heritage register, it may provisionally enter the place in the register. In this case, the QHC must immediately:

- notify the owner and the relevant local government, in writing, of the proposal to enter the place in the register on a permanent basis, the reasons on which the proposal is based, and the right to object to the proposal; and
- give public notice of the proposal to enter the place in the register on a permanent basis.<sup>74</sup>

A similar notification process applies for proposed removals from the register if the QHC believes the cultural heritage significance of a place no longer justifies its retention in the heritage register.<sup>75</sup>

### ***Objections to QHC proposals***

If no objection is made to the QHC's proposal, the QHC may proceed as proposed by either permanently entering the place in the register or removing the place from the register (as relevant).<sup>76</sup>

However any person, including the owner of a place the subject of a proposal by the QHC may object to the proposal.<sup>77</sup>

Objections must generally be made to the QHC within 20 business days after notice of the proposal was given.<sup>78</sup>

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<sup>73</sup> Act, ss 35(3) and 36(3).

<sup>74</sup> Act, s 35(4).

<sup>75</sup> Act, s 36(4).

<sup>76</sup> Act, s 41(1).

<sup>77</sup> Act, s 37(1).

<sup>78</sup> Act, s 37(2).

The only ground on which an objection to the proposed entry of a place in the register may be made is that the place is not of cultural heritage significance or does not satisfy the criteria for entry in the register.<sup>79</sup>

Expert assessors, independent of the QHC, inquire into, and report on, objections to proposals of the QHC. A panel of such assessors (at least ten) exists, who are appointed by the Minister on the basis of their expertise in fields relevant to heritage conservation.<sup>80</sup> Objections must be referred by the QHC to a selected assessor within ten business days after the last day for receiving objections.<sup>81</sup>

The assessor must then inquire into and report to the QHC on the objections. Objectors must be provided a reasonable opportunity to make representations (personally or in writing) to the assessor. The assessor may also receive representations from, or consult with, such other persons as the assessor considers appropriate. The assessor's inquiry must be conducted as 'expeditiously as possible' and, in any event, a report on the objections must be given to the QHC generally within 40 business days after reference of the objections.<sup>82</sup>

### ***QHC decision on proposal***

The QHC has 20 business days to consider the assessor's report and decide whether to proceed with the proposal. If the QHC decides to proceed, it must also decide whether to vary its proposal in light of the assessor's report.<sup>83</sup> That is, the QHC may (depending on whether the proposal is for the entry of a place in, or the removal of a place from, the heritage register):

- permanently enter the place in the register, as originally proposed;
- permanently enter the place, as varied from the original proposal;
- remove the provisional entry of the place from the register;
- remove the place from the register, as originally proposed; or
- leave the entry of the place in the register.<sup>84</sup>

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<sup>79</sup> Act, s 37(3).

<sup>80</sup> Act, s 38.

<sup>81</sup> Act, s 39.

<sup>82</sup> Act, ss 40(1)-(3).

<sup>83</sup> Act, s 40(4).

<sup>84</sup> Act, ss 41(2)-(3).

The QHC must notify its decision publicly, to the owner of the place the subject of the decision and the relevant local government.<sup>85</sup>

Dissatisfied owners who objected to the original proposal may, within 20 business days of notification of the decision, appeal to the Planning and Environment Court.<sup>86</sup>

### ***Certificates of immunity***

Owners of places, or persons with the agreement of an owner, may apply to the QHC for a ‘certificate of immunity’ from registration in respect of a place.<sup>87</sup>

The QHC must consider such applications and, if it appears that the relevant place does not satisfy the criteria for entry in the heritage register, issue a certificate of immunity in respect of the place such that the place may not be entered in the register for a period of five years from the date of the certificate.<sup>88</sup>

## **5.2 PROPOSED AMENDMENTS**

### **5.2.1 A new ‘Queensland heritage register’**

The Bill proposes that a new ‘Queensland heritage register’ be kept by the chief executive recording:

- ‘State heritage places’;
- ‘archaeological places’; and
- ‘protected areas’.<sup>89</sup>

Changes regarding the descriptions required for entries in the Queensland heritage register are that, for each area or place, the entry must include:

- enough information to identify the location and boundaries of the place or area;
- information about the history of the place or area;

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<sup>85</sup> Act, s 41(4).

<sup>86</sup> Act, ss 41(5)-(7).

<sup>87</sup> Act, s 43.

<sup>88</sup> Act, ss 43(5)-(7).

<sup>89</sup> Cl 13, proposed new ss 30(1)-(2).

- a description of the place or area; and
- a statement that the area or place is the subject of a heritage agreement (if applicable).<sup>90</sup>

In addition, for each particular place or area that may be listed in the Queensland heritage register, an entry must include:

- for State heritage places, a statement about the cultural heritage significance of the place related to the cultural heritage criteria;
- for archaeological places, a statement about the place related to the archaeological criteria; and
- for protected places, a statement about the cultural heritage significance of the place relevant to the declaration of the protected area.<sup>91</sup>

The Bill also proposes the Queensland heritage register to be available for inspection by the public free of charge. Accessibility should also be facilitated by the ability of the chief executive to make the register available at a number of locations, including the department's website.<sup>92</sup>

## 5.2.2 'State heritage places'

### *Criteria for entry as a State heritage place*

It is proposed that a simplified test apply for the entry of places in the Queensland heritage register as 'State heritage places', compared to the current test that requires places to be of cultural heritage significance and satisfy at least one of eight stated criteria.<sup>93</sup>

Under the new test, a place may be entered in the Queensland heritage register as a 'State heritage place' provided it satisfies at least one of the eight criteria. The additional requirement of also having to be a place 'of cultural heritage significance' is deleted.<sup>94</sup> This simplification is explained as follows:

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<sup>90</sup> Cl 15, proposed new ss 30(3)(a)-(d).

<sup>91</sup> Cl 13, proposed new ss 30(3)(e)-(g).

<sup>92</sup> Cl 13, proposed new s 31.

<sup>93</sup> These criteria are listed in part 5.1.2 of this Research Brief.

<sup>94</sup> Cl 16, proposed new s 34.

*The cultural heritage criteria are based on national standards and are specific indicators of cultural heritage significance. The amendments remove the requirement ... for a duplicate but less rigorous test of cultural heritage significance, which is based on the definition of cultural heritage significance [in the Act].*<sup>95</sup>

The meaning of ‘place’ is also proposed to be substantially amended, as follows:

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

*2 Place includes –*

- (i) any feature on land mentioned in item 1; and*
- (ii) any part of the immediate surrounds of a feature mentioned in subparagraph (i) that may be required for its conservation.*<sup>96</sup>

‘Feature’ will be defined to include:

- a building or structure, or part of a building or structure;
- an artefact, including an archaeological artefact;<sup>97</sup>
- a precinct;
- a natural or landscape feature.<sup>98</sup>

The Bill also seeks to remove the existing exclusion of places from entry in the heritage register ‘if there is no prospect of the cultural heritage significance of the place being conserved’.<sup>99</sup> The removal of this exclusion is explained as follows:

*Due to its wide interpretation, this provision is not consistent with the object of the Act, nor is the application of this test at the point of entry [of a place in the register] consistent with the best practice heritage management.*<sup>100</sup>

Instead, the physical condition and structural integrity of a place will be considered by the QHC later in the process when a decision about the possible entry in the

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<sup>95</sup> Explanatory Notes, p 15.

<sup>96</sup> Clause 45, proposed amendment to schedule.

<sup>97</sup> ‘Archaeological artefact’ is discussed in part 5.2.3 of this Research Brief.

<sup>98</sup> Clause 45, proposed amendment to schedule.

<sup>99</sup> This exclusion currently exists under the Act, s 34(3).

<sup>100</sup> Explanatory Notes, p 15.

register is being made. The factors will be considered in the context of whether they prevent the cultural heritage significance of the place being preserved.<sup>101</sup>

***Entry in, or removal from, the Queensland heritage register of State heritage places***

The Bill proposes to significantly amend the process for entering places in, or removing places from, the Queensland heritage register as State heritage places.

It is hoped that these amendments will result in an “improved process” with “end-to-end timeframes, earlier engagement with owners of nominated places and the community, an expanded role for the chief executive and greater access to the decision-maker for affected parties”.<sup>102</sup>

***Applications for entry in, or removal from, the Queensland heritage register***

Applications for places to be entered in, or removed from, the Queensland heritage register as State heritage places will be made to the chief executive, rather than the QHC.<sup>103</sup>

Applications for entry will need to be accompanied by:

- a statement of how the place satisfies one or more of the criteria for entry in the register;
- information about the history of the place to support that statement; and
- a description of the features of the place that contribute to its cultural heritage significance, supported by photographs, drawings or other documents showing the features.<sup>104</sup>

Currently, many of these requirements are set out in the Queensland Heritage Regulation 2003 (Qld), s 4, rather than the Act.

Similarly, applications to remove places from the Queensland heritage register as State heritage places will need to be accompanied by a statement of how the place

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<sup>101</sup> Cl 17, proposed new s 42H(2). This proposed amendment is discussed in part 5.2.2 (under ‘Decision of QHC about entry in, or removal from, Queensland heritage register’) of this Research Brief.

<sup>102</sup> Explanatory Notes, p 15.

<sup>103</sup> Cl 17, proposed new s 35(1).

<sup>104</sup> Cl 17, proposed new s 35(2)(c).

does not satisfy any of the cultural heritage criteria, together with information to support that statement.<sup>105</sup>

Significantly, the Bill proposes to introduce a new restriction limiting certain applications for entry in, or removal from, the register of State heritage places where the QHC has made a decision about the matter in the previous 12 months. An application can not be made to have a place entered in the register if the application is made less than one year after the day:

- the place was removed from the register; or
- the QHC decided not to enter the place in the register.<sup>106</sup>

Similarly, an application can not be made to have a place removed from the register if the application is made less than one year after the day:

- the place was entered in the register; or
- the QHC decided not to remove the place from the register.<sup>107</sup>

### ***Initial notification of applications***

The current process requires owners and local governments to be notified of applications affecting certain places after a place has already been provisionally entered in the heritage register, or after the QHC has decided that it proposes to remove a place from the register (as relevant). No timeframes govern the period within which the decision to provisionally enter, or to recommend the removal of, a place must be made after an applicant has been received. The proposed amendments require the chief executive, within ten business days after receiving an application, to provide a copy of the application to the owner of the place and the relevant local government. An owner will also be provided with information on how to make a written submission to the chief executive about the application.<sup>108</sup>

Within ten business days after this initial notification to owners and local governments, the chief executive will also be required to notify the application in a newspaper and on the department's website. The notice must provide certain information about the application, where it may be viewed and how a submission may be made.<sup>109</sup>

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<sup>105</sup> Cl 17, proposed new s 35(2)(d).

<sup>106</sup> Cl 17, proposed new s 36(1).

<sup>107</sup> Cl 17, proposed new s 36(2).

<sup>108</sup> Cl 17, proposed new s 37(1).

<sup>109</sup> Cl 17, proposed new s 38.

### ***Submissions and representations about applications***

A written submission about an application ('heritage submission') will be able to be given to the chief executive within 20 business days after the application was notified in a newspaper. In some circumstances, this period may be extended by up to a further 20 business days.<sup>110</sup> These timeframes reflect those in the current legislation.

Heritage submissions will have to be made on the basis that the place the application relates to either does, or does not, satisfy the cultural heritage criteria.<sup>111</sup>

Similar to the existing ability of the QHC to invite written submissions from particular persons or bodies about certain proposals under consideration,<sup>112</sup> the chief executive will have power to ask an appropriate person or other entity to make written representations about places the subject of applications concerning the Queensland heritage register.<sup>113</sup>

### ***Interim protection orders***

The Bill provides for the issue of 'interim protection orders', which will give temporary protection for places similar to that which currently exists when places are provisionally entered in the heritage register.

The chief executive may issue an interim protection order to the owner of a place if:

- an application to have the place entered in the Queensland heritage register as a State heritage place is current and has not been decided by the QHC; and
- the chief executive is satisfied that:
  - the place is likely to satisfy at least one of the cultural heritage criteria; and
  - the order is necessary to conserve the cultural heritage significance of the place because of development that may be carried out on the place.<sup>114</sup>

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<sup>110</sup> Cl 17, proposed new s 40.

<sup>111</sup> Cl 17, proposed new s 41. Currently, the Act only contains a similar requirement in terms of objections to proposed entries in the heritage register, and not for proposed removals from the heritage register (see Act, s 37(3)).

<sup>112</sup> Act, ss 35(3) and 36(3).

<sup>113</sup> Cl 17, proposed new s 42.

<sup>114</sup> Cl 29, proposed new s 54A.

An interim protection order will:

- state the reasons for the order having been made;
- state that the place is taken to be a State heritage place when the order is given; and
- provide information about the duration of the order.<sup>115</sup>

An interim protection order will cease on the earlier of 60 business days after the order is given, or the day the QHC makes, or is taken to have made, a decision on the application. The chief executive may also end an interim protection order by notice to the owner at any time.<sup>116</sup>

The power to issue an interim protection order cannot be delegated.<sup>117</sup>

Interim protection orders have been explained as follows:

*To streamline the process for deciding applications to the register, the amendments remove provisional listing. Temporary protection for places under consideration for entry in a heritage register is a common feature in Australian heritage legislation as it assists in the rational consideration of applications and removes the incentive to carry out reactive demolitions. Section 88 of the Act, Stop Orders, provides a mechanism to deal with emergency situations, such as when demolition work is about to start or is underway. The interim protection order will have a lesser affect on a place. Unlike a stop order, it will allow development of a place to commence or continue provided the appropriate approvals have been obtained.<sup>118</sup>*

### ***Recommendations of chief executive to QHC***

The proposed amendments will require the chief executive to:

- firstly, consider an application together with any submissions, representations and other relevant information; and
- then, give the QHC a written recommendation (‘heritage recommendation’) about whether the place the subject of the application should be entered in, or removed from, the Queensland heritage register.<sup>119</sup>

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<sup>115</sup> Cl 29, proposed new s 54B. See also cl 29, proposed new s 54D.

<sup>116</sup> Cl 29, proposed new s 54C.

<sup>117</sup> Cl 43, proposed new s 104(2).

<sup>118</sup> Explanatory Notes, p 9. Stop orders are discussed in part 9.1.2 of this Research Brief.

<sup>119</sup> Cl 17, s 42A(1).

The recommendation must be for the place to be entered in, or stay on, the register if the chief executive considers at least one of the cultural heritage criteria is satisfied.<sup>120</sup> Alternatively, the recommendation must be for the place not to be entered in, or for it to be removed from, the register if the chief executive considers no cultural heritage criteria are satisfied.<sup>121</sup>

Generally, the heritage recommendation must be given to the QHC within 80 business days after the relevant application was received. In some cases, this may be extended to 120 business days after the receipt of the application.<sup>122</sup> A copy of a heritage recommendation must be given by the chief executive to the applicant, owner, local government and any submitters within ten business days after it was given to the QHC.<sup>123</sup>

### ***Decision of QHC about entry in, or removal from, Queensland heritage register***

The QHC will be required to consider and make a decision on each heritage recommendation it receives.<sup>124</sup> To assist this decision, the QHC may ask an appropriate person or other entity to make written representations about the place the subject of the application.<sup>125</sup>

Applicants, owners, local governments and submitters have ten business days after receiving notice of the heritage recommendation in which to ask to make oral representations to the QHC before a decision is made on the heritage recommendation. All reasonable steps must be taken to comply with such a request from the owner of a place. The QHC may decide to hear other requests if satisfied it is appropriate to do so (e.g. by having regard to any submission given by the person or entity making the request, and any new information they may have about the place that is relevant to the recommendation and the cultural heritage criteria).<sup>126</sup>

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<sup>120</sup> Cl 17, proposed new s 42A(4).

<sup>121</sup> Cl 17, proposed new s 42A(5).

<sup>122</sup> Cl 17, ss 42A(2), 42A(6) and 42B.

<sup>123</sup> Cl 17, proposed new s 42C.

<sup>124</sup> Cl 17, proposed new s 42D.

<sup>125</sup> Cl 17, proposed new s 42E.

<sup>126</sup> Cl 17, proposed new s 42F.

A decision by the QHC on a heritage recommendation must generally be made within 60 business days after receipt of it from the chief executive.<sup>127</sup> However, the QHC and the owner of the place may agree to extend this timeframe to 100 business days after the QHC received the recommendation.<sup>128</sup> Failure by the QHC to make a decision within the required timeframe will be taken to be:

- for an application for entry in the register – a decision not to enter the place; and
- for an application for removal from the register – a decision to retain the entry of the place.<sup>129</sup>

In making a decision, the QHC:

- will be required to have regard to:
  - the application;
  - any submissions made to the chief executive;
  - any written representations made to the chief executive or the QHC in relation to the application; and
  - any oral representations made to the QHC; and
- may have regard to other information considered relevant to the application. Importantly, this will include whether the physical condition or structural integrity of the place may prevent its cultural heritage significance being preserved.<sup>130</sup>

The QHC:

- may enter the place in the Queensland heritage register if it considers at least one of the cultural heritage criteria are satisfied; and
- must remove the place from the register if it considers none of the cultural heritage criteria are satisfied.<sup>131</sup>

The decision of the QHC may adopt, vary or contradict the chief executive's recommendation.<sup>132</sup>

The QHC must advise the chief executive of its decision, and the reasons for it, as soon as it is made.<sup>133</sup> The chief executive then has ten business days to:

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<sup>127</sup> Cl 17, proposed new s 42H(1)(a).

<sup>128</sup> Cl 17, proposed new ss 42H(1)(b) and 42I.

<sup>129</sup> Cl 17, proposed new s 42L.

<sup>130</sup> Cl 17, proposed new ss 42H(2)-(3).

<sup>131</sup> Cl 17, proposed new ss 42J(1)-(2).

<sup>132</sup> Cl 17, proposed new ss 42J(3)-(4).

<sup>133</sup> Cl 17, proposed new s 42K(1).

- give public notice of the decision; and
- notify the applicant, owner, local government and any submitter of the decision and the reasons for it.<sup>134</sup>

If a decision involves entering a place in the register, varying an entry in the register or removing a place from the register, the owner must also be informed:

- that an appeal against the decision may be made to the Planning and Environment Court within 20 business days after being notified of the decision, and the ground for an appeal; and
- how to appeal.<sup>135</sup>

***Obligations to notify proposed developments or development approvals affecting proposed State heritage places***

In the period prior to the QHC making a decision on an application, owners of places proposed for entry in the Queensland heritage register as State heritage places must:

- notify the chief executive at least ten business days before an application is made for a development approval on the place;
- advise the chief executive, within ten business days of being notified of the application, of any development approval for development on the place that the owner knows or ought reasonably to know of; and
- advise the chief executive, within ten business days of being notified of the application, of any application for development approval for development on the place that the owner knows or ought reasonably to know has been made but not yet decided.<sup>136</sup>

Contravening any of these requirements will attract a maximum penalty of 100 penalty units (\$7,500).<sup>137</sup>

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<sup>134</sup> Cl 17, proposed new s 42K(2).

<sup>135</sup> Cl 17, proposed new s 42K(3); cl 45, amendment to schedule (proposed new definition for 'information notice'). Unlike the existing situation, owners will not be required to have objected to a proposal in order for their appeal rights to be preserved.

<sup>136</sup> Clause 19, proposed new ss 43A and 43B.

<sup>137</sup> One penalty unit is currently \$75 (*Penalties and Sentences Act 1992* (Qld), s 5).

***Notices about maintaining State heritage places***

The chief executive will have the ability to give owners of State heritage places notices requiring them to carry out stated ‘essential maintenance work’ if the chief executive reasonably believes:

- it is necessary to carry out that work; and
- the work is urgently required in order to protect the place from serious or irreparable damage or deterioration caused by weather, fire or vandalism.<sup>138</sup>

‘Essential maintenance work’ means work of a minor nature that, if carried out on the place, would help to prevent serious or irreparable damage to, or deterioration of, the place. Examples include:

- refixing loose roofs or wall boards;
- removing potential fire hazards;
- maintaining existing fire management systems, or locks on doors and windows;
- boarding up insecure openings in an unoccupied building;
- shutting down electricity or gas services to an unoccupied building.<sup>139</sup>

The chief executive will be required to take reasonable steps to consult with the owner before giving such a notice.<sup>140</sup>

The owner will have at least 20 business days after receiving the notice to carry out the stated work.<sup>141</sup> Failure to comply with the notice without a reasonable excuse will attract a maximum penalty of 100 penalty units for an individual (\$7,500) and 1,000 penalty units for a corporation (\$75,000).<sup>142</sup>

The power to issue a maintenance notice cannot be delegated.<sup>143</sup> It is stated that the power will “only be used to address serious cases of neglect”.<sup>144</sup>

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<sup>138</sup> Cl 29, proposed new s 54E(1).

<sup>139</sup> Cl 29, proposed new s 54E(7).

<sup>140</sup> Cl 29, proposed new s 54E(3).

<sup>141</sup> Cl 29, proposed new s 54E(4)-(5).

<sup>142</sup> Cl 29, proposed new s 54E(6).

<sup>143</sup> Cl 43, proposed new s 104(2).

<sup>144</sup> Explanatory Notes, p 24.

### 5.2.3 ‘Archaeological places’

The Bill proposes including archaeological places in the Queensland heritage register.<sup>145</sup>

#### *Criteria for entry of an ‘archaeological place’*

For entry as an ‘archaeological place’, a place must:

- not be a State heritage place; and
- have potential to contain an ‘archaeological artefact’ that is an important source of information about Queensland’s history.<sup>146</sup>

An ‘archaeological artefact’:

- will be any artefact that is evidence of an aspect of Queensland’s history, whether it is located in, on or below the surface of land; and
- excludes a thing that is aboriginal cultural heritage under the *Aboriginal Cultural Heritage Act 2003* or Torres Strait Islander cultural heritage under the *Torres Strait Islander Cultural Heritage Act 2003*.<sup>147</sup>

#### *Entry in, or removal from, the Queensland heritage register of archaeological places*

The process for registering archaeological places will be a simplified version of the process that applies for State heritage places. However, one point of difference will be that places will only be considered by the QHC for entry in the State heritage register as archaeological places if they are recommended by the chief executive.<sup>148</sup> Provision is not made for nominations of archaeological places from other persons.

#### *Proposals to recommend entry or removal of archaeological places*

Similar to the process for State heritage places, the process for the registration of, or removal from registration of, archaeological places includes:

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<sup>145</sup> Cl 19, proposed new part 4A.

<sup>146</sup> Cl 19, proposed new s 43C.

<sup>147</sup> Cl 45, proposed new definition for ‘archaeological artefact’ in the schedule.

<sup>148</sup> Cl 45, proposed new s 43D(1).

- the chief executive giving written notice of the proposed entry or removal to the owner of the place, the relevant local government and publicly via newspapers and the department's website;<sup>149</sup>
- the chief executive receiving written submissions about the proposal;<sup>150</sup>
- the chief executive making a written recommendation to the QHC to enter the place, or remove the place from, the Queensland heritage register as an archaeological place;<sup>151</sup>
- owners, local governments and submitters being notified of such recommendations;<sup>152</sup>
- owners being able to request the QHC to allow them to make oral submissions to the QHC before a decision is made on the chief executive's recommendation;<sup>153</sup>
- the QHC being required to make a decision within 60 business days after receipt of the chief executive's recommendation;<sup>154</sup>
- the QHC being able to enter a place in the Queensland heritage register only if it considers the place satisfies the archaeological criteria;<sup>155</sup>
- the QHC being required to remove a place from the register if it considers the place no longer satisfies the archaeological criteria;<sup>156</sup> and
- the QHC being required to notify the chief executive of its decision, with the chief executive then notifying the owner, local government and submitters of the decision. In the case of an owner, if the place is entered in or removed from the register, the owner must also be advised of the process of appeal to the Planning and Environment Court.<sup>157</sup>

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<sup>149</sup> Cl 19, proposed new s 43D.

<sup>150</sup> Cl 19, proposed new ss 43D(2)(b) and (3).

<sup>151</sup> Cl 19, proposed new s 43E.

<sup>152</sup> Cl 19, proposed new s 43F.

<sup>153</sup> Cl 19, proposed new s 43G.

<sup>154</sup> Cl 19, proposed new s 43I(1).

<sup>155</sup> Cl 19, proposed new s 43I(3)

<sup>156</sup> Cl 19, proposed new s 43I(4)

<sup>157</sup> Cl 19, proposed new s 43J.

## 6 HERITAGE AGREEMENTS

### 6.1 CURRENT PROVISIONS

After obtaining and considering the QHC's advice, the Minister may:

- enter into a 'heritage agreement' with the owner of a registered place; or
- by agreement with the owner, vary or terminate a heritage agreement.<sup>158</sup>

A heritage agreement attaches to the land and is binding on the successive owners and occupiers of registered places.<sup>159</sup> Heritage agreements, and any variations or terminations, are notified to the registrar of titles.<sup>160</sup> They are also entered in the heritage register.<sup>161</sup>

A local government may be a party to a heritage agreement.<sup>162</sup>

Heritage agreements may contain provisions to promote:

- the conservation of a registered place; or
- public appreciation of the importance of the place to Queensland's cultural heritage.<sup>163</sup>

For example, a heritage agreement may:

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

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<sup>158</sup> Act, ss 50(1), (3).

<sup>159</sup> Act, ss 50(2), (4).

<sup>160</sup> Act, s 52.

<sup>161</sup> Act, s 53.

<sup>162</sup> Act, s 51(3).

<sup>163</sup> Act, s 51(1).

- specify development that may be carried out for which an exemption certificate will be issued.<sup>164</sup>

Heritage agreements can be enforced in the Planning and Environment Court.<sup>165</sup>

Most heritage agreements pertain to development.<sup>166</sup>

## **6.2 PROPOSED AMENDMENTS**

The Bill proposes to make the provisions concerning heritage agreements more flexible in order to encourage greater use of them.<sup>167</sup>

The chief executive, rather than the Minister, will be responsible for entering into heritage agreements.<sup>168</sup> Similar to the current position, the advice of the QHC will still need to be obtained and considered in order to “ensure that the use of heritage agreements is consistent with the strategic goals of the [QHC]”.<sup>169</sup> Other proposed changes include:

- the extension of heritage agreements beyond the owners of the particular places to, with the owner’s consent, other persons or entities who have an interest in the place;<sup>170</sup>
- removal of the mandatory requirement for heritage agreements to attach to land;<sup>171</sup>
- heritage agreements being able to deal with the appropriate management of registered places.<sup>172</sup>

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<sup>164</sup> Act, s 51(2).

<sup>165</sup> Act, s 54.

<sup>166</sup> Explanatory Notes, p 5.

<sup>167</sup> Explanatory Notes, p 23.

<sup>168</sup> Cl 26, proposed new s 50.

<sup>169</sup> Explanatory Notes, p 23.

<sup>170</sup> Cl 26, proposed new s 50(1).

<sup>171</sup> Cl 26, proposed new s 50(2).

<sup>172</sup> Cl 27, proposed new s 51(1)(a).

## 7 DEVELOPMENT IN REGISTERED PLACES

### 7.1 CURRENT PROVISIONS

#### 7.1.1 QHC as assessment manager or referral agency

Under the IPA, the QHC is the ‘assessment manager’ or a ‘referral agency’ for certain development applications, in which case the QHC is required to assess the relevant application against the objects of the *Queensland Heritage Act*.<sup>173</sup>

The QHC is required to refuse, or recommend refusal of, a development application if it is satisfied:

- the effect of approving the development would be to destroy or substantially reduce the cultural heritage significance of a registered place; and
- there is a feasible and prudent alternative to carrying out the development (having regard to safety, health and economic considerations, and other relevant matter).<sup>174</sup>

In the financial year to 30 June 2006, the QHC dealt with 148 development applications for places on the heritage register.<sup>175</sup>

#### 7.1.2 Development by the State

If the State proposes to carry out development in relation to a registered place, the chief executive of the relevant department or agency proposing the development must give the QHC a report on the proposal. If the QHC is satisfied the development would substantially affect the cultural heritage significance of the place, it must publish a written notice providing details of the development and inviting written submissions. The QHC must then consider all submissions and make a recommendation to the Minister proposing that the development may be carried out, may be carried out subject to stated conditions or modifications, or not be carried out. If the development would be to destroy or substantially reduce the cultural heritage significance of the place, the QHC may only recommend that the

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<sup>173</sup> Act, s 44(1).

<sup>174</sup> Act, ss 44(2)-(3).

<sup>175</sup> QHC Annual Report 2005-2006, p 18.

development may be carried out if it is satisfied there is no prudent and feasible alternative.<sup>176</sup>

The Minister proposing the development must consider the QHC's recommendation and decide whether to accept or reject it. The Minister must also give public notice of decisions relating to publicly notified development proposals.<sup>177</sup>

### **7.1.3 Exemption certificates**

Special provisions apply for development that:

- is 'maintenance work';
- is 'minor repair work';
- is 'other minor work';
- is genuinely required for a place of worship for liturgical purposes;<sup>178</sup>
- is permitted under a heritage agreement; or
- would have no impact on the cultural significance of the place.<sup>179</sup>

In these situations, a person may apply to the QHC for an exemption certificate to carry out the development.<sup>180</sup> The QHC must decide such applications within 20 business days of their receipt. If an application is approved, the QHC will issue an 'exemption certificate' to the applicant.<sup>181</sup> Exemption certificates can also be issued to owners and local governments without them having to apply.<sup>182</sup>

'Maintenance work' means work that:

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<sup>176</sup> Act, ss 45(1)-(8).

<sup>177</sup> Act, ss 45(9)-(10).

<sup>178</sup> In the case of development that is required for liturgical purposes, a certificate must be supplied in which an official who is authorised by the religious organisation states that the development is genuinely required for liturgical purposes. The QHC must be satisfied that this is the case. The development must also not be the substantial or total demolition of a place of worship (Act, s 49).

<sup>179</sup> Act, s 46(5).

<sup>180</sup> Act, s 46(1).

<sup>181</sup> Act, s 47.

<sup>182</sup> Act, s 48.

- will not cause detriment to the cultural heritage significance of a registered place; and
- is performed for the protective care of a registered place, including, for example, the protective care of the materials, features, contents and setting comprising fences, gardens and grounds, roads and paths, roof and drainage systems, and services and utilities.<sup>183</sup>

‘Maintenance work’ also includes painting work in a colour conforming with an existing colour scheme at the registered place.<sup>184</sup>

‘Minor repair work’ means work of a minor nature:

- that will not cause detriment to the cultural heritage significance of the place;
- involving repairs to the materials, features, contents and setting that comprise a registered place; and
- using the same type of materials and the same construction methods as were originally used on the registered place.<sup>185</sup>

‘Other minor work’ means work that is not of a significant scale and which will not cause detriment to the cultural heritage significance of the place.<sup>186</sup>

In the financial year to 30 June 2006, the QHC issued 121 exemption certificates.<sup>187</sup>

## **7.2 PROPOSED AMENDMENTS**

### **7.2.1 Chief executive as assessment manager or referral agency**

Under the amendments proposed by the Bill, the chief executive, rather than the QHC, will be the assessment manager or referral agency for a development application for development on a State heritage place.<sup>188</sup>

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<sup>183</sup> Act, schedule.

<sup>184</sup> Act, schedule.

<sup>185</sup> Act, schedule.

<sup>186</sup> Act, schedule.

<sup>187</sup> QHC Annual Report 2005-2006, p 18.

<sup>188</sup> CI 20, proposed new s 44(1).

The chief executive will also be the assessment manager or referral agency for development applications for development on archaeological places.<sup>189</sup>

### **7.2.2 Assessment by chief executive of development applications for archaeological places**

The chief executive will be required to assess development applications for development on archaeological places having regard to:

- the impact of the proposed development on any archaeological artefact on the place; and
- other relevant information (e.g. an ‘archaeological investigation’ of the place).<sup>190</sup>

If satisfied the development is likely to have a detrimental impact on any archaeological artefact on the place, the chief executive may include in/require the inclusion in any development approval of conditions considered necessary to appropriately manage archaeological artefacts on the place, such as a condition requiring the applicant to conduct an archaeological investigation of the place.<sup>191</sup>

### **7.2.3 Advisory role for QHC in certain cases**

The Bill makes provision for the chief executive to refer a matter relating to a development application for development on a registered place to the QHC for the QHC’s advice about the matter before giving a decision or response for the application.<sup>192</sup> This will “allow the chief executive to seek advice about particularly complex or contentious applications before reaching a decision about a development”.<sup>193</sup>

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<sup>189</sup> Cl 21, proposed new s 44A(1).

<sup>190</sup> Cl 21, proposed new s 44A(2). An ‘archaeological investigation’ means a physical investigation of the place by an appropriately qualified person for the purpose of investigating, recording or conserving archaeological artefacts on the place (cl 45, amendment to schedule).

<sup>191</sup> Cl 21, proposed new s 44A(3).

<sup>192</sup> Cl 21, proposed new s 44B.

<sup>193</sup> Explanatory Notes, p 21.

#### 7.2.4 Development by the State

The existing provisions governing development at registered places proposed by the State will continue to apply (that is, the QHC will provide advice to the State but the final decision will remain with the Minister proposing the development) except in the case of:

- an emergency endangering the life or health of a person or the structural safety of a building; or
- the State having an exemption certificate for the development.<sup>194</sup>

In these particular situations, there will be no need to obtain approval for the development.

#### 7.2.5 Exemption certificates

Exemption certificates will be available for State heritage places, archaeological places and protected areas. Applications for exemption certificates will be made to the chief executive rather than to the QHC. They will also be decided by the chief executive, who must decide them within 20 business days after their receipt (or within 20 business days after the receipt of further information requested by the chief executive).<sup>195</sup>

The chief executive will also be able to issue exemption certificates in the absence of any applications, including in relation to all registered places or to particular classes of registered places. Conditions may also be imposed on exemption certificates issued in these circumstances.<sup>196</sup> The chief executive's power to issue exemption certificates in the absence of applications cannot be delegated.<sup>197</sup>

The categories of development for which an exemption certificate may be issued will also be simplified. The amended provision will state that an exemption certificate may be given to carry out development on a registered place only if the development:

- is permitted under a heritage agreement for the place; or

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<sup>194</sup> Cl 22, proposed new s 45(1).

<sup>195</sup> Cl 24, proposed new s 47; cl 23, proposed new ss 46 and 46A.

<sup>196</sup> Cl 25, proposed new s 48.

<sup>197</sup> Cl 43, proposed new s 104(3). The power to issue of exemption certificates following application may, however, be delegated to an appropriately qualified person.

- will not have a detrimental impact on the cultural heritage significance of the place.<sup>198</sup>

Applicants will also have to provide more detailed information, including:

- enough details about the proposed development to allow the chief executive to assess its impact on the cultural heritage significance of the place;
- a plan showing the location of the development in relation to the features of the place that contribute to its cultural heritage significance;
- if the application is for development permitted under a heritage agreement – details of the agreement to support the application; and
- if the application is for development other than that permitted under a heritage agreement – information showing how the development will not have a detrimental impact on the cultural heritage significance of the place.<sup>199</sup>

A new maximum penalty of 1,000 penalty units (\$75,000) will apply if a person carries out development for which an exemption certificate has been given and the development contravenes a condition of that certificate.<sup>200</sup>

In the case of development for liturgical purposes, the Bill proposes that this type of development be exempt development under the IPA.<sup>201</sup> It removes the QHC/chief executive from having any role in approving development for liturgical purposes. It also removes the current restriction that prevents development for these purposes if it involves the substantial or total demolition of such places. An official of the religious organisation proposing the development will be required, at least 20 business days before starting the development, to give the chief executive a notice stating their name and position and briefly describing the proposed development and the liturgical purpose for which it is required.<sup>202</sup>

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<sup>198</sup> Cl 23, proposed new s 46(3).

<sup>199</sup> Cl 23, proposed new s 46(2).

<sup>200</sup> Cl 25, proposed new s 49.

<sup>201</sup> Cl 25, proposed new s 49A.

<sup>202</sup> Cl 25, proposed new s 49C.

## 8 ARCHAEOLOGICAL OBJECTS AND ARCHAEOLOGICAL AREAS

### 8.1 CURRENT PROVISIONS

Currently, the Act provides for the discovery and protection of archaeological objects and archaeological areas. It also provides for the declaration of protected areas that contain protected objects or places of cultural heritage significance.<sup>203</sup>

#### 8.1.1 Studies and discoveries

Certain provisions apply if a person proposes to study land or territorial waters for the purpose of identifying archaeological objects or areas that may contain archaeological objects, and the objects or areas may be of cultural heritage significance.<sup>204</sup>

If these criteria are met, the person must give the chief executive notice about the study, which provides information about:

- its purpose and methodology;
- the area to be studied;
- when the study will be conducted;
- the persons carrying out the study and their qualifications; and
- the arrangements for storing and conserving objects removed, if this is intended by the study.<sup>205</sup>

A maximum penalty of 300 penalty units (\$22,500) applies if a person carries out a study for the purpose of identifying objects or places that may be of cultural heritage significance without the chief executive's approval.<sup>206</sup>

Within 40 business days after completing the study, the person must give the chief executive a report stating:

- whether the purpose of the study was achieved, and how it was achieved;
- the area studied, and an assessment of its cultural heritage significance;

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<sup>203</sup> Act, part 7.

<sup>204</sup> Act, s 55(1).

<sup>205</sup> Act, s 55(2).

<sup>206</sup> Act, s 55(3).

- the methodology used for the study, and when the study was conducted;
- details of all findings and observations; and
- any appropriate recommendations for the protection of objects or any area of cultural heritage significance found in the study.<sup>207</sup>

A maximum penalty of 300 penalty units (\$22,500) applies if this requirement is not met.<sup>208</sup>

A maximum penalty of 50 penalty units (\$3,750) also applies if a person discovers either an object on or under land, or the remains of a ship or some other object in territorial waters of Queensland, that may be of cultural heritage significance and fails to report the discovery to the Minister as soon as practicable after it is made.<sup>209</sup>

### **8.1.2 Protected objects**

The Minister may, by gazette notice, provisionally declare either of the following to be a ‘protected object’ if satisfied it may be of cultural significance:

- an object situated on, under or recovered from the surface of land;
- the remains of a ship or some other object in, or recovered from, the territorial waters of Queensland.<sup>210</sup>

The notice remains in force until the earlier of the end of two months or the commencement of a regulation declaring the object or remains to be a protected object.<sup>211</sup>

A maximum penalty of 1,000 penalty units (\$75,000) applies if a person, without the chief executive’s written consent or a reasonable excuse:

- knowingly interferes with a protected object (e.g. damages or destroys it);
- disposes of a protected object; or
- removes a protected object from where it is situated.<sup>212</sup>

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<sup>207</sup> Act, s 55(4).

<sup>208</sup> Act, s 55(4).

<sup>209</sup> Act, s 56.

<sup>210</sup> Act, ss 57(1)-(2).

<sup>211</sup> Act, ss 57(3), (5).

<sup>212</sup> Act, s 58.

A maximum penalty of 100 penalty units (\$7,500) applies for a person who, without the chief executive's written approval or another lawful excuse, has in their possession a protected object that the person knows or ought reasonably to know is a protected object.<sup>213</sup>

### **8.1.3 Protected areas**

Areas containing protected objects or places of cultural heritage significance may be declared by regulation to be 'protected areas'.<sup>214</sup>

A maximum penalty of 1,000 penalty units (\$75,000) applies for a person who, without a permit<sup>215</sup> or reasonable excuse, enters or interferes with (e.g. damages, destroys or excavates) a protected area.<sup>216</sup>

## **8.2 PROPOSED AMENDMENTS**

The Bill proposes replacing the existing provisions concerning archaeological studies and discoveries and protected objects with new provisions dealing with the protection of 'archaeological artefacts'<sup>217</sup> generally.

A permit will no longer be required to conduct archaeological studies, and only those studies involving development at a registered place will require approval.<sup>218</sup>

### **8.2.1 Notifying the discovery of archaeological artefacts**

A person who discovers a thing they know or ought reasonably to know is an archaeological artefact that is an important source of information about an aspect of

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<sup>213</sup> Act, s 59.

<sup>214</sup> Act, s 60.

<sup>215</sup> Permits are available under the Act, s 62. See also the Act, ss 63-68, in relation to the permit process and permits in general.

<sup>216</sup> Act, s 61.

<sup>217</sup> For the meaning of 'archaeological artefact', see part 5.2.3 of this Research Brief.

<sup>218</sup> If the study involving development is at a State heritage place, approval would be required under the proposed new s 44. If the study occurs at an archaeological place, approval would be required under the proposed new s 44A. If the study is being undertaken by the State, approval would be required under the proposed new s 45.

Queensland's cultural heritage history must notify the chief executive. Failure to do so will attract a maximum penalty of 1,000 penalty units (\$75,000).<sup>219</sup>

### **8.2.2 Offence of interfering with a discovery**

If a person is aware that the discovery of an archaeological artefact has been notified to the chief executive, the person will commit an offence if, within 20 business days of the notification and without the chief executive's written consent, they interfere with the thing. A maximum penalty of 1,000 penalty units (\$75,000) applies for a contravention of this provision.<sup>220</sup>

'Interfere with' includes damage, destroy, disturb, expose or move.<sup>221</sup>

It is said that this period "balances the need to investigate an important archaeological artefact before it is destroyed with the requirement to continue any construction project that was underway when the artefact was discovered".<sup>222</sup>

### **8.2.3 Offence of interfering with a shipwreck**

A person who, without the chief executive's written consent or a reasonable excuse, interferes with a shipwreck is liable to a maximum penalty of 1,000 penalty units (\$75,000).<sup>223</sup>

'Shipwreck' means the remains or any part of the remains of a ship that has been in Queensland waters for over 75 years.<sup>224</sup>

It is explained that this amendment "helps to align protection for historic shipwrecks in Queensland waters with the Commonwealth provisions and provides

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<sup>219</sup> Cl 30, proposed new s 56. This is a considerable increase in the current equivalent penalty of 50 penalty units.

<sup>220</sup> Cl 30, proposed new s 57.

<sup>221</sup> Cl 30, proposed new s 55.

<sup>222</sup> Explanatory Notes, p 25.

<sup>223</sup> Cl 30, proposed new s 58(1).

<sup>224</sup> Cl 30, proposed new s 58(2).

blanket protection for all shipwrecks in Queensland waters that are over 75 years old”.<sup>225</sup>

#### **8.2.4 Ownership of particular archaeological artefacts**

A new provision will be inserted allowing the ownership of particular archaeological artefacts to be declared to the State in order to “provide for the rare occasions when the State decides there is a pressing need to declare ownership of a particularly important archaeological artefact”.<sup>226</sup>

The chief executive will have the ability, by public notice, to declare that an archaeological artefact that is in, or has been removed from, a registered place is the property of the State if satisfied that:

- the artefact is important to Queensland’s cultural heritage; and
- a declaration of ownership to the State is necessary to help conserve the cultural heritage significance of the artefact.<sup>227</sup>

The power to make such a declaration cannot be delegated.<sup>228</sup>

A person who suffers loss as a result of such a declaration will be entitled to be paid just and reasonable compensation for the loss.<sup>229</sup>

#### **8.2.5 Protected areas limited to areas containing places of cultural heritage significance**

Under the Bill, protected area declarations will be restricted to areas containing a place of cultural heritage significance. They will not extend to areas containing protected objects, as is currently the case.<sup>230</sup>

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<sup>225</sup> Explanatory Notes, p 25. See *Historic Shipwrecks Act 1976* (Cth).

<sup>226</sup> Explanatory Notes, p 25.

<sup>227</sup> Cl 30, proposed new s 59(1).

<sup>228</sup> Cl 43, proposed new s 104(2).

<sup>229</sup> Cl 30, proposed new s 59A. Other provisions deal with how such compensation is applied for (proposed new s 59B), deciding applications for compensation (proposed new s 59D), notifying decisions on compensation (proposed new s 59E) and appeals against compensation decisions (proposed new ss 59F-59J).

<sup>230</sup> Cl 31, proposed new s 60.

In addition, the maximum penalty for unlawfully entering or interfering with a protected area will increase to 1,700 penalty units for individuals (\$127,500) and 17,000 penalty units for corporations (\$1,275,000).<sup>231</sup> As explained:

*The declaration of a protected area by the Governor in Council is intended to provide the highest level of protection. This amendment ensures there is a sufficient deterrent for destroying protected areas.*<sup>232</sup>

## 9 ENFORCEMENT

### 9.1 CURRENT PROVISIONS

#### 9.1.1 Authorised persons

Under the Act, certain ‘authorised persons’ (public service officers or employees appointed by the chief executive)<sup>233</sup> have power to:

- inspect places, or objects in a place, for the purpose of deciding or recording the cultural heritage significance of the places or objects; and
- conduct investigations and inspections to monitor compliance with the Act and with certain aspects of the IPA.<sup>234</sup>

An authorised person may enter a place if:

- its occupier consents to the entry;
- it is a public place and the entry occurs when it is open to the public;
- the entry is authorised by warrant; or
- it is a place of business and is open for business or otherwise open for entry.<sup>235</sup>

Certain procedures apply for the entry of an authorised person with consent<sup>236</sup> and under a warrant.<sup>237</sup>

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<sup>231</sup> Cl 32, proposed new s 61(1).

<sup>232</sup> Explanatory Notes, p 26.

<sup>233</sup> Act, s 69.

<sup>234</sup> Act, s 70. The power in relation to monitoring and enforcing compliance with IPA is to the extent that it relates to assessable development completely or partly for a registered place.

<sup>235</sup> Act, s 77(1).

<sup>236</sup> Act, s 78.

<sup>237</sup> Act, ss 79-82.

An authorised person who enters a place has power to:

- search any part of the place;
- inspect, examine, photograph or film anything in the place;
- take extracts from, and make copies of, any document in the place;
- take into the place any persons, equipment and materials the authorised person reasonably requires for exercising a power; and
- require a person in the place to provide reasonable information or help and reasonable facilities to exercise the above powers (e.g. giving information about how to access electronic systems at the place, or the provision of a photocopier for copying a document).<sup>238</sup>

Failure of a person, without a reasonable excuse, to comply with a request to provide reasonable information or help or reasonable facilities attracts a maximum penalty of 100 penalty units (\$7,500).<sup>239</sup>

An authorised person may also require someone to state their name and address if the authorised person:

- finds them committing, or about to commit, an offence against the Act; or
- finds them in circumstances that lead, or has information that leads, to a reasonable suspicion they have just committed an offence against the Act.<sup>240</sup>

It is an offence, without a reasonable excuse, not to comply with such a requirement.<sup>241</sup>

### 9.1.2 ‘Stop orders’

The Act allows the Minister to issue a ‘stop order’ if the Minister believes such action is necessary in order to protect a place of cultural heritage significance. A stop order requires a person to stop any work or activity, or prohibits a person from starting any work or activity, that may destroy or reduce the cultural heritage significance of the place. Unless earlier revoked, a stop order will continue in

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<sup>238</sup> Act, s 83(1).

<sup>239</sup> Act, s 83(2)-(3).

<sup>240</sup> Act, s 84(1).

<sup>241</sup> Act, ss 84(2), (5).

force for up to 40 business days.<sup>242</sup> Contravention of a stop order attracts a maximum penalty of 17,000 penalty units (\$1,275,000).<sup>243</sup>

### **9.1.3 General offences**

The following general offences exist under the Act:

- knowingly making a false or materially misleading statement to an authorised person – maximum penalty of 500 penalty units (\$37,500);<sup>244</sup>
- giving an authorised person a document known to be false or materially misleading - maximum penalty of 500 penalty units (\$37,500);<sup>245</sup>
- obstructing an authorised person in the exercise of a power, without a reasonable excuse - maximum penalty of 200 penalty units (\$15,000);<sup>246</sup>
- pretending to be an authorised person - maximum penalty of 100 penalty units (\$7,500);<sup>247</sup>
- failing to provide name or address, or the correctness of same, if required to do so - maximum penalty of 50 penalty units (\$3,750);<sup>248</sup>
- knowingly making a statement that is false or materially misleading to a person concerned in the administration of the Act on a matter relating to the administration of the Act – maximum penalty 50 penalty units (\$3,750).<sup>249</sup>

The executive officers of a corporation must ensure the corporation complies with the Act. If the corporation commits an offence against the Act, each of its executive officers also commits an offence of failing to ensure the compliance by the corporation. The maximum penalty is the penalty for the contravention of the provision by an individual.<sup>250</sup>

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<sup>242</sup> Act, s 88.

<sup>243</sup> Act, s 89.

<sup>244</sup> Act, s 90.

<sup>245</sup> Act, s 91.

<sup>246</sup> Act, s 92(1).

<sup>247</sup> Act, s 92(3).

<sup>248</sup> Act, s 93.

<sup>249</sup> Act, s 97.

<sup>250</sup> Act, s 94.

### 9.1.4 Restoration orders

If a person is convicted of an offence against the Act, the court may, in addition to imposing a penalty for the offence, order the person to make good, to the satisfaction of the Minister, any damage caused through the commission of the offence. Failure to comply with such an order attracts a maximum penalty of 17,000 penalty units (\$1,275,000). In addition, the Minister may carry out the necessary work and recover the cost of doing so, as a debt, from the person in default.<sup>251</sup>

### 9.1.5 Non-development orders

If the owner of a registered place is convicted of an offence against the Act involving the destruction of, or damage to, the registered place, the Minister may by order served on the owner prohibit the development of the place for a period of up to ten years. A copy of such an order must be provided to the registrar of titles, and the order will attach to the land and bind successive owners and occupiers. A maximum penalty of 17,000 penalty units (\$1,275,000) applies for the contravention of such an order.<sup>252</sup>

## 9.2 PROPOSED AMENDMENTS

The key amendments proposed by the Bill concern the provision of additional powers to, and appropriate processes for, authorised persons investigating offences who enter places to seize evidence. It is explained that “these are standard provisions similar to those used in other Acts”.<sup>253</sup> The powers of entry are not proposed to be amended; only the powers relating to the seizure of evidence.

The powers of seizure will depend upon how the place is entered by the authorised person.

The new powers of seizure will be:

- if a place is entered without a warrant or the occupier’s consent (e.g. a public place) – an authorised person may seize a thing at the place only if they reasonably believe the thing is evidence of an offence against the Act;<sup>254</sup>

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<sup>251</sup> Act, s 100.

<sup>252</sup> Act, s 101.

<sup>253</sup> Explanatory Notes, p 28.

<sup>254</sup> Cl 35, proposed new s 84A.

- if a place is entered with a warrant – an authorised person may seize the evidence for which the warrant was issued;<sup>255</sup>
- if a place is entered with the occupier’s consent - an authorised person may seize a thing at the place only if they reasonably believe the thing is evidence of an offence against the Act and the seizure is consistent with the purpose of the entry as told to the occupier when asking for their consent;<sup>256</sup>
- if a place is entered with a warrant or with the occupier’s consent - an authorised person may also seize anything else at the place if they reasonably believe the thing is evidence of an offence against the Act and the seizure is necessary to prevent the thing being hidden, lost or destroyed, or being used to continue, or repeat, the offence;<sup>257</sup> and
- if a place is entered with a warrant or with the occupier’s consent – an authorised person may seize a thing at the place if they reasonably believe it has just been used in committing an offence against the Act.<sup>258</sup>

Further proposed provisions will deal with:

- how seized things should be secured;
- unauthorised tampering with seized things (a maximum penalty of 100 penalty units (\$75,000) will apply);
- powers to require a thing to be taken to a place or to be returned from a place<sup>259</sup> (a maximum penalty of 100 penalty units (\$75,000) will apply for a contravention);
- an authorised person providing receipts for seized things;
- the forfeiture of seized things to the State in certain limited circumstances;
- the return of seized things; and
- access to seized things.<sup>260</sup>

## **10 LOCAL HERITAGE REGISTERS**

The Bill proposes a new Part 7B ‘Provisions about places of cultural heritage significance in local government areas’<sup>261</sup> which is directed at ensuring “all local

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<sup>255</sup> Cl 35, proposed new s 84B(3).

<sup>256</sup> Cl 35, proposed new s 84B(2).

<sup>257</sup> Cl 35, proposed new s 84B(4).

<sup>258</sup> Cl 35, proposed new s 84B(5).

<sup>259</sup> Cl 35, proposed new s 84F.

<sup>260</sup> Cl 35, proposed new ss 84C-84J.

<sup>261</sup> Cl 34.

governments have a workable system for dealing with heritage matters”. It is said that the new provisions “will particularly assist those local governments that do not have adequate provision for identifying and protecting heritage places incorporated into their planning schemes”.<sup>262</sup>

Certain local governments may be exempted from the application of these new provisions if the chief executive is satisfied that their planning schemes identify places of cultural heritage significance and satisfactorily provide for the conservation of those places.<sup>263</sup>

Local governments will be required to keep a register (‘local heritage register’) of places of cultural heritage significance in their area. These registers must be available for inspection, free of charge, by the public.<sup>264</sup> For each place entered in a local heritage register, there must be sufficient information to identify the location and boundaries of the place and a statement about the cultural heritage significance of the place.<sup>265</sup> Owners of places entered in a register are not provided with rights of appeal, however they may claim compensation for potential loss under section 5.4.2 of IPA and the entry of the place is treated as though it is a change of the local government’s planning scheme.<sup>266</sup>

If the chief executive is satisfied that a place is of cultural heritage significance for a local government area and entry of the place in the local government’s register is necessary to help conserve its cultural heritage significance, the chief executive may recommend that the local government enter the place in its local heritage register.<sup>267</sup>

In addition, local governments may, of their own initiative, propose the entry of places in, or the removal of places from, their local heritage registers. A proposal for entry in a register must be made by a local government if it has received a recommendation to this effect from the chief executive.<sup>268</sup>

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<sup>262</sup> Explanatory Notes, p 26.

<sup>263</sup> Cl 34, proposed new s 68A.

<sup>264</sup> Cl 34, proposed new s 68B. Local heritage registers may be incorporated into a local government’s planning scheme (cl 34, proposed new s 68L).

<sup>265</sup> Cl 34, proposed new s 68C.

<sup>266</sup> Cl 34, proposed new s 68M.

<sup>267</sup> Cl 34, proposed new s 68D.

<sup>268</sup> Cl 34, proposed new s 68E.

Proposals for entry in or removal from local heritage registers must be notified to the owners of the relevant places and publicly in a newspaper. Notices must call for submissions on the proposal. Submissions must be made on the basis that a place either is or is not of cultural heritage significance for the local government's area.<sup>269</sup>

The relevant local government must consider any submissions and other relevant information in deciding a proposal, including any recommendation received from the chief executive.<sup>270</sup>

Entries in, or removals from, a local heritage register are made by a resolution of the local government. A decision on a proposal must be made within 80 business days of the proposal being notified.<sup>271</sup> The decision must be notified to the owner and also publicly.<sup>272</sup>

In terms of development, the proposed amendments provide for an Integrated Development Assessment System ('IDAS') assessment code for development on a local heritage place to be prescribed in a regulation.<sup>273</sup> It is explained that the code, "which will provide a consistent, basic level of protection for local heritage places, is essential to ensure that all local governments have a workable system to protect heritage".<sup>274</sup>

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<sup>269</sup> Cl 34, proposed new s 68F.

<sup>270</sup> Cl 34, proposed new s 68G.

<sup>271</sup> Cl 34, proposed new s 68H.

<sup>272</sup> Cl 34, proposed new s 68I.

<sup>273</sup> Cl 34, proposed new s 68J.

<sup>274</sup> Explanatory Notes, p 28.



## **APPENDIX A – MINISTERIAL MEDIA STATEMENT**

**Hon. Lindy Nelson-Carr MP, Minister for Environment and Multiculturalism**

**23 August 2007**

### **Neglect of heritage buildings tackled in proposed new laws**

New steps to discourage neglect of heritage buildings are included in a raft of changes to Queensland's Heritage Act introduced in parliament today.

Environment Minister Lindy Nelson-Carr said the amendments follow an extensive review of Queensland's heritage framework, the first since the Act was introduced 15 years ago.

“One of proposed new laws calls for owners of places on the Register to provide basic levels of protection from serious damage caused by weather, fire or vandalism but does not require them to renovate or restore their properties.

“The intention is to avoid situations where heritage buildings are neglected to the point where they are only fit for the wreckers,” Ms Nelson-Carr said.

“As well, interim protection orders will enable nominated properties under threat to be protected by the Heritage Act for 60 days while their heritage significance is assessed, reducing the need for last minute action to save a noteworthy building from being demolished.

“The Bill also includes set timeframes to speed up entry of places to the State Heritage Register and alters the way development on heritage places is assessed.

“Amongst other changes the Queensland Heritage Council will have a greater focus on developing strategies for effective heritage conservation, there will be improved engagement with owners and the community when Register nominations are made and the test for state heritage entry will be a more simple process.”

Ms Nelson-Carr said the Environmental Protection Agency will decide the majority of decisions on heritage sites consistent with its other development assessment roles, in contrast with the current approach where a sub committee of the Heritage Council approves applications on EPA recommendations.

“Importantly too, local government will be required to keep a register of places of local heritage significance in their area, with registers to be phased in gradually.

“Combined with the Queensland Government's \$2.7 million state-wide survey of heritage places, the new laws will create a more predictable system of protection for Queensland's most important heritage locations. Owners and commercial property interests will also benefit from more transparent and timely decisions,” Ms Nelson-Carr said.

Media contact: Karla Steen 3336 8004

## APPENDIX B – MINISTERIAL MEDIA STATEMENT

**Hon. Desley Boyle MP, Minister for Environment, Local Government, Planning and Women**

**20 July 2006**

### **New future for Queensland's cultural heritage**

New laws will be introduced to give the community greater certainty that Queensland's special heritage places will be protected, Environment Minister Desley Boyle said today.

Ms Boyle today announced amendments would be made to the *Queensland Heritage Act 1992* following the review of Queensland's heritage system.

"The Queensland Heritage Act is 14-years-old. Changes will be made to speed up the entry of State heritage places to the Queensland Heritage Register and to help councils better protect local heritage places.

"Too often the community is left fighting developers at the last minute when a heritage place is under threat.

"These new laws will ensure Queensland's heritage places are better protected by a more timely and predictable process.

"They will give increased certainty to owners of heritage places, developers and the wider community," Ms Boyle said.

The changes include:

- The Queensland Heritage Council will retain its status as an independent statutory body that makes decisions about listing places on the Queensland Heritage Register
- The Council will focus more on broader heritage policy issues including providing future vision and strategic guidance for cultural heritage in Queensland
- The Environmental Protection Agency will make decisions on development applications for work on places in the Queensland Heritage Register, rather than the Heritage Council. The EPA may still seek QHC's advice on major development applications
- Development on properties next to heritage places will also be assessed by the EPA for heritage impacts.

A statutory timeframe of 80 business days (four months) will be set to deal with nominations to the Queensland Heritage Register. Limited extensions will be available for further negotiations between the Heritage Council and owners.

Owners of heritage places will be able to exercise a "right to be heard" directly by the Queensland Heritage Council to voice their opinions for or against the listing.

The new changes will also require councils to keep a list of National and State heritage places. It will be up to local government to decide which places, if any, are of local heritage significance.

“But I would encourage all local governments to create their own list of local heritage places that are important to their community and to protect them.

“And local government will be pleased to hear there will be three dedicated officers within the heritage section to help local governments with their National, State and local heritage lists.

“Local governments in Brisbane, Ipswich and Toowoomba, for example, have many places on their local heritage registers and have well-established frameworks for managing these places.

“In consultation with local government, a Heritage Code will be developed which will give councils guidelines for dealing with development applications affecting local heritage places.”

“There is often confusion about the difference between places of state heritage significance (entered on the Queensland Heritage Register) and locally significant places.

“For example a town hall may be locally significant because for years residents have attended local functions and important community events there.

“Most town halls are significant at a local level. However, factors such as how original or unaltered a building is, its rarity, or its contribution to the story of Queensland’s development can lift a building to state heritage importance,” Ms Boyle said.

Only places of state heritage significance should be entered in the Queensland Heritage Register.

“The other plank of the Government’s heritage strategy is our \$2.7 million state-wide audit to make to sure we identify Queensland’s most significant heritage places.

“Local communities will help the EPA with this important survey to identify heritage places.

“Information on places identified in the audit that are not added to the State register will be shared with local government and I would encourage them to look seriously at their suitability for local listing.

“Under the Heritage Code places of local heritage significance will be decided by local government.

“Heritage-listed properties help us understand who we are and where we come from as Queenslanders,” she said.

Ms Boyle thanked the many people and organisations who had input into the heritage review, including the Queensland Heritage Council, the Ministerial Heritage Advisory Committee, the National Trust of Queensland, the Local Government Association Queensland, the Urban Development Industry Association and church organisations.

The draft *Queensland Heritage and Other Legislation Amendment Bill* will be made available for public consultation later this year.

## APPENDIX C – MINISTERIAL MEDIA STATEMENT

**Hon. Lindy Nelson-Carr MP, Minister for Environment and Multiculturalism**

**1 March 2007**

**State aims to protect heritage places with \$2.7 million project**

Environment Minister Lindy Nelson-Carr today announced the Environmental Protection Agency's (EPA) \$2.7 million heritage survey would identify Queensland's heritage places before they were lost to development.

Ms Nelson-Carr said Queensland's rapid population growth and the associated demand for new infrastructure underlined the need for more strategic heritage planning – and sooner rather than later.

“The state-wide survey is an important project in which the state's key historic places will be recognised and listed in the Queensland Heritage Register for their protection.”

With a pilot study in the Mackay-Whitsunday region nearly finished and half a dozen new heritage staff, other parts of the state soon would be surveyed.

“Queensland has been divided into 17 parts for the project and these will be progressively surveyed over the next three years.

“With Queensland's 150th celebrations only a couple of years away, it's an excellent time to draw attention to the role our heritage plays in shaping us as a society.

“Queensland has come a long way since heritage legislation was first introduced in 1992 as a response to the public outcry over the midnight demolition of Brisbane's iconic Cloudland Ballroom.”

Ms Nelson-Carr said one of the problems with heritage legislation was that it was too reactive, with places often being considered after they had been threatened by development.

“Amendments to the Heritage Act are being prepared and recent initiatives clearly show we are prepared to back up our talk with financial commitment.”

Ms Nelson-Carr said since early 2006 the Beattie Government had committed more than \$10 million to adopt a more systematic and proactive approach which would ensure the state's key heritage places were better protected.

“Together with the recently announced \$5 million Living Buildings and Places program and the \$5 million Markers and Monuments program, no government in this state's history has allocated more resources to preserving our heritage for future generations.”

Ms Nelson-Carr also urged people to contact the Cultural Heritage Branch in their region about the special places in their communities.

In south Queensland, phone 3227 6499, in the central region, phone 4936 0577, and in the north phone 4046 6694.

Media contact: Andie Gatti 3336 8002

## **APPENDIX D – MINISTERIAL MEDIA STATEMENT**

**Hon. Lindy Nelson-Carr MP, Minister for Environment and Multiculturalism**

**30 November 2006**

### **Hip pocket relief for owners of heritage properties**

Owners struggling with the costs of maintaining heritage-listed properties are eligible to apply for a Queensland Government grant.

Environment Minister Lindy Nelson-Carr said the \$5 million Living Buildings heritage conservation fund was a Beattie Government election commitment to help Queenslanders manage their properties.

Ms Nelson-Carr said expressions of interest would be invited from owners, community groups and local governments to identify heritage conservation projects.

“Historic places are entered in the Queensland Heritage Register to recognise and protect their heritage values for the benefit of Queenslanders, and many owners do an incredible job with the resources they have.

“The State Government recognises heritage places sometimes need additional care which can be expensive.

“This funding will help those who want to ensure their properties are used and conserved for future generations.”

Ms Nelson-Carr said heritage places and properties helped to define where we had come from as a society but that did not mean heritage properties could not be changed to meet contemporary needs.

“There is lots of scope for owners and communities to adapt heritage buildings for modern use while conserving their heritage values.”

Places that are entered in the Queensland Heritage Register, local heritage places covered by an approved planning scheme, rural heritage places and National Trust historic properties are eligible for assistance.

Eligible projects include:

- Essential repairs and core structural works;
- Fire regulation upgrades;
- “Like for like” material replacement or maintenance;
- Projects aimed at the continued sustainable use of heritage buildings; and
- Heritage conservation plans for properties listed in the Queensland Heritage Register.

Up to \$50,000 is available for general conservation works or up to \$100,000 where the State Government will match owners’ contributions dollar for dollar.

Special purpose projects outside these limits will also be considered.

The closing date for expressions of interest is **31 March 2007**.

For more information phone the EPA's Cultural Heritage Branch on 3227 6499 or visit [www.epa.qld.gov.au](http://www.epa.qld.gov.au) to download the Living Buildings information kit and form.

Media contact: Karla Steen 3336 8004 or Andie Gatti 3336 8002

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