

ELECTRONIC VERSION

**PROTECTING QUEENSLAND'S CULTURAL
HERITAGE: THE REGULATORY FRAMEWORK**

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ABSTRACT

The need to conserve our cultural heritage has been increasingly recognised in Australia in the last 20 years. This Research Bulletin examines the legislative framework for the protection of cultural heritage in Queensland. It covers relevant international conventions to which Australia is a signatory, Commonwealth and State legislation, and, to a lesser extent, local government laws. The provisions of the primary Queensland legislation, the Queensland Heritage Act 1992, are explained in detail and court cases which have impacted on the operation of the Act are outlined. The financial assistance available for cultural heritage conservation and the role of the National Trust in this area are also discussed.

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1. INTRODUCTION

...heritage [is] ...the name we give to those valuable features of our environment which we seek to conserve from the ravages of development and decay.¹

In the last few decades, conservation and heritage issues have become significant to the general public, and therefore to governments and administrators. The need for wilderness preservation, national parks, species conservation, the protection of indigenous artefacts and cultural activities, and the conservation of buildings, historic sites and townscapes has been established. Numerous government and non-government bodies are now working towards the conservation of our heritage.

The concepts of **conservation** and **heritage** can be broadly divided into two areas: the conservation of our natural heritage and the conservation of our cultural heritage. Both natural and cultural heritage have economic, social, political and scientific significance to the broader community.² This Research Bulletin is restricted to discussing the legislative framework for the protection of Queensland's **cultural** heritage.

1.1 WHAT IS CULTURAL HERITAGE?

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 outlined in this Research Bulletin, 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.

¹ Graeme Davison & Chris McConville, *A Heritage Handbook*, Allen & Unwin, 1991, p 1.

² Michael Hall & Simon McArthur, 'Heritage Management - An Introductory Framework', in *Heritage Management in New Zealand and Australia - Visitor Management, Interpretation and Marketing*, eds Michael Hall & Simon McArthur, Oxford University Press, Auckland, 1993, pp 1-17 (pp 4-9).

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 civilization. The first heritage legislation in relatively modern times was enacted to protect monuments in Sweden in 1666. Today it is also recognised, especially in times of such rapid change, that a community's cultural heritage contributes to its sense of place and identity which future generations have the right to share.³

Not all places or items of cultural heritage can be, or should be protected and conserved. One of the major roles of heritage legislation is to provide the **framework for the identification** of the places or items which are of cultural heritage value for people today or in the future. This assessment requires an understanding of the *nature* of the cultural significance of a place or object, such as whether it is of social, historical, aesthetic or scientific significance, and the *degree* of that significance, including whether it has national, state or local status.

Heritage law is now recognised as an integral part of environmental law. The legislative framework for the protection of cultural heritage in Queensland consists of international conventions, Commonwealth and State legislation, and in some cases, local government laws. Each of these is discussed in this Research Bulletin.

2. INTERNATIONAL CONVENTIONS

Australia is a signatory to a number of international conventions, treaties and agreements relating to the conservation of cultural heritage. These international agreements carry political and moral weight in an era when the public's awareness of conservation issues is ever-increasing. The most significant international conventions which impact on the protection of cultural heritage in Australia are described below.

2.1 THE WORLD HERITAGE CONVENTION

The most well known of the international agreements in this area is the *Convention for the Protection of the World Cultural and Natural Heritage 1972*, better known as simply the World Heritage Convention. This convention was adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1972, was ratified by the Australian Government in 1974 and came into force in 1975.

³ Michael Pearson & Sharon Sullivan, *Looking After Heritage Places - The Basics of Heritage Planning for Managers, Landowners and Administrators*, Melbourne University Press, 1995, pp 4-7.

The preamble to the Convention states that:

*...parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole...in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an effective complement thereto.*⁴

Signatories to the Convention are required to adopt general policies and establish appropriate organisational structures for the protection and conservation of their country's cultural and natural heritage, and undertake appropriate legal, scientific administrative and financial measures to implement such policies. Member states must also submit an inventory of properties suitable for inclusion on the World Heritage List.

The World Heritage Convention relates to both natural and cultural heritage. Accordingly, the World Heritage List contains most of the world's well known man-made features, such as the Great Wall of China, the Taj Mahal, Westminster and the Pyramids of Egypt as well as natural features such as the Great Barrier Reef, the Grand Canyon and Mount Everest. To date, the Australian inclusions in the World Heritage List are all natural features, such as Kakadu, Uluru and Lord Howe Island. However, the Australian Government has proposed the listing of the Sydney Opera House and is investigating the feasibility of nominating major convict places and certain significant Aboriginal places. Aboriginal groups are also looking at amending the World Heritage List in respect to places such as Uluru, to more clearly state their cultural heritage value.⁵

The World Heritage Convention has been the subject of considerable controversy in Australia, mainly on the basis of the Commonwealth's power to propose areas for World Heritage listing despite objections from the states in which such areas are situated.⁶ The type of concern and opposition that has been encountered from various interest groups when World Heritage listing is proposed in Australia has not been encountered to the same degree overseas. However, there is now general recognition in Australia of the conservation value of World Heritage listing as well

⁴ UNESCO, *Convention for the Protection of the World Cultural and Natural Heritage*, 1972.

⁵ Pearson & Sullivan, pp 39-44.

⁶ The listing of the Western Tasmanian Wilderness was unsuccessfully challenged in the High Court by the Tasmanian Government (refer to *Commonwealth v Tasmania* (1983) 46 ALR 625) and the listing of Queensland's wet tropics rainforest was also unsuccessfully challenged by the Queensland Government (refer to *Queensland v Commonwealth* (1988) 62 ALJR 143).

as the benefits that can flow to the local tourist industry from such global recognition of our natural or cultural heritage.

The World Heritage Convention is implemented in Australia by the combined effect of the following Commonwealth legislation:

- *World Heritage Properties Conservation Act 1983*,
- *Australian Heritage Commission Act 1975*, and
- *National Parks and Wildlife Conservation Act 1975*.

2.2 THE VENICE CHARTER & THE BURRA CHARTER

The Venice Charter 1964 is the charter of the International Council on Monuments and Sites (ICOMOS). ICOMOS is a non-government UNESCO-sponsored organisation, of which Australia is a member. The Australian National Committee of ICOMOS (Australia ICOMOS) was formed in 1976 and has a membership of over 200 professionals working in the conservation of culturally significant places. At Burra Burra in South Australia in 1979, Australia ICOMOS adopted and expanded the Venice Charter in the *Australia ICOMOS Charter for the Conservation of Places of Cultural Heritage*, generally known as the Burra Charter.

The Burra Charter contains principles governing physical intervention for heritage places. It is an obligatory standard for conservation agencies which receive federal funding in Australia. Compliance with it is also often a prerequisite for conservation works carried out or funded by the states' heritage authorities.⁷

3. COMMONWEALTH LEGISLATION

The most relevant Commonwealth legislation regarding cultural heritage are:

- *Australian Heritage Commission Act 1975*,
- *World Heritage Properties Conservation Act 1983*,
- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, and
- *Protection of Movable Cultural Heritage Act 1986*.

These are discussed in this section. Other Commonwealth statutes which have very specific applications, and which are not discussed here are the *Aboriginal Land Rights (Northern Territory) Act 1976*, the *Historic Shipwrecks Act 1976* and the *National Parks and Wildlife Conservation Act 1975*.

⁷ Pearson & Sullivan, p 44.

3.1 THE AUSTRALIAN HERITAGE COMMISSION ACT 1975

3.1.1 Background

The *Australian Heritage Commission Act 1975* was passed by the Whitlam Government to implement a recommendation of the 1974 *Report of the Committee of Inquiry into the National Estate* (the Hope Report). In its Report, the Committee stated that:

*The Australian Government has inherited a National Estate which has been downgraded, disregarded and neglected. All previous priorities accepted at various levels of government and authority have been directed by a concept that uncontrolled development, economic growth and 'progress', and the encouragement of private as against public interest in land use, use of waters, and indeed in every part of the National Estate, was paramount.*⁸

In discussing what should be included in the definition of 'National Estate', the Committee went on to say:

*Without attempting to prejudge what is to be finally included within the concept, we are certain that the concept itself is a powerful crystallisation of an emergent but hitherto almost unfocused idea. This idea of a National Estate has been taking shape at an increasing rate precisely because it has been aroused by the realisation that much which is of national, and even international, value in the man-made and natural spheres is coming under very strong threats and pressures from damaging or potentially damaging human action. The National Estate is a limited and valuable possession and much has already been lost.*⁹

3.1.2 The Australian Heritage Commission

Under the provisions of the Act, the Australian Heritage Commission was set up in July 1976 with functions including:

- giving advice to the Minister on the identification, conservation, improvement and presentation of the National Estate, and on Commonwealth expenditure in this area, whether by grants or otherwise;
- encouraging public interest in and understanding of issues relevant to the National Estate and promoting training and education in relevant fields of interest;

⁸ Australia. Committee of Inquiry into the National Estate, *Report of the National Estate*, Australian Government Publishing Service, Canberra, 1974, p 334.

⁹ Committee of Inquiry into the National Estate, p 20.

- preparing a Register of the National Estate and administering places in the National Estate which are given to the Commission; and
- administering the National Estate Grants Program, which provides financial assistance to the States and Territories and approved bodies for National Estate projects.¹⁰

The Commission consists of a part-time chairperson and up to six part-time commissioners with relevant qualifications or experience (s 12).

3.1.3 What is the National Estate?

Section 4(1) of the Act defines the **National Estate** as:

those places, being components of the natural environment of Australia or the cultural environment of Australia, that have aesthetic, historic, scientific or social significance or other special value for future generations as well as for the present community.

The issue of what constitutes our National Estate is elaborated on by criteria for the assessment of nominations to the Register of the National Estate which were inserted in the Act in 1990 (s 4(1A)). These are:

- a) its importance in the course, or pattern, of Australia's natural or cultural history;*
- b) its possession of uncommon, rare or endangered aspects of Australia's natural or cultural history;*
- c) its potential to yield information that will contribute to an understanding of Australia's natural or cultural history;*
- d) its importance in demonstrating the principal characteristics of:*
 - (i) a class of Australia's natural or cultural places; or*
 - (ii) a class of Australia's natural or cultural environments;*
- e) its importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;*
- f) its importance in demonstrating a high degree of creative or technical achievement at a particular period;*
- g) its strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;*
- h) its special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history.*

¹⁰ Australian Heritage Commission Act 1975, s 7.

The definition of **national estate** and the above criteria allow parts of the natural environment to be included in the Register, such as wilderness areas, special habitats and scenic features, in addition to items of cultural heritage which are the subject of this Research Bulletin, such as historic and architecturally significant buildings and works, Aboriginal relics and historic sites.

Places included in the National Estate are listed in the Register of the National Estate, which is maintained by the Commission. Places can be nominated for entry in the Register by state governments, their departments, local governments, voluntary bodies, individuals or by direction of the Minister.

The Act requires the Commission to notify the owners of the property and the relevant local government authority and to advertise its intention to enter a place in the Register, inviting comments or objections. Objections may be assessed by an independent assessor and the nomination is then reconsidered by the Commission (ss 23-23B). Assessments are made solely on the basis of national estate values which include evolutionary significance, contribution to research, rarity, and historic, aesthetic, technical, creative or social values. Other attributes such as economic values are not considered in the assessment process.¹¹

3.1.4 Implications of National Estate Listing

The Australian Constitution does not give the Commonwealth Government the power to directly control land-use in the states and thereby protect the National Estate. For this, state and territory heritage legislation is needed. Due to this constitutional constraint, the *Australian Heritage Commission Act 1975* does not directly affect owners of private property or state or local governments. The Act's only direct protective role relates to the Commonwealth Government's own actions and property. These provisions are found in Part V (s 30) of the Act, which requires that:

- all Commonwealth Ministers ensure that their own actions and those of their departments and authorities do not adversely affect the National Estate values of places in the Register unless there are no feasible and prudent alternatives and, if that is the case, that all reasonable measures are taken to minimise the adverse effect.
- all Commonwealth authorities take the steps outlined above.
- all Commonwealth Ministers, Departments and authorities inform the Australian Heritage Commission prior to any proposed action that might affect a place in the Register to a significant extent, to give the Commission a reasonable opportunity to consider and comment on it.

¹¹ Australian Heritage Commission, *Annual Report 1994-95*, pp 7-9.

Part V (s 28) also provides for the Commission to provide advice to the Minister in respect of matters relating to the National Estate on its own initiative, or at the Minister's direction. These provisions reflect the Commission's role to ensure, as far as possible, that decisions which might adversely affect a place in the Register are taken with an awareness of the National Estate significance of the place involved.

Despite the Act's constitutional limitations in protecting the National Estate, the listing of a place often gives it prestige which leads to public pressure being exerted against any proposed action which would negatively affect its National Estate value.

3.1.5 Queensland Examples

The total number of places entered in the Register of the National Estate at 30 June 1995 was 11,270. Of these, 1,081 are Queensland places.

Figure 1. Register of the National Estate - Queensland Places

	Aboriginal	Historic	Natural	Total
Register	144	632	255	1031
Interim List	4	31	15	50
Total	148	663	270	1081

Source: Australian Heritage Commission, *Annual Report 1994-95*, Australian Government Publishing Service, Canberra, 1995, p 105.

A selection of Queensland places listed in the National Estate Register for their Aboriginal or historic cultural value is set out in Appendix A.

3.2 THE WORLD HERITAGE PROPERTIES CONSERVATION ACT 1983

The *World Heritage Properties Conservation Act 1983* contributes towards Australia's compliance with its obligations under the World Heritage Convention by allowing the Commonwealth to intervene in matters which involve the development, degradation or damage to an area that is on the World Heritage List or is potentially a candidate for nomination to that list.¹² It was drafted, in part, to accommodate the

¹² Ben Boer, 'The Legal Framework of Heritage Conservation', in *Cultural Conservation: Towards a National Approach*, Australian Heritage Commission, Special Australian Heritage Publication Series No 9, AGPS, Canberra, 1995, pp 15-37 (p 30).

Commonwealth Government's policy of preventing the construction of a dam on the Franklin River in south-west Tasmania.

The Act is designed to be consistent with the requirements of the World Heritage Convention, which was discussed earlier. The validity of the Act was challenged, and substantially upheld in the *Franklin Dam Case*¹³ but the High Court did hold certain provisions in the Act to be invalid.¹⁴ The Act was later amended to reflect the High Court's decision.

The Act provides that where the Governor-General is satisfied that an **identified property** (ss 6-8) is being or is likely to be damaged or destroyed, the Governor-General may make a Proclamation, activating the protective provisions in the Act which prohibit certain activities in relation to that property. There is provision for the responsible Minister to give his or her written consent to activities which would otherwise be unlawful (ss 9-11). Before giving such consent the Minister is required to inform the appropriate State or Territory Minister and give them a reasonable opportunity to make representations in this regard. The granting of or refusal to grant consent by the Minister must be published in the Commonwealth Government Gazette and notified to both Houses of federal Parliament (ss 13(3)-(4)).

Both the granting of and the refusal to grant consent by the Minister can be challenged under the *Administrative Decisions (Judicial Review) Act 1977* (s 13(5)). The Act also provides for either the Attorney-General or any **interested person** to apply for an injunction to restrain a person from doing something which is unlawful under the Act (s 14).

3.3 THE ABORIGINAL AND TORRES STRAIT ISLANDER HERITAGE PROTECTION ACT 1984

The Australian Constitution specifically grants the Commonwealth the power to make laws with respect to the “*people of any race for whom it is deemed necessary to make special laws*”.¹⁵ This head of power enabled the enactment of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*. The purpose of this Act is stated in Section 4 as:

¹³ *Commonwealth v Tasmania* (1983) 46 ALR 625.

¹⁴ The High Court struck out all of the original Section 9 of the Act except subsections (1)(h) and (2) because it contained a blanket prohibition of activities which would not be necessary to prohibit in all cases in order to achieve the objectives of the World Heritage Convention.

¹⁵ *Commonwealth Constitution Act 1900*, s 51(26).

...the preservation and protection from injury or desecration of areas and objects in Australia and in Australian waters, being areas and objects that are of particular significance to Aboriginals in accordance with Aboriginal tradition.

Although the *Australian Heritage Commission Act 1975* does extend to the protection of Aboriginal sacred and historic sites, its constitutional constraints in protecting listed places and the lack of adequate State and Territory legislation at the time led to the enactment of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, with the aim of guaranteeing a role for Aboriginals in the management of places of Aboriginal significance.

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* is administered by the Aboriginal and Torres Strait Islander Commission. The Act does not limit the operation of State or Territory laws which are capable of operating concurrently with it but in some circumstances it can override such legislation.¹⁶

3.3.1 Protective Declarations

The Act allows the Minister for Aboriginal Affairs to make a declaration protecting an area if an application is made by an Aboriginal or Torres Strait Islander individual or organisation and the Minister is satisfied that the area is a significant Aboriginal area and that it is under threat of injury or desecration.

Ordinarily a report must be made to the Minister on the significance of the area, the nature and extent of the threat of injury or desecration and the effect a declaration would have on the property or pecuniary interests of persons other than the applicants. The application must also be advertised. In such circumstances the Minister's declaration may be for such period as the Minister decides. However, the Act also contains provisions for an emergency declaration where there is serious and immediate threat of injury or desecration. An emergency declaration has effect for up to 30 days and can subsequently be extended (ss 9-10). The Act also makes similar provision for the protection of specified significant Aboriginal objects which are under threat of injury or desecration, and for authorised officers to make limited declarations where there is not sufficient time to have the matter taken to the Minister (ss 12,18).

The Act requires the Minister to consult with the appropriate State or Territory Minister as to whether there is effective protection of the threatened area or object under State or Territory laws. However, any failure to comply with this provision does not invalidate the making of a declaration (s 13).

¹⁶ *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, s 7.

In 1994-95 the Minister received 15 new applications for heritage protection, one concerning Aboriginal objects and records and 14 concerning areas. Four declarations were made by the Minister under the Act. Three of these were in respect to the Strehlow Collection of objects collected in Central Australia in the 1940s by Professor Ted Strehlow. The fourth declaration related to the controversial Hindmarsh Island Bridge.¹⁷

The maximum penalties prescribed by the Act for the contravention of a declaration are substantial.¹⁸ The Federal Court can also grant an injunction to restrain threatened breaches of a declaration (s 26).

If the provisions of a declaration result in the acquisition of property the declaration is reviewable by the Commonwealth Parliament (s 15). There are also provisions for compensation and legal assistance for those affected by an application for a declaration or a declaration itself (ss 28,30).

3.3.2 Discovery of Aboriginal Remains

The Act requires any person who discovers what they reasonably suspect to be Aboriginal remains to report the discovery to the Minister and provide details of the remains and their location. If satisfied that such a report does relate to Aboriginal remains the Minister must take reasonable steps to consult with any Aborigines who have an interest in the remains, with a view to determining the proper course of action to be taken (s 20).

Where appropriate, the Act enables the Minister to order that Aboriginal remains be delivered to the Minister or a specified Aboriginal or Aboriginal group entitled to, and willing to accept the remains (s 12(4)). If Aboriginal remains are delivered to the Minister they must be returned to the appropriate Aboriginal custodians or dealt with as reasonably directed by such persons (s 21).

3.4 THE PROTECTION OF MOVABLE CULTURAL HERITAGE ACT 1986

Moveable cultural heritage items, such as documents, coins, fossils and Aboriginal relics, by their nature, are easily taken and traded internationally. The *Protection of*

¹⁷ Australia. Aboriginal and Torres Strait Islander Commission, *Annual Report 1994-95*, pp 102-108.

¹⁸ A \$10,000 fine or five years imprisonment, or both, for a natural person, or a \$50,000 fine for a body corporate, in relation to a significant Aboriginal area; a \$5,000 fine or two years imprisonment or both for a natural person or a \$25,000 fine for a body corporate, in relation to a significant Aboriginal object (s 22).

Moveable Cultural Heritage Act 1986 aims to prevent illegal international traffic in such items in accordance with Australia's obligations under the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property*.

The Act creates the National Cultural Heritage Control List, which lists categories of objects which are subject to export control. The description in the Act of the movable cultural heritage of Australia extends to objects that are of importance to Australia or any particular part of Australia for ethnological, archaeological, historical, literary, artistic, scientific or technological reasons (ss 7,8).

The export of an Australian protected object, otherwise than in accordance with a permit or certificate, renders the object forfeited and the Act provides for substantial penalties (s 9). In a recent example of the operation of the Act the Administrative Appeals Tribunal quashed a bid by a Queensland medal dealer to obtain an export permit for an Australian Victoria Cross awarded to Major Edgar Thomas Towner as a member of the 2nd Machine Gun Division in 1918.¹⁹ The Act also contains provisions relating to the unlawful import of the protected objects of a foreign country and similar penalties apply (s 14).

The Act establishes a National Cultural Heritage Committee to give advice to the Minister regarding the operation of the Act and a National Cultural Heritage Fund to enable objects on the control list to be acquired (ss 15,16,25).

4. QUEENSLAND LEGISLATION

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.²⁰ 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 BelleVue Hotel, the Cloudland Ballroom and the Commonwealth Bank in Queen Street.

¹⁹ Terry Ingram, 'Tribunal refuses permission to export VC medal', *Australian Financial Review*, 15 May 1996, p 13.

²⁰ Rod Fisher, 'Nocturnal Demolitions: The Long March Towards Heritage Legislation in Queensland', in *Packaging the Past - Public Histories*, eds John Rickard & Peter Spearritt, *Australian Historical Studies* 24(96), April 1991, pp 55-69.

Other relevant Queensland legislation is the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*, which relates specifically to Aboriginal cultural heritage and the *Local Government (Planning and Environment) Act 1990*.

4.1 HERITAGE BUILDINGS PROTECTION ACT 1990

The *Heritage Buildings Protection Act 1990* was passed by the Goss Government as interim legislation to provide some protection to Queensland's cultural heritage while more comprehensive legislation was drafted. In summary, the Act listed around 900 classified buildings which were deemed to be provisionally entered in the Heritage Register upon enactment of the *Queensland Heritage Act 1992*. This list was based on the National Trust of Queensland's list, the National Estate Register and Section 22 of the Brisbane Town Plan.

Owners of properties included in the list were not able to appeal against their property's inclusion until the subsequent legislation was passed. In the meantime, demolition, development or subdivision of the listed properties required the consent of the Heritage Committee established by the interim Act. That Act also provided for considerable penalties for unauthorised works.²¹

4.2 QUEENSLAND HERITAGE ACT 1992

4.2.1 The Scope of the Act

The object of the *Queensland Heritage Act 1992* is to provide for the conservation of Queensland's cultural heritage (s 3(1)). The Act states two principles which must be adhered to by the Minister, the Heritage Council and other relevant persons in administering the Act. These introduce a public interest element into the Act's provisions by providing that those administering the Act must seek to achieve:

- a) *the retention of the cultural heritage significance of the places and objects to which it applies; and*
- b) *the greatest sustainable benefit to the community from those places and objects consistent with the preservation of their cultural heritage significance.*²²

The Act does not cover places which are of cultural heritage significance to Aboriginal and Torres Strait Islanders solely by their association with indigenous

²¹ Catherine Arnold & Karen Garner, 'Valuing our Built Heritage - Who Pays for its Preservation?', *Queensland Law Society Journal*, October 1993, pp 451-468 (p 452).

²² *Queensland Heritage Act 1992*, s 3(2).

tradition or custom. Instead, its application is limited to Queensland's historic environment since European settlement (s 61).

The lynchpin of the Act is the definition of the **cultural heritage significance** of a place or object. This is defined as including its “*aesthetic, architectural, historical, scientific, social or technological significance to the present generation or past or future generations*” (s 4). This definition is similar to the definition of the **National Estate** in the *Australian Heritage Commission Act 1975*. However, the Queensland definition was amended in 1995 in response to the Planning and Environment Court's decision in *Advance Bank Australia Limited v Queensland Heritage Council*²³, which is discussed below.

Conservation is defined by the Act as including protection, stabilisation, maintenance, preservation, restoration, reconstruction and adaption (s 4). This definition has been adopted from the Burra Charter.

The other important definitions which set the parameters of the Act's application are:

“object” means an object or group of objects, and includes an object or group of objects that has become attached to, or has merged with, land, and

“place” means a defined or readily identifiable area of land (which may be comprised in separate titles and in different ownership), and includes-

- a) a building and such of its immediate surrounds as may be required for its conservation;*
- b) a natural feature of historical significance and such of its immediate surrounds as may be required for its conservation.*²⁴

Examples of a **place** include private houses, homesteads, public and commercial buildings and their immediate surrounds as well as mine workings, industrial buildings (such as the Blackall Woolscour), roads, wharves, bridges, natural features (such as the Tree of Knowledge at Barcaldine), historic sites, gardens, plantations, cemeteries and memorials. An **object** of cultural heritage significance could be ship and aircraft wrecks, steam engines, furnishings, deposits of bottles and farm machinery as well as objects of natural creation. The definition of **cultural heritage significance** means that buildings or objects of a contemporary vintage can also enjoy that status. Moveable objects are protected by the Act only if they contribute to the cultural heritage significance of a place.²⁵

²³ [1994] QPLR 229.

²⁴ *Queensland Heritage Act 1992*, s 4.

²⁵ Queensland. Department of Environment and Heritage, *Queensland Heritage Act 1992 - A Guide For Heritage Property Owners*, BP651, 1 July 1992.

4.2.2 The Heritage Council

The Act establishes the Queensland Heritage Council, which consists of 12 members appointed by the Governor-in-Council. Of these, seven are nominated by the Minister after inviting and considering representations from organisations with appropriate knowledge and expertise in heritage conservation. The remaining five members of the Council are appointed from nominations made by specified organisations such as the National Trust of Queensland and the Local Government Association of Queensland (s 10).

The functions of the Heritage Council include advising the Minister and encouraging public interest and understanding of heritage issues and the management of places of cultural heritage significance (s 9). The Council also maintains the Heritage Register, which is discussed below. In 1995, Michael Williams, an anthropologist, became the first Aboriginal appointed to the Heritage Council.²⁶

4.2.3 The Heritage Register

The Heritage Register is a public register which lists places with cultural heritage significance that have fulfilled the criteria for entry set out in the Act. The Register also records heritage agreements, protected areas and any orders or permits made or granted under the Act (s 20).

Criteria for Entry

In order to be entered in the Register a place must be of cultural heritage significance and also must satisfy one or more of the following criteria:

- a) *the place is important in demonstrating the evolution or pattern of Queensland's history;*
- b) *the place demonstrates rare, uncommon or endangered aspects of Queensland's cultural heritage;*
- c) *the place has potential to yield information that will contribute to an understanding of Queensland's history;*
- d) *the place is important in demonstrating the principal characteristics of a particular class of cultural places;*
- e) *the place is important because of its aesthetic significance;*
- f) *the place is important in demonstrating a high degree of creative or technical achievement at a particular period;*

²⁶ 'Heritage insight', *Courier Mail*, 5 December 1995, p 5.

- g) *the place has a strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;*
- h) *the place has a special association with the life or work of a particular person, group or organisation of importance in Queensland's history.*²⁷

These criteria are similar to those in the *Australian Heritage Commission Act 1975* in the definition of the National Estate, with the obvious differences required due to the Commonwealth legislation covering both natural and cultural heritage and the interest in Queensland, rather than Australian, cultural heritage.

The fact that places with similar characteristics are already entered in the Register does not exclude from registration a place which otherwise satisfies the above criteria (s 23(2)). The Act does however exclude a place from being entered in the Register if there is no prospect of the cultural heritage significance of the place being conserved (s 23(3)). This provision has been a cause for concern for heritage experts. It links the otherwise separate issues of the assessment of cultural heritage significance and the future management of the place. As the Act does not prohibit neglect of a place entered in the Register, this provision appears to leave open the possibility of owners wilfully neglecting their property and arguing on this basis against its entry on the Heritage Register, or for its removal, so they can proceed with development of the site.

Proposals for Entry in Register

The registration procedure can be commenced by the Heritage Council on its own initiative or on application by any person. The Council can require an applicant to provide relevant information and can also invite submissions from any person or body with special interest in the place or with cultural heritage expertise (ss 24(1)-(3)).

If the Council is of the opinion that a place does satisfy the statutory criteria for registration it can enter the place in the Register on a provisional basis. The Council is then required to notify the owner of the place and the relevant local government giving the reasons on which the proposal is based and explaining their right to object. The Council must also give public notice of its intention to enter the place in the Register on a permanent basis (s 24).

Once a place is provisionally entered, it is immediately subject to the development provisions of the Act. The reason for giving notice after provisional registration is

²⁷ *Queensland Heritage Act 1992*, s 23(1).

to provide protection to the place while any objection and appeal against the proposed permanent entry of the place in the Heritage Register is resolved.²⁸

Objections and Appeals

Objections may be made by any interested person and must be submitted within 30 days after the notice. The only basis of objection allowable under the Act is that the place is not of cultural heritage significance or does not satisfy the criteria for entry in the register (ss 26(1)-(3)). There is no provision for a person to object to a proposed listing on the basis that the listing would limit the development potential of the site and result in its commercial value being adversely affected, or on any other economic grounds.²⁹ In comparison, New South Wales heritage legislation provides for the right to object on the grounds that an order would render the place incapable of reasonable or economic use, or that conservation could not be achieved without undue hardship to the owner.³⁰

If no objections are received the place can be entered permanently in the Register (s 26(4)). If an objection is received it is referred to an expert assessor, selected from a panel appointed by the Minister (ss 27-28). The assessor must investigate the objection and report to the Council within 60 days of the referral. The assessor must allow the objector a reasonable opportunity to make representations and may receive representations from or consult with such other people as he or she thinks fit. The Council must then make its decision whether to proceed, and if so, whether any variation should be made, within 30 days of receiving the report (s 29). As soon as the Council has made its decision it is required to notify the owner and the relevant local government (s 30(4)). Public notice is required at the same time.

If the owner of a place is dissatisfied with the Council's decision they may appeal to the Planning and Environment Court against the decision within 30 days after they are given notice of the decision (s 30(5)). As in the case of an objection, an appeal may only be made on the basis that the place is not of cultural heritage significance or does not satisfy the criteria for entry in the register (s 30(6)). The Planning and Environment Court is empowered by the Act to confirm, vary or reverse the Council's decision and to make consequential orders and directions (s 30(7)).

²⁸ Poh-Ling Tan, 'Ownership and control: an analysis of the Queensland Heritage Act 1992', *Queensland Law Society Journal*, June 1993, pp 223-242 (p 228).

²⁹ Arnold & Garner, p 455.

³⁰ *Heritage Act 1977* (NSW), s 41.

Entry in the Heritage Register

When a place is entered in the Heritage Register, whether provisionally or on a permanent basis, the Minister is required to notify the Registrar of Titles (s 31). This notification can be searched at the Titles Office in the unregistered dealings system, however there is no time specified in the Act by which the Registrar of Titles must be notified.

4.2.4 Certificate of Immunity

The Act makes provision for the owner of a place to apply to the Heritage Council for a **certificate of immunity** which ensures that the place cannot be entered in the Heritage Register within five years of the date of the certificate. Such certificates are issued where the Council considers that the place does not satisfy the criteria for entry in the Heritage Register (s 32). This provision does not give any immunity from declaratory controls, which are discussed below. Five Certificates of Immunity have been issued to June 1996.³¹

4.2.5 Development of Listed Places

Once a place is entered in the Heritage Register, the Act prohibits its development without the approval of the Heritage Council (s 33(1)). The definition of **development** is broad and includes subdivision, change of use, demolition, renovations and any change to landscape which substantially alters the appearance of the place (s 4). Ongoing maintenance and minor repair work can be undertaken, without the Council's approval, so long as the work does not alter the fabric of the heritage item. In the case of a church or church precinct, development which is genuinely required for liturgical purposes is exempt from these provisions (s 33(2)). Development of Crown owned, heritage-registered places is subject to separate provisions which are discussed below.

An application for the Heritage Council's approval of proposed development must be made to the relevant local government (unless it relates to a place owned by the local government, in which case application must be made to the Council) (s 34(1)). Applications for development approval are referred to the Heritage Council unless authority to decide such applications has been delegated to the local government (ss 7,34(2)). If the proposed development would have a substantial effect on the cultural heritage significance of the place then the Council or the local government

³¹ Discussions with Manager, Cultural Heritage Branch, Queensland Department of Environment, 2 July 1996.

must give public notice of the application and invite representations from interested persons within 21 days of the notice (s 34(3)).

The application for development approval must be determined by the Heritage Council (or the local government, if authority has been delegated) within 60 days, or such longer period as the Minister may determine (ss 34(4)-(5)). The Queensland Department of Environment's records indicate that all 108 applications for development in 1994-95 were approved³², and that more than 80% of development applications were assessed in less than half the time allowed under the Act.³³

An application for development can be either refused or approved unconditionally or subject to conditions (s 35(1)). If the proposed development would destroy or substantially reduce the cultural heritage significance of the place the application may only be granted if there is "*no prudent or feasible alternative to carrying out the development*" (s 35(2)). This is the same phrase which is used in the *Australian Heritage Commission Act 1975* in regard to the obligations of Commonwealth Ministers and authorities with respect to the National Estate.

If an applicant is dissatisfied with the decision on an application for development approval they can apply to the Council for a review of the decision (s 36(1)). If still dissatisfied with the decision on review the applicant may appeal against the decision in the Planning and Environment Court within 30 days after the decision (s 36(6)). However, if the effect of a proposed development would be to destroy or substantially reduce the cultural heritage significance of the place, a decision to allow the development may only be made on review or appeal if there is no prudent and feasible alternative to carrying out the development (s 36(8)).

A study released in 1995 by the Australian Heritage Commission examined the economic impacts of heritage listing, particularly on individual property owners.³⁴ The study concluded that although previous research was limited, it suggested that in general, heritage designation of itself has little impact on the value of the heritage property. Rather, specific attributes such as location and alternative uses will have a more significant impact on the value of the property, and the effect on it of heritage listing.

Where there is no feasible alternative use of the property, for example in the case of the Princess Theatre in Melbourne, heritage listing can have an adverse impact on

³² Correspondence with the Acting Director, Cultural Heritage, Queensland Department of Environment, 27 June 1996.

³³ Queensland. Department of Environment and Heritage, *Annual Report 1994-95*, p 23.

³⁴ Urban Consulting Group, *Economic Effects of Heritage Listing*, study prepared for Australian Heritage Commission, AGPS, Canberra, July 1995 [information taken from report summary].

property value. Where an alternative use is available, such as residential development in the case of Mactaggarts Woolstore in Teneriffe, Brisbane (see Appendix B), any negative effect of heritage listing on property value is reduced.

The study also identified possible wider economic benefits of heritage listing, including increased building activity, development of specific conservation-related products and industries, increased tourism, rehabilitation of town centres, and employment growth.

The Queensland Heritage Council has recognised that commercial places in the Heritage Register often need to have an economically viable use, and has approved proposals for upgrading, refurbishment, and/or adaptations to particular structures. Examples of various types of development approved by the Heritage Council are given in Appendix B.

Development by the Crown

The Act contains similar provisions in respect of proposed development of heritage listed places by the Crown. These are of particular significance because many heritage listed places are owned by the government. Section 37 of the Act requires the Crown to give a report on any proposal for the development of Crown-owned heritage places to the Heritage Council, which must then publish a public notice of the proposal and invite objections within 21 days. The Heritage Council must then recommend to the Minister responsible for the proposal that the development be carried out, either as proposed or subject to conditions or modifications, or that it should not be carried out. Again, where the effect of a proposed development would be to destroy or substantially reduce the cultural heritage significance of a place then the Heritage Council can only recommend that the proposal proceed if there is “*no prudent and feasible alternative to carrying out the development*” (s 37(4)). The final decision of whether to accept the Heritage Council’s recommendation is made by the Minister responsible for the development. In making his or her decision, that Minister must take account of the public interest element in the object and principles of the *Queensland Heritage Act 1992*.³⁵

The decision of whether there is any prudent and feasible alternative to development which would destroy or substantially reduce the cultural heritage significance of a registered place is assisted by section 38 which provides that in making such a decision, the Heritage Council, the local government or the Court must have regard to safety, health and economic considerations and any other considerations which may be relevant.

³⁵ Poh-Ling Tan, pp 231-234.

The provisions of the Act relating to the development of registered places by the Crown have attracted criticism from heritage experts. One of the reasons for this criticism is that the Minister for Environment has no contribution in the final decision of whether to develop heritage listed state-owned property. The most significant case of the use of these provisions was the conversion of the Treasury Building, Queens Park and the Lands Administration Building in Brisbane to a casino, car park and hotel, which opened in 1995. Section 37 of the Act enabled the then Treasurer, Hon Keith DeLacy, to proceed with the development despite the recommendation of the Heritage Council against the casino development. This decision was reinforced by the *Brisbane Casino Agreement Act 1992*, which provided that the proposed development was considered development by the Crown, not by a private owner and prohibited judicial review of the decision.³⁶

4.2.6 Heritage Agreements

The Minister for Environment may, having considered advice from the Heritage Council, enter into a heritage agreement with the owner of a place entered in the Heritage Register. Heritage agreements made under the Act attach to the land and are binding on the current and any successive owners and occupiers of the property (s 39). The purpose of a heritage agreement is to promote conservation of the registered place and, if appropriate, public appreciation of the place's importance to Queensland's cultural heritage (s 40(1)).

The main advantage of the heritage agreement concept in the Act is the flexibility of its content and form. The Act lists a number of examples of the types of things it is envisaged that a heritage agreement could cover. These include:

- restricting the use of the place;
- requiring specified work to be carried out;
- providing for public access to the place and admission charges;
- providing for financial, technical or other professional advice or assistance for the owner; and
- providing for a review of the value of the place (see 4.2.9 below).³⁷

The Act also provides for a local government to be a party to a heritage agreement (s 40(3)).

The existence of a heritage agreement, or any variation of it, must be notified to the Registrar of Titles (s 41). It must also be entered in the Heritage Register (s 42).

³⁶ *Brisbane Casino Agreement Act 1992* (Qld), s 7.

³⁷ *Queensland Heritage Act 1992*, s 40(2).

If a party fails to comply with a heritage agreement or there is reason to believe that they may fail to comply with its provisions, any party to the agreement can apply to the Planning and Environment Court. The Court can make such orders as are necessary to secure compliance with the agreement, remedy the default or deal with any related or incidental matters (s 43).

4.2.7 Stop Orders & Other Penalties

If the Minister is of the opinion that it is necessary to protect a place of cultural heritage significance, the Minister can make a **stop order**. The stop order can require a person to stop any work or activity, or prohibit a person from starting any work or activity which may destroy or reduce the cultural heritage significance of the place (s 58(1)).

A stop order can be served personally or by fixing it in a prominent position in the place and is in force from the time of service for 60 days or any shorter period stated in the order (ss 58(2)-(3)). Contravention of a stop order attracts a maximum penalty of \$1,275,000 (s 59).³⁸ There is no provision for appeal against the making of a stop order. Three stop-orders have been issued to June 1996.³⁹

Any person convicted of any offence under the Act can also receive a **restoration order** to make good any damage caused by the offence to the satisfaction of the Minister. Restoration orders are made in addition to the penalty prescribed for that offence. The cost of any restorative work can be recovered from the offender as a debt (s 65).

A further penalty provided for by the Act is a **non-development order**. If the owner of a place entered in the Heritage Register is convicted of an offence which involves the destruction of, or damage to that place, the Minister may serve on the owner an order prohibiting the development of the place for a period of up to 10 years. The owner must be given a reasonable opportunity to show cause why such an order should not be made. If a non-development order is made, it binds both the current owner and occupier of the land and any subsequent owners and occupiers for the term of the order. Notice of the order must also be given to the Registrar of Titles. The penalty for contravening a non-development order is also severe, at a maximum of \$1,275,000 (s 66).

³⁸ Penalties are presented in the Act in terms of penalty units (in this case, 17,000 penalty units). Penalties quoted in this Research Bulletin have been converted into dollar values based on the value of a penalty unit at the time of writing, \$75.

³⁹ Discussions with Manager, Cultural Heritage Branch, Queensland Department of Environment, 2 July 1996.

Penalties such as a stop order or a non-development order would in many circumstances radically affect the value of a site over a lengthy period, and hence operate as powerful inducements for owners of registered places to comply with the Act.⁴⁰ This is perhaps demonstrated by the fact that no prosecutions, restoration orders or non-development orders have been made since the commencement of the Act.⁴¹ The penalties also contrast dramatically with the circumstances which existed before the passing of this legislation. In 1983, the owner of the Cloudland Ballroom was fined \$125 for contravening building by-laws by failing to obtain a demolition permit.⁴²

4.2.8 Cultural Relics

Protected Relics

Any object which is situated in or recovered from the territorial waters of Queensland or situated in or under the surface of land in Queensland and, in the opinion of the Governor in Council is of cultural heritage significance, can be declared a **protected relic**. The *Queensland Heritage Act* also provides for a provisional declaration in relation to an object in or recovered from territorial waters which operates for up to one year (ss 44-45). The offence of knowingly damaging, destroying or interfering with a protected relic or removing or disposing of a protected relic without the Minister's written consent and without reasonable excuse attracts a maximum penalty of \$75,000 (s 47).

Restricted Zones & Protected Areas

The Governor in Council may also declare an area of Queensland's territorial waters or land, where a protected relic is situated, to be a **restricted zone**. Such a declaration can restrict access to, or restrict or prohibit specified activities within a restricted zone. The maximum penalty prescribed for contravening such a declaration without reasonable excuse is \$37,500 (s 46).

The Act also provides that the Governor in Council can declare an area to be a **protected area** if it might contain objects of cultural heritage significance. This provision applies to areas of archaeological interest which, if declared to be

⁴⁰ WD Duncan (ed), *Planning and Environment Law in Queensland*, Federation Press, Sydney, 1993, pp 183-184.

⁴¹ Correspondence with the Acting Director Cultural Heritage, Queensland Department of Environment, 27 June 1996.

⁴² Poh-Ling Tan, pp 237-238.

protected areas, are protected from being damaged, disturbed or excavated without a permit issued by the Minister. Such permits, if issued, are subject to conditions relating to the supervision of any operations, and standards to be complied with, in uncovering items of possible cultural heritage significance (ss 50-52).

A person who discovers the remains of a ship or other object which may be of cultural heritage significance in Queensland's territorial waters is required by the Act to report the discovery to the Minister as soon as practicable (s 48). However, as the majority of historic shipwrecks are protected by the Commonwealth *Historic Shipwrecks Act 1976*, this provision, and the above provisions relating to protected relics, would only apply to the remains of a ship located in State internal waters above low water mark or any proclaimed baseline.⁴³

The provisions in the Act relating to the protection of cultural relics do not extend to Aboriginal and Torres Strait Islander relics. These are the subject of the *Cultural Record (Landscapes Queensland and Queensland Estates) Act 1987*, discussed below (section 4.3).

4.2.9 The Valuation of Heritage Properties

As mentioned above, one of the matters that can be provided for in a Heritage Agreement is the review of the valuation of a registered place. The reduction of the unimproved value of land on which a heritage-listed place is built, as recorded by the Queensland Valuer-General, may lead to a reduction in the rates and land tax payable by the owner of that property.

In determining the unimproved value of land, the Valuer General is required by the *Valuation of Land Act 1944*, to determine the amount which the land might be expected to realise if offered for sale on reasonable terms, assuming that the improvements on the land do not exist.⁴⁴ The Valuer-General's valuation is not based on the current use of the land but the "*highest and best use*" to which it can be put, taking into account restrictions on the use of the land which bind future owners. This issue has been of concern to the owners of properties listed in the Queensland Heritage Register because the most economically beneficial use of a heritage property may often be its demolition and redevelopment, which would clearly result in a higher unimproved value for the land.

The issue was considered by the Land Court in 1991 and 1992 in a number of cases regarding the Valuer-General's valuation of easily recognisable heritage buildings

⁴³ WD Duncan (ed), pp 187-189.

⁴⁴ *Valuation of Land Act 1944* (Qld), s 3(1)(b).

such as the Queensland Club and Ballow Chambers, at Spring Hill.⁴⁵ While deciding that certain of the heritage restrictions contained in the Brisbane Town Plan must be taken into account by the Valuer-General in determining unimproved value, the Land Court initially held that the restrictions of the *Heritage Buildings Protection Act 1990* did not run with the land and therefore could not be taken into consideration by the Valuer-General. This decision caused much consternation amongst owners of heritage buildings in Queensland as it meant that the basis on which the unimproved value of heritage properties was determined depended on whether the place was listed under the Brisbane City Council's town-planning laws, or under State legislation.⁴⁶

On appeal, however, the Land Appeal Court overturned this decision and held that the restrictions imposed by the *Heritage Buildings Protection Act 1990* must be taken into account by the Valuer-General. The Court held that the heritage listing of Ballow Chambers placed such a significant impediment in the way of the demolition of the building and any redevelopment of the land that it must be reflected in the unimproved value of the land. This decision remedied the disparity which had previously arisen and made the way clear for the owners of heritage properties to be afforded some rates and land tax relief on an equitable basis.⁴⁷ Rowes Arcade is one such property, where the current owners are understood to save nearly \$100,000 per year.⁴⁸

4.2.10 The Advance Bank Case

In 1993, the Planning and Environment Court heard an appeal against the Queensland Heritage Council's decision to enter in the Queensland Heritage Register the building known as Ascot Chambers, then on the corner of Queen and Edward Streets, Brisbane.⁴⁹ Ascot Chambers had been provisionally entered in the

⁴⁵ *Queensland Club v The Valuer-General* (1991) 13 QLCR 195, *The Valuer-General at Queensland Club*, (1991) 13 QLCR 207, *Robert W. Mathers and Robert F. Gibson v The Valuer-General* (1992) Unreported decision of the Land Court, *The Valuer-General v Ballow Chambers Limited & Ballow Chambers Limited at The Valuer-General*, (1992) Unreported decision of the Land Court.

⁴⁶ Catherine Arnold, 'Heritage properties: an unjust and inequitable system of valuation', *Proctor*, 13(2), March 1993, p 16.

⁴⁷ Arnold & Garner, pp 458-466.

⁴⁸ Correspondence with Department of Environment, June 1996.

⁴⁹ *Advance Bank Australia Limited v Queensland Heritage Council* (1994) QPLR 229.

Register by virtue of its inclusion in the Schedule of the *Heritage Buildings Protection Act 1990*.

In its decision on the appeal, the Court considered the elements of the definition of **cultural heritage significance** in the *Queensland Heritage Act 1992* (s 4). In doing so, and amongst other things, the Court noted the use of the word **historic** in the original definition of **cultural heritage significance** in the Act, distinguishing it from the word **historical**, which is used in the definition of **place**. The Court held that although there may have been some interest in the building at the time of its erection due to the fact it was the first fully framed steel tall building with non-load bearing walls in Brisbane, it was not a unique feature, as other buildings were similarly constructed in other capital cities in Australia. These circumstances were held not to satisfy the term **historic**. The fact that the building was not in the Brisbane City Council Heritage Trail and that it was not visited by the public were relevant in the Court holding that Ascot Chambers also did not have significance to the present community and future generations.⁵⁰

For these and other reasons the Court held that the place was not of cultural heritage significance and ordered that Ascot Chambers be removed from the Heritage Register. In 1995, in response to the Court's decision in the Advance Bank case, the Queensland Government amended the definition of **cultural heritage significance** in the *Queensland Heritage Act 1992*, including changing **historic** to **historical**.

4.3 THE CULTURAL RECORD (LANDSCAPES QUEENSLAND AND QUEENSLAND ESTATE) ACT 1987

4.3.1 Definitions

The long title of this Act states that it is:

An Act to provide for the preservation and management of all components of Landscapes Queensland and the Queensland Estate; to foster dissemination of knowledge of Landscapes Queensland and the Queensland Estate; to promote understanding of the historic continuum evidenced within Queensland and for related purposes.

Section 5 of the Act defines **Landscapes Queensland** as

areas or features within Queensland that:

a) have been or are being used, altered or affected in some way by humans; and

⁵⁰ Fiona Selnes, 'Advance Bank Australia Limited v The Queensland Heritage Council', *Queensland Law Society Journal*, 24(3) June 1994, pp 267-270.

- b) are of significance to humans for any anthropological, cultural, historic, prehistoric or societal reason.

The **Queensland Estate** is defined as

evidence of human occupation of the areas comprising Queensland at any time that is at least 30 years in the past, but does not include anything-

- a) made or constructed as a facsimile; or
b) made or constructed after the commencement of this Act for the purpose of sale; or
c) anything that is not of prehistoric or historic significance.⁵¹

It is of note that these definitions do not cover objects related to non-human occupation such as dinosaur bones and fossils.

Although these definitions are broad enough to conceivably cover both Aboriginal cultural heritage and non-Aboriginal heritage items such as buildings, this Act in practice **operates only in respect to Aboriginal and Torres Strait Islander cultural heritage**. In any event its possible application to non-Aboriginal heritage has now been superseded by the *Queensland Heritage Act 1992*.⁵²

4.3.2 Designated Landscape Areas

The Act gives the Governor in Council the power to declare an area to be a designated landscape area if satisfied that it is necessary or desirable for the preservation of Landscapes Queensland or the Queensland Estate that the entry of people into the area should be regulated or prevented. However, if the land proposed to be declared a designated landscape area is privately owned, then the owner's consent must first be obtained (ss 17-18). This requirement is regarded as the major drawback of the Act.⁵³

Under the Act, it is an offence to trespass or interfere with a designated landscape area (ss 23-24). The Act also gives the Minister the power to perform surveys,

⁵¹ *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*, s 5.

⁵² The discussion paper on proposed heritage legislation in Queensland which was released by the Queensland Government in 1990, stated that the *Cultural Record (Landscapes Queensland and Queensland Estate) Act* had proved ineffective in practice and “did not offer the necessary incentives and forms of protection which are required to successfully protect Queensland's important cultural heritage”. See Queensland. Department of Environment and Heritage, *Proposals for a Heritage Act for Queensland - A Discussion Paper*, 1990, p 5.

⁵³ Poh-Ling Tan, ‘Finders keepers? heritage protection of found objects in Queensland’, *Environmental and Planning Law Journal*, 11(6), December 1994, pp 507-516 (p 510).

excavation, examination or research on or upon designated landscape areas and to remove any part of the Queensland Estate from its location in a designated landscape area to the Queensland Museum (s 27(1)).

Although there have been no regulations made under the Act for the declaration of a designated landscape area, there are a number of areas in Queensland which are deemed to be designated landscape areas, carried over from the Act's predecessor, the *Aboriginal Relics Preservation Act 1967*.⁵⁴ Studies and environmental assessments of these areas are being carried out with permits issued under the current Act.

4.3.3 Acquisition and Ownership of Land and Objects

The Act authorises the State to compulsorily acquire private land if the Minister is satisfied that Landscapes Queensland or any item of the Queensland Estate cannot be properly preserved or managed by declaring the area to be a designated landscape area (s 26). The Minister may also acquire any item of the Queensland Estate by purchase or gift for the purpose of its preservation. Any structures which are required to be erected or any other steps which are necessary or desirable to preserve any item which the Minister has acquired under these provisions are also authorised under the Act (s 38).

Ownership of all parts of the Queensland Estate which constitute evidence of occupation by indigenous persons or in respect of which there is no identifiable legal owner are deemed to have always been the property of the State. This provision applies with respect to all evidence of occupation by indigenous persons notwithstanding that the evidence is on or under private land, except in certain specified circumstances (s 33). Where it is determined that an item of the Queensland Estate is the property of the State, then if it is decided to retain the item, it is to be kept and preserved in the Queensland Museum (s 37).

4.3.4 Surveys, Excavation and Research

The Minister also has the power to issue permits authorising surveys, excavation, examination or research in respect of any part of Landscapes Queensland or the Queensland Estate and the removal of any part of the Queensland Estate to the Queensland Museum. In determining whether to grant such a permit, regard must be had to matters such as:

- the qualifications of the applicant;

⁵⁴ *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*, s 6.

- the financial resources available to the applicant;
- the applicant's ability to effectively attain the purpose of the permit;
- the desirability of performing the proposed work; and
- whether persons who would be affected by the proposed work have been sufficiently consulted.⁵⁵

In the case of private land, a permit issued under the Act is not valid without the consent of the owner and the occupier. Similarly, in the case of State land the consent of the occupier, if any, is required (s 28(3)(b)).

The holder of a permit issued under these provisions is required to provide the Minister with progress reports of the work performed and any publications which relate to that work. The Act prohibits a permit-holder's progress reports from disclosing any information which they have acquired which is of a sacred or secret nature in the understanding of indigenous people (s 31(1A)).

4.3.5 Indigenous Burial Remains

The Act provides that burial remains are the property of the traditional group of indigenous people which have familial or traditional links with the remains, where the Minister is satisfied that this is the case. Such links must be established by consultation between the persons claiming ownership of the burial remains and appropriate departmental officers (s 34).

Any person who has control of Queensland indigenous burial remains is required by the Act to submit them to the Minister or as the Minister directs, for examination and classification. Further, any person who uncovers any indigenous burial remains is required to notify the Minister forthwith (s 35).

4.3.6 Register of the Queensland Estate

Part 5 of the Act also provides for the maintenance of a register of the Queensland Estate, to include the particulars of items approved by the Governor in Council as being of great significance to Queensland's history which should be preserved. Nominations for entry of items can be made to the Minister by any person or association. However, if the item is privately owned, the owner's consent must be obtained before the Governor in Council can approve the nomination (s 42).

If the owner of an item which is entered in the register proposes to take any action which might destroy, damage or interfere with the item, the owner must submit the

⁵⁵ *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*, s 27(4).

proposal to the Minister. If the Governor in Council determines that the proposal is likely to result in destruction of the item or interference with it to such an extent that it would lose its historical significance then the item shall be removed from the register (s 44).

The Act also provides for the Governor in Council to make regulations about various matters, including the maintenance of the register of the Queensland Estate (s 66). Despite the provisions of the Act relating to the Register, appropriate regulations have not been made and the Register has not been established. The Cultural Heritage branch of the Queensland Department of Environment does however maintain an inventory of the Queensland Estate which contains information obtained through the Department's operations, from reports on work performed under the authority of permits issued under the Act, and from the general public.⁵⁶

4.4 QUEENSLAND PLANNING LEGISLATION

4.4.1 The Local Government (Planning and Environment) Act 1990

Section 1.3(a) of the *Local Government (Planning and Environment) Act 1990* provides that one of the objectives of the Act is to “provide a code by which a local government or the Minister may undertake the planning of an area to facilitate orderly development and the protection of the environment”. Section 1.4 of the Act gives a broad definition of **environment** which includes the social, economic, aesthetic and cultural conditions which affect all natural and physical resources, people and communities. The definition of **town planning** in the Act also appears to address heritage issues by including “all matters necessary or expedient for securing the...conservation of an area or part of an area”. These definitions suggest that local governments in Queensland do have the jurisdiction to consider cultural heritage values in their planning schemes.

Despite this, most local governments in Queensland do not have provisions relating to cultural heritage in their planning schemes.⁵⁷ However, an increasing number of local governments in Queensland are conducting heritage surveys and proposing cultural heritage provisions for their strategic and development control plans.⁵⁸ The

⁵⁶ Discussions with the Acting Director Cultural Heritage, Queensland Department of Environment, 21 June 1996.

⁵⁷ Poh-Ling Tan, ‘Ownership and control: an analysis of the Queensland Heritage Act 1992’, pp 234-235.

⁵⁸ Correspondence with the Acting Director Cultural Heritage, Queensland Department of Environment, 27 June 1996.

most notable example of local government heritage laws is that of the Brisbane City Council, which is discussed in Section 4.4.3.

Ipswich City Council also has developed a Heritage Register which is an adjunct to its planning legislation. There are comprehensive provisions covering the former Ipswich City area and following amalgamation, provisions are being prepared for the former Moreton Shire Council area. Heritage protection and approval requirements under the Ipswich Planning Scheme take effect from the date upon which notice is served on the owner of a place that the Council proposes to provisionally list in its Heritage Register.

Heritage studies in some local authorities have resulted in some establishing a Heritage Advisor program in partnership with the Department of Environment. Heritage Advisors are usually architects with building conservation experience employed on a two year contract basis. They visit a local authority to provide free building conservation advice to owners and/or occupiers of heritage places.⁵⁹

4.4.2 The Draft PEDA Bill

At the time of writing, the Borbidge Government is reviewing the draft Planning, Environment, Development and Assessment Bill (the PEDA Bill) which was released by the Goss Government for public comment in May 1995 and which was intended to replace the *Local Government (Planning and Environment) Act 1990*. As the Government's intentions have not yet been announced it is only possible to comment on the provisions of the Exposure Draft of the Bill.

The objective of the draft Bill is the management of land use and development, which includes protecting, restoring and enhancing the environment.⁶⁰ The definition of **environment** in the draft Bill⁶¹ is the same as that in the *Local Government (Planning and Environment) Act 1990*.

The Bill elaborates on its objectives and indicates desired outcomes, which include:

⁵⁹ Heritage advisor consultants are currently operating in Ipswich, Charters Towers, Maryborough, Mackay and Toowoomba. Other cities are investigating whether to join the program. (Correspondence with the Acting Director, Cultural Heritage, Queensland Department of Environment, 27 June 1996.)

⁶⁰ Queensland. Department of Housing, Local Government and Planning, *Planning, Environment and Development Assessment [PEDA] Bill - Exposure Draft for Public Comment*, May 1995, Section 1.2.2, pp 14-15.

⁶¹ PEDA Bill Exposure Draft, Schedule, p 129.

- conserving or enhancing areas and buildings of special scientific, aesthetic, architectural, historical or cultural significance, and
- applying legislation about the management and protection of the environment in planning and development decision making.⁶²

The first of these points reflects the definition of **cultural heritage significance** in the *Queensland Heritage Act 1992*. The explanatory notes which accompany the draft Bill state that the second of these points refers to a number of Queensland Acts, including the *Cultural Heritage Act 1991*. As there is no Queensland legislation by that name it is suggested that it should have referred to the *Queensland Heritage Act 1992*.

The draft Bill does not define the terms **conserving** or **conservation**, so although the draft Bill's terminology is addressing cultural heritage issues much more directly than the *Local Government (Planning & Environment) Act 1990*, the extent of the Bill's objectives with regard to such issues remains somewhat unclear.

The provisions in the Bill relating to planning schemes specify that a local government planning scheme must, amongst other things, "*identify the valuable features and state how the valuable features are to be preserved, conserved, managed, developed, restored or rehabilitated*".⁶³ The definition of **valuable features** includes areas of cultural or heritage significance, which may be of significance or value from a national, State, regional or local perspective.⁶⁴ This seems to require the identification of heritage areas and the development of policies for the protection and on-going management of such places.

One of the traditional problems with the concept of local governments providing for heritage conservation is that planning schemes in Queensland do not bind the Crown⁶⁵, and as has been mentioned, many places of significant heritage value are owned by the Crown. The draft PEDA Bill seeks to address this problem by providing that government development must be applied for and processed in the same way as any other application, except on land shown in the planning scheme as being designated for public works.⁶⁶

⁶² PEDA Bill Exposure Draft s 1.3.2, pp 15-16.

⁶³ PEDA Bill Exposure Draft, s 2.5.4, pp 32-33.

⁶⁴ PEDA Bill Exposure Draft, s 2.5.7, p 35.

⁶⁵ *Local Government (Planning and Environment) Act 1990*, s 2.21.

⁶⁶ PEDA Bill Exposure Draft, Chapter 5, Part 1, pp 81-86.

The draft PEDA Bill also seeks to introduce a major reform to Queensland's planning system called the Integrated Development Assessment System (IDAS).⁶⁷ This scheme aims to integrate all development assessment processes administered by the State and local government throughout the State. It is anticipated that the consideration of applications to develop heritage listed places will be incorporated into the IDAS scheme and consequential amendments to the *Queensland Heritage Act 1992* in that regard would be likely.

It is clear that the draft Bill requires the consideration of cultural heritage issues by local government. However, whether these provisions are further amended, and how they would be implemented in conjunction with the *Queensland Heritage Act 1992*, remains to be seen. If the draft Bill is retained substantially in the format described here, its enactment would move the protection of built heritage areas in Queensland towards the model of South Australia's *Development Act 1993* which integrates local government planning with heritage conservation in that State.⁶⁸

4.4.3 Brisbane City Council - Heritage Protection

In 1987, in response to the absence of appropriate Queensland legislation, and concerns over the number of historic buildings which had been demolished in the City, the Brisbane City Council amended its Town Plan to provide an incentive for protecting heritage places, primarily in the Central Business District. Section 22 of the Town Plan for the City of Brisbane aims to “*conserve culturally significant places in the City by retaining sufficient buildings and other structures which are illustrative of the historic development and character of the City*”.⁶⁹

The focus of Section 22 is the heritage character of street frontages, facades and decoration. It specifies a number of Heritage Areas and over seventy Heritage Buildings which are subject to the heritage protection provisions. These include St John's Cathedral, the Masonic Temple and Central Station, all in Ann Street, Rowes Arcade, the People's Palace and the Tattersall's Club in Edward Street and the General Post Office, Customs House and the Brisbane Arcade in Queen Street.⁷⁰

⁶⁷ PEDA Bill Exposure Draft, Chapters 3-5.

⁶⁸ Bob O'Sullivan, 'Keeping built heritage areas in Queensland: The draft Planning, Environment and Development Assessment Bill 1995', *Environmental and Planning Law Bulletin* 13(1) February 1996, pp 59-61 (p 61).

⁶⁹ Brisbane City Council, *Town Plan for the City of Brisbane*, 1987, s 22.2.

⁷⁰ *Town Plan for the City of Brisbane*, Table 22.5.

The Brisbane heritage protection provisions allow for incentives for the retention and maintenance of heritage buildings. These include the relaxation of development standards, additional floor space and the use of transferrable development rights.⁷¹ The Section operates by firstly providing that any works in a Heritage Area or involving a Heritage Building (including demolition, but excluding those of a minor nature) are **permissible development** and therefore are subject to the scrutiny of the Council under the provisions of the Town Plan relating to development.

Secondly, if the Council is satisfied that the conservation of a Heritage Building is ensured then the Council may approve the adding of a specified **transferable site area** to some other site in the central business district which is nominated by the owner of the Heritage Building. This is used to calculate the increase in the extent of development which the Council will allow to be carried out on the other site. These transferrable development rights are only granted where the Heritage Building has not been substantially destroyed or deteriorated beyond reasonable repair.⁷² The Council maintains a Register of Transferable Site Area which lists the amount of each transferable site area which has been approved to be added to the area of another site and the details of the relevant land.⁷³

Section 22 also allows the Council to increase the maximum gross floor area of any development of a Heritage Building where such development facilitates its conservation. Any such increase is calculated according to a formula based on the extent and quality of the conservation action and the characteristics of the development associated with that action.⁷⁴ The Council can also penalise the demolition of a Heritage Building or any development of a Heritage Building which precludes or prejudices its conservation by reducing the allowable development on that site.⁷⁵

The Town Plan also provides that any development in a Heritage Area or involving a Heritage Building shall be designed and utilise materials so as not to detract from the significance of its heritage value. This also applies to development adjacent to a Heritage Area or a Heritage Building.⁷⁶ The object of Section 22 is clearly to encourage owners of heritage listed buildings to relinquish their rights to develop

⁷¹ *Town Plan for the City of Brisbane*, s 22.2.

⁷² *Town Plan for the City of Brisbane*, s 22.11.

⁷³ *Town Plan for the City of Brisbane*, s 22.12.

⁷⁴ *Town Plan for the City of Brisbane*, ss 22.7 & 22.9.

⁷⁵ *Town Plan for the City of Brisbane*, ss 22.8 & 22.10.

⁷⁶ *Town Plan for the City of Brisbane*, ss 22.13 & 22.14.

those buildings by permitting them to transfer those rights to some other site or to ensure that any development does not destroy the cultural heritage value of the building.⁷⁷

Many of the properties listed in Section 22 in the Town Plan are now listed in the Queensland Heritage Register. Section 22 does not impose any positive or negative obligations on owners which enforce conservation. It merely acts as an incentive to maintain heritage listed buildings and develop other sites which do not have heritage value.

In recent years the Brisbane City Council has also introduced Development Control Plans for specific areas of the city with significant heritage value, such as South Brisbane, Newstead and Teneriffe. These Plans incorporate planning incentives to encourage sensitive development in these areas. Where buildings included in the Queensland Heritage Register are covered by either Section 22 or a Development Control Plan, officers of the Brisbane City Council's Heritage Unit work closely with the Queensland Heritage Council and the Department to ensure the best possible result.⁷⁸

5. FINANCIAL ASSISTANCE FOR CULTURAL HERITAGE CONSERVATION

5.1 THE NATIONAL ESTATE GRANTS PROGRAM

As mentioned earlier, one of the functions of the Australian Heritage Commission is to administer the National Estate Grants Program. This program is co-ordinated by the Australian Heritage Commission but administered locally by State and Territory Governments on behalf of the Commonwealth. The Act enables the Commonwealth to provide project grants to non-profit organisations and local government, as well as Commonwealth, State and Territory departments and authorities. The types of projects supported by the program include:

- thematic, methodological and regional studies and surveys to identify, assess and document places of national estate significance,
- conservation planning and conservation work on places entered in the Register of the National Estate, and

⁷⁷ WD Duncan (ed), pp 185-187.

⁷⁸ Discussions with officers of the Brisbane City Council Heritage Unit, 24 June 1996.

- community and professional educational activities which help identify the National Estate or conserve or promote places on the Register.⁷⁹

The number of applications received for funding under the program, and the amount of money requested, always far exceed what the program is able to support. In 1994-95 the program supported 262 projects which represented only around 25% of applications received and only 16% of the demand for funds.⁸⁰

In Queensland, the program is administered by the Cultural Heritage subprogram of the Department of Environment. In 1994-95, \$671,228 was allocated under the Commonwealth program in Queensland. Projects funded included:

- \$40,000 to the Island Co-ordinating Council to document sites of cultural heritage significance in the Torres Strait;
- \$13,000 to the Central Queensland Speleological Society to locate, identify and record the habitat sites of the ghost bat in the caves of the Mitchell-Palmer karst area; and
- \$32,400 for urgent conservation work at the Blackall Woolscour.⁸¹

5.2 QUEENSLAND GOVERNMENT GRANTS PROGRAMS

The Queensland Government funds the Queensland Heritage Grants Program which is also administered by the Cultural Heritage subprogram of the Department of Environment. In 1994-95 this program provided \$220,000 to 19 applicants, including:

- the Kalkadoon Tribal Council in Mt Isa for continuing a heritage ranger survey to document significant places in the Mt Isa-Cloncurry region (including major rock art sites) and identify major conservation problems. The project also involves community education about the Aboriginal culture and cultural heritage of the region;⁸²
- the University of Queensland to undertake the Ugarapul cultural heritage survey;
- restoration of St Peter's Anglican Church on Warraber Island in the Torres Strait to replace non-traditional materials with traditional mangrove wood

⁷⁹ Australian Heritage Commission, *Annual Report 1994-95*, pp 71-72.

⁸⁰ Australian Heritage Commission, pp 72-73.

⁸¹ Queensland. Department of Environment and Heritage, *Annual Report 1994-95*, pp 23-26.

⁸² 'Kalkadoon Tribal Council Heritage Project', *Queensland Heritage News*, No 1, January 1995, p 4.

and to conserve the stoneworks and coconut palm frond weaving in its floor mats and external walls;⁸³

- conservation works on the Masonic Lodge at Yangan, the Homebush Mission Hall near Mackay and the Old Cork Homestead near Winton.

Another program funded by the Queensland Government is the Queensland Community History Grants Program which was established to provide assistance for projects which add to the historical documentation of Queensland's cultural heritage, with particular emphasis on the relationship between people and places. The Program aims to support historical societies and heritage groups. Examples of support provided by this program include:

- \$4,000 to the Buderim Historical Society to conduct research into the lives of the South Sea Islanders who were brought to Buderim to work on sugarcane plantations in the late 1800s;
- \$1,000 to the National Association of Watch and Clock Collectors to compile a history of horology and electrical engineering in Queensland, including the Brisbane-based Synchronome Clock Company which designed and built some of Queensland's most important clocks, such as the Brisbane City Hall tower clock;⁸⁴
- \$3,500 to the One People of Australia League to compile a pictorial history of the organisation;
- \$5,000 to the Women of Maleny History Group to collect and transcribe oral histories of the older women of Maleny into a publication;
- \$2,500 to the Ipswich and West Moreton Family Resource Centre to record details of the railway workshop site before it is vacated.⁸⁵

5.3 TAX INCENTIVES FOR HERITAGE CONSERVATION

In 1995 the Commonwealth Government introduced the Tax Incentive for Heritage Conservation scheme, which commenced operation in the 1994-95 financial year. The scheme allows for a tax rebate of 20 cents in the dollar for conservation work which is planned for a heritage listed building. The building must be listed in the National Estate Register or the relevant statutory State or Territory heritage register. Listing by the National Trust or a local government does not give eligibility for the scheme. To apply for the scheme, the planned conservation work

⁸³ 'Message from the Minister for Environment and Heritage, Molly Robson MLA', *Queensland Heritage News*, No 1, January 1995, p 1.

⁸⁴ 'Hands of time', *Queensland Community History News*, No 1, June 1995, p 3.

⁸⁵ Queensland. Department of Environment and Heritage, *Annual Report 1994-95*, p 23.

must be estimated to cost at least \$5,000 and be able to be completed within two years.

The scheme provides for a maximum of \$9.5 million in heritage conservation work each financial year. If the total value of eligible applications exceeds that amount, the applications are prioritised. In the 1994-95 tax year, \$1.5 million of conservation works to Heritage Register places in Queensland were included in the scheme.⁸⁶

The Commonwealth Department of Communications and the Arts has developed Conservation guidelines which must be complied with in order to be eligible for the scheme. These are based on the Burra Charter.⁸⁷

The conservation movement has lobbied for many years for taxation incentives. However, the limitation on the value of the work covered by the scheme has attracted criticism. It is also argued that the tax incentive scheme is of more assistance to those with high incomes.⁸⁸

6. THE ROLE OF THE NATIONAL TRUST

Many people's first encounter with cultural heritage conservation may be related to an historic building listed by the National Trust. There is a National Trust organisation in each State. For example, the Queensland organisation is established under the *National Trust of Queensland Act 1963*. These various bodies operate on a national level through the Australian Council of National Trusts. The objectives of the National Trust focus on the preservation and maintenance of lands, buildings, furniture, pictures and other chattels of beauty or of national, historic, scientific, artistic or architectural interest, for the benefit of the public.⁸⁹

The National Trusts' most influential activity has been the compilation of registers of important sites and buildings, landscapes, streetscapes and complexes for each State. Although these registers do not have any legal status they have brought many

⁸⁶ Correspondence with the Acting Director Cultural Heritage, Queensland Department of Environment, 27 June 1996.

⁸⁷ Australia. Department of Communications and the Arts, *Tax Incentive for Heritage Conservation - Information Guide*, August 1995; and Australia. *Income Tax Assessment Act 1936*, Part III, Division 17, Subdivision AAD.

⁸⁸ Pearson & Sullivan, p 315.

⁸⁹ *National Trust of Queensland Act 1963* (Qld), s 5.

sites to the attention of the public and have exerted pressure on governments (at all levels) and developers to take account of heritage values.⁹⁰

The National Estate Register established under the Commonwealth *Australian Heritage Commission Act 1975* is based on places from the National Trust registers.

⁹⁰ Pearson & Sullivan, pp 76-78.

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APPENDIX A

QUEENSLAND EXAMPLES OF THE NATIONAL ESTATE

- **The Parliamentary Precinct**, Brisbane - consisting of Parliament House, the Queensland Club and The Mansions. Regarded as an outstanding group of Victorian Classical Revival buildings.
- **Old Government House**, George Street, Brisbane - Built in 1860-62 and used as the Governor's official residence until 1910. It is situated within the grounds of the Queensland University of Technology and is used as the headquarters of the National Trust.
- **Brisbane City Hall**, King George Square, Brisbane - built in 1920-30.
- **Customs House**, Queen Street, Brisbane - built in 1886-89. Recently refurbished by the University of Queensland.
- **Regatta Hotel**, corner Coronation Drive and Sylvan Road, Toowong - example of Australian verandahed hotel with lavish use of cast iron and a popular landmark in Brisbane.
- **Water Tower**, Sussex Street, Bundaberg - an eight storey high circular brick tower. Regarded as a structure of industrial archaeological significance and a local landmark.
- **Bellevue Homestead**, Coominya - a large timber homestead complex built around the turn of the century which is a significant example of a south-east Queensland homestead. In 1975 it was removed to Coominya by the National Trust of Queensland from its original site which was flooded by the Wivenhoe Dam.
- **Rocky Scrub Creek Area** near Gatton - site of Aboriginal rock engravings in a small sandstone rock shelter of a type rare in south-east Queensland and northern New South Wales.
- **Rhondda Colliery**, Bundamba, Ipswich - the last mine to retain a vertical shaft and poppet head on the oldest mining field in Queensland. An excellent example of a Victorian coal mine.
- **Ipswich Grammar School** - built in 1863, this two-storey Gothic revival brick school was the first to be established under the *Grammar Schools Act 1860*.
- **Maryborough Band Rotunda**, Queen's Park, Maryborough - an octagonal cast-iron rotunda erected in 1890 after being imported from Glasgow.
- **Dunwich Cemetery**, North Stradbroke Island - this cemetery contains graves dating from 1847. It is one of the few traces of the earliest European settlement of North Stradbroke Island.
- **Glengallan Homestead**, near Warwick - built around 1875 from stone quarried on the site. Integral part of the social history of the area.

- **Jondaryan Woolshed** - at the time of its construction in 1859-60, this was the largest shearing shed in Queensland. Now a popular tourist attraction.
- **Cawdor Area**, near Toowoomba - a stone Aboriginal ceremonial ground in a wide, shallow, natural amphitheatre.
- **Carnarvon Gorge Sites** - approximately 10 sites with extensive evidence of traditional Aboriginal life in and around Carnarvon Gorge. Has a range of different rock-art types. Archaeological excavation has revealed over 400 implements.
- **Emerald Railway Station**, Railway Reserve, Emerald - an outstanding example of a timber station and a major landmark in the town. Built in 1900.
- **Blacks Palace Reserve**, near Tambo - the largest complex of art sites in the Central Queensland Highlands, located along a small sandstone gorge.
- **Mount Morgan Mine** - mining began at this site in 1882. Its industrial structures overlook the town.
- **The Supreme Court**, Rockhampton - this sandstone courthouse was built in 1887 and features Ionic columns and wrought iron gates.
- **Normanton Railway Terminus** - a corrugated iron railway station and shed built in 1891 to serve the Croydon goldfields. An imposing building of historic and industrial significance.
- **Shearers' Strike Camp Site**, near Barcaldine - the site of the 1891 Shearers' Strike which gave impetus to the political labour movement.
- **Former Adelaide Steamship Company Building**, Cairns - a single storey masonry building built in 1909 which makes an important contribution to the Cairns townscape.
- **Charters Towers Conservation Area** - this area of outstanding historic character and appeal is centred on the town's two main streets and contains more than 60 buildings of significance in commercial use, and other residential buildings.
- **Mrs Watson's Monument**, Cooktown - a Victorian Gothic monument and drinking fountain erected in 1888 in memory of Mary Watson who died with her baby and servant after escaping attack by Aborigines on Lizard Island.
- **Weipa Shell Mounds Area** - an area on the banks of the shallow estuaries of the Embley, Hey, Pine and Mission Rivers containing around 500 shell mounds, and various Aboriginal artefacts.
- **Townsville Customs House** - a magnificent two-storey building on a prominent corner site which originally accommodated the Customs Department and the Harbour Master.

Source: Australian Heritage Commission, *The Heritage of Australia - The Illustrated Register of the National Estate*, Macmillan, Melbourne, 1981, pp 4/1-100.

APPENDIX B

EXAMPLES OF THE DEVELOPMENT OF QUEENSLAND HERITAGE LISTED PLACES AS FOLLOWS:

- 1) THE CAIRNS REGIONAL ART GALLERY**
- 2) THE ITHACA FIRE STATION, PADDINGTON, BRISBANE**
- 3) THE QANTAS MUSEUM, LONGREACH AIRPORT**
- 4) COMMONWEALTH OFFICES, TOWNSVILLE**
- 5) THE EMPIRE THEATRE, TOOWOOMBA**
- 6) MACTAGGARTS WOOLSTORE, TENERIFFE, BRISBANE**
- 7) NEWSPAPER HOUSE, (FORMER COLONIAL MUTUAL BUILDING)
BRISBANE**

Sources (1-6): Extracts from the Queensland Heritage Register and notes provided by the Cultural Heritage Branch, Queensland Department of Environment. (6-7) RA Brown (ed), *The Role of Local Government in Heritage Conservation*, Proceedings Workshop 94, Department of Geographical Sciences and Planning, the University of Queensland, Brisbane, April 1994.

1. THE CAIRNS REGIONAL ART GALLERY

The Cairns Court House Complex consists of the former Cairns Court House which was erected in 1919-21, its gardens and the former Public Office Building, erected in 1934-36. The Complex was included in the Schedule of Heritage Buildings under the *Heritage Buildings Protection Act 1990* and was transferred to the Heritage Register under the provisions of the *Queensland Heritage Act 1992*.

Both of the buildings in the Court House Complex are substantial masonry buildings. They are fine quality examples of interwar public architecture adapted to suit a tropical climate, with classical detailing and interior finishes.

In 1992 the Heritage Council received and approved an application for the adaptation of the former Public Office Building into the Cairns Regional Art Gallery. The development involved the use of the ground and first floors and the expansive roof space of the building for gallery use and ancillary services, including a small lecture theatre, curators' space, shop and cafe. Full disabled access was achieved to all three floors. The development represents a sensitive and innovative adaptive re-use of a heritage building which makes a positive contribution to Cairns.

2. THE ITHACA FIRE STATION, PADDINGTON, BRISBANE

The former Fire Station at Ithaca, now part of the suburb of Paddington in Brisbane, was nominated for inclusion in the Queensland Heritage Register in 1992. It was permanently entered in the Register in 1993 after no objections to its listing were received.

The cultural heritage significance of the Ithaca Fire Station comes from its position as an integral part of a group of historic buildings which demonstrate the identity of the former Ithaca Town, including the adjacent Ithaca War Memorial and Park, The Substation and the Ithaca Embankments, which are also listed in the Heritage Register. It also demonstrates the main characteristics of an early twentieth century suburban fire station and is a landmark in Paddington.

The building was erected in 1918-19 by the Ithaca volunteer firefighters themselves. It functioned as a fire station until August 1992. When it was vacated it was the longest operating fire station in the Brisbane area.

In January 1995, the Heritage Council approved an application for the conversion and extension of the building to form a private Bridge Club which is now operating.

3. THE QANTAS MUSEUM, LONGREACH AIRPORT

QANTAS, which is the world's second oldest airline, commenced operations in November 1920 at Winton, in outback Queensland. Soon after, in February 1921, the company's headquarters were moved to Longreach. In 1922 the company built its hangar at the Longreach Aerodrome, which for many years was the only building on the site. The hangar housed the building and repair of aircraft as well as a flying training school which was opened in 1926.

The QANTAS Hangar was entered in the Queensland Heritage Register after being included in the Schedule to the *Heritage Buildings Protection Act 1990*. In 1992, seventy years after it was built, the adaptation of the hangar to be part of the QANTAS Founders' Outback Museum was approved by the Heritage Council.

4. COMMONWEALTH OFFICES, TOWNSVILLE

The Commonwealth Offices in Townsville is a three-storeyed masonry building which was erected between 1884 and 1889 as a warehouse and offices for the British drapery firm of Scott, Dawson & Stewart. Subsequently the building was used by wholesale importers and furniture manufacturers. In 1941 it was acquired by the Commonwealth Government and served as Australian Defence Headquarters, North East Area, during the Second World War. Its cultural heritage significance includes demonstrating the evolution and pattern of Queensland's history of mercantilism and defence, as well as its aesthetic characteristics.

This building was also listed in the Schedule to the *Heritage Buildings Protection Act 1990*. Its permanent entry into the Queensland Heritage Register was appealed against by the owner in the Planning and Environment Court. This appeal was withdrawn on sale of the property. The new owner applied to the Heritage Council in 1994 for the refurbishment of the interior and exterior of the building for office purposes. This application, based on a conservation plan, was approved in August 1994 and involved the removal of unsympathetic later fittings, the repair and construction of original interior fabric and the installation of upgraded services including airconditioning and a fire sprinkler system.

5. THE EMPIRE THEATRE, TOOWOOMBA

The Empire Theatre in Neil Street, Toowoomba was permanently entered in the Heritage Register in 1994. The current building, in classic art-deco style, was constructed in 1933 to replace the original theatre which was destroyed by fire. It incorporates the side walls of the original building, constructed in 1911. The building was used as a theatre until 1973 and was acquired by the Queensland Government for a Technical College in 1975.

The Empire Theatre is one of the largest and most intact art-deco provincial picture theatres in Australia and has technological significance for its use of theatre lighting and film projection technologies. It also has an important cultural status in Toowoomba as a major entertainment venue from 1911 to 1971 as well as being a local landmark. The first “talkie” screened in Toowoomba, *The Jazz Singer*, was shown at the Empire Theatre in 1929.

In 1994 the Toowoomba City Council applied to the Heritage Council for extensions and alterations to the Empire Theatre to operate as a live theatre. Although the proposal involves considerable alteration to the building, it was approved by the Heritage Council as it provides an opportunity to continue the theatrical use of the site which commenced in 1911.

6. MACTAGGARTS WOOLSTORE, TENERIFFE, BRISBANE

Mactaggarts Woolstore is one of a number of wool stores located at Teneriffe on the Bulimba Reach of the Brisbane River. Wool has always been one of Queensland's most important exports. Wool was brought to the stores by rail from western Queensland to be shown to prospective buyers and safely stored awaiting shipment to overseas markets.

Mactaggarts woolstore was built in 1926. The lower floors of the building were used for storage, loading and unloading, and the upper floors for display. An ingenious pattern of south-facing diagonal roof lights caught abundant natural light to display and excluded harmful direct sunlight. After it was sold, the wool was pressed and baled, trolleyed to the wharves and loaded on to the ships. Changing technology, especially the introduction of container shipping, meant that this method of handling wool fell into disuse after the mid 1960s.

The present owners of Mactaggarts Woolstore decided to find a new use for the old store and obtained the approval of the Queensland Heritage Council to develop the store into an apartment building. Through sensitive design, the building can be used in this new way without destroying the evidence of the building's history. The plan allows the unusual roof form to be retained and some of the machinery to remain in the building.

One aspect of the proposal which was not acceptable on heritage grounds was the intention to lower window sills on the upper floor to provide river views. Because of the impact that this would have on the external facade, this was resisted, and negotiations resulted in the upper floor units having a raised false floor constructed in the living, dining and kitchen areas, providing a split-level effect to the interior of the apartment, and views of the river, but no impact on the exterior of the building.

7. NEWSPAPER HOUSE (FORMER COLONIAL MUTUAL BUILDING) 289 QUEEN STREET, BRISBANE

This ten story building next door to the Brisbane GPO was constructed in 1930 as offices for Colonial Mutual Life Assurance Society. Queensland Newspapers purchased the site in 1983 and maintained a city office at the rear of the ground floor, although the balance of the ground floor, basement and upper floors were progressively vacated. An application has been approved to convert the building to residential use, consisting of forty-four one and two bedroom units and a roof-top penthouse. The major changes required were the introduction of kitchens and bathrooms on each floor, but as the internal layout and finishes had been previously altered with successive office fitouts, the significance of the building was concentrated in its external architectural form and style, and its distinctive reconstructed stone cladding. The new use had no appreciable impact on these aspects of the building's significance, and was considered to be compatible. Despite the lack of any on-site car accommodation, the project was successfully marketed prior to adaptation.