

**TASMANIA**

HISTORIC CULTURAL HERITAGE ACT 1995

No. 117 of 1995

TABLE OF PROVISIONS**PART 1****PRELIMINARY**

1. Short title
2. Commencement
3. Interpretation
4. Act binds Crown

PART 2**TASMANIAN HERITAGE COUNCIL**

5. Establishment of Heritage Council
6. Constitution of Heritage Council
7. General functions and powers of Heritage Council
8. Delegation by Minister
9. Delegation by Heritage Council
10. Committees
11. Staff

PART 3

FINANCIAL PROVISIONS

- 12. Heritage Fund
- 13. Application of Fund
- 14. Money and property on trust

PART 4

TASMANIAN HERITAGE REGISTER

- 15. Heritage Register
- 16. Required criteria for entry in Register
- 17. Provisional entry in Register
- 18. Procedure relating to provisional entry in Register
- 19. Objection to permanent entry in Register
- 20. Submission relating to permanent entry in Register
- 21. Permanent entry in Register
- 22. Removal of place from Register
- 23. Objection to removal from Register
- 24. Submission relating to removal from Register
- 25. Removal of entry from Register
- 26. Notice of entry in or removal from Register
- 27. Appeal against Heritage Council's decision
- 28. Determination of appeal

PART 5

HERITAGE AREAS

- 29. Declaration of heritage areas
- 30. Effect of order
- 31. Exemptions

PART 6

APPROVAL TO CARRY OUT WORKS

- 32. Application for approval to carry out works
- 33. Dealing with application by planning authority
- 34. Notice of application
- 35. Submissions relating to works application
- 36. Approval of works application by planning authority

37. Notification of decision by planning authority
38. Referral to Heritage Council
39. Approval of works application by Heritage Council
40. Notification of decision by Heritage Council
41. Approval of certain works
42. Approval without determination
43. Appeal against approval to carry out works
44. Determination of appeal
45. Supervision and standards
46. Revocation of approval to carry out works

PART 7

HERITAGE AGREEMENTS

47. Heritage agreement
48. Provisions of heritage agreement
49. Variation or termination of heritage agreement
50. Notification to Recorder of Titles
51. Duration of heritage agreement
52. Binding nature of heritage agreement
53. Enforcement order
54. Appeal against enforcement order
55. Financial and other assistance
56. Non-application of other laws

PART 8

STOPWORK ORDERS AND REPAIR NOTICES

57. Stopwork order
58. Duration of stopwork order
59. Revocation of stopwork order
60. Notice to take or stop action
61. Appeal against notice
62. Determination of appeal
63. Failure to comply with notice or order

PART 9

SHIPWRECKS

64. Application of Part

65. Shipwrecks in Register
66. Activity disturbing shipwrecks
67. Approval of application to undertake activity
68. Revocation of approval to undertake activity
69. Protected zone
70. Approval of application to enter protected zone
71. Revocation of approval to enter protected zone
72. Finding shipwreck

PART 10

ADDITIONAL ORDERS

73. Order to repair damage
74. Order prohibiting works
75. Lodgment of orders with Recorder of Titles
76. Order charge on land
77. Failure to comply with order

PART 11

CERTIFICATES

78. Application for certificate for unregistered place
79. Separate applications for separate titles
80. Issue of certificate for unregistered place
81. Objection to intention to issue certificate for unregistered place
82. Submission relating to certificate for unregistered place
83. Issue of certificate
84. Duration of certificate for unregistered place
85. Prohibition on dealing with unregistered place
86. Application for certificate for affected place
87. Issue of certificate for affected place
88. Certificate as evidence

PART 12

MISCELLANEOUS

89. Assistance to Heritage Council
90. Matters to take into account
91. Immunity from liability

- 92. Annual report
- 93. Evidence of Register
- 94. Amendment of Register
- 95. False and misleading statements
- 96. Regulations
- 97. Listed places
- 98. Non-application of Act
- 99. Exemption from Act
- 100. Mineral exploration
- 101. Administration of Act

SCHEDULE 1

PROVISIONS WITH RESPECT TO MEMBERSHIP OF HERITAGE COUNCIL

SCHEDULE 2

PROVISIONS WITH RESPECT TO MEETINGS OF HERITAGE COUNCIL

**HISTORIC CULTURAL HERITAGE ACT 1995**

No. 117 of 1995

AN ACT to promote the identification, assessment, protection and conservation of places having historic cultural heritage significance and to establish the Tasmanian Heritage Council

[Royal Assent 8 December 1995]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART 1
PRELIMINARY

Short title

1—This Act may be cited as the *Historic Cultural Heritage Act 1995*.

Commencement

2—This Act commences on a day to be proclaimed.

Interpretation

3—In this Act—

“**Appeal Tribunal**” means the Resource Management and Planning Appeal Tribunal established under the *Resource Management and Planning Appeal Tribunal Act 1993*;

“**building**” includes land or any structure in or on the land;

“**chairperson**” means the chairperson of the Heritage Council;

“**conservation**”, in relation to a place, includes—

- (a) the retention of the historic cultural heritage significance of the place; and
- (b) any maintenance, preservation, restoration, reconstruction or adaptation of the place;

“**development**” includes—

- (a) the construction, exterior alteration or exterior decoration of a building; and
- (b) the demolition or removal of a building; and
- (c) the subdivision or consolidation of land, including buildings or airspace; and
- (d) the placing or relocating of a building; and
- (e) the construction, or putting up for display, of signs or hoardings;

“**Fund**” means the Heritage Fund established under Part 3;

“**heritage agreement**” means an agreement in force under Part 7;

“**heritage area**” means an area declared as such under Part 5;

“Heritage Council” means the Tasmanian Heritage Council established under section 5;

“Heritage Register” means the Tasmanian Heritage Register kept under Part 4;

“historic cultural heritage significance”, in relation to a place, means significance to any group or community in relation to the archaeological, architectural, cultural, historical, scientific, social or technical value of the place;

“land” includes—

- (a) buildings; and
- (b) land covered with water; and
- (c) water covering land;

“law” includes any enactment, regulations, rules, by-laws or proclamation;

“member” means a member of the Heritage Council;

“National Trust” means the National Trust of Australia (Tasmania) established under the *National Trust of Australia (Tasmania) Act 1975*;

“owner” includes any mortgagee, lessee or other person who has an interest in property;

“place” includes—

- (a) a site, precinct or parcel of land; and
- (b) any building or part of a building; and
- (c) any shipwreck; and
- (d) any item in or on, or historically or physically associated or connected with, a site, precinct or parcel of land where the primary importance of the item derives in part from its association with that site, precinct or parcel of land; and
- (e) any equipment, furniture, fittings and articles in or on, or historically or physically associated or connected with, any building or item;

“planning authority” means—

- (a) a council as defined in the *Local Government Act 1993* exercising jurisdiction in the locality to which the context relates; and
- (b) a marine board constituted under the *Marine Act 1976*;

“primary production” means production resulting directly from—

- (a) the cultivation of land; and
- (b) the maintenance of animals or poultry for the purpose of selling them or their bodily produce; and
- (c) the manufacture of dairy produce by a person who produces the raw material used in the manufacture; and
- (d) fishing operations; and
- (e) forest operations; and
- (f) mining operations; and
- (g) horticulture;

“protected zone” means a zone declared to be a protected zone under section 69;

“registered place” means a place registered in the Heritage Register;

“registered shipwreck” means a shipwreck entered in the Heritage Register;

“required criteria” means the criteria specified in section 16;

“shipwreck” includes a shipwreck site and any maritime relic;

“stopwork order” means an order made under Part 8;

“use” includes proposed use;

“works” includes—

- (a) any development; and
- (b) any physical intervention, excavation or action which may result in a change to the nature or appearance of the fabric of a place; and
- (c) any change to the natural or existing condition or topography of land; and
- (d) any removal, destruction or lopping of trees otherwise than in accordance with forest practices as defined in the *Forest Practices Act 1985*; and
- (e) any removal of vegetation or topsoil;

“works application” means an application under Part 6 for approval to carry out works.

Act binds Crown

4—This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

PART 2

TASMANIAN HERITAGE COUNCIL

Establishment of Heritage Council

5—(1) The Tasmanian Heritage Council is established.

(2) The Heritage Council is part of the State's resource management and planning system, the objectives of which are set out in Schedule 1 to the *Land Use Planning and Approvals Act 1993*.

Constitution of Heritage Council

6—(1) The Heritage Council consists of 15 persons appointed by the Minister of whom—

- (a) one is the chairperson; and
- (b) one is the Director of National Parks and Wildlife; and
- (c) 4 are persons—
 - (i) who together have expertise in at least 4 of the areas of architecture, archaeology, engineering, history, planning and building surveying; and
 - (ii) one of whom is nominated by the Local Government Association of Tasmania; and
- (d) one is a person representing heritage conservation interests; and
- (e) one is a person representing community interests; and
- (f) one is a person representing the National Trust in Tasmania; and

- (g) one is a person representing the Local Government Association of Tasmania; and
- (h) one is a person representing the building development industry; and
- (i) one is a person representing the mining industry with expertise in mining heritage.
- (j) one is a person representing the Tasmanian Farmers and Graziers Association who—
 - (i) has agricultural expertise or experience; and
 - (ii) is the owner of a rural place of historic cultural heritage significance; and
- (k) one is a person representing the Tasmanian Chapter of the Australian Tourism Industry Association; and
- (l) one is a person representing the Tasmanian Council of Churches.

(2) Schedule 1 has effect with respect to membership of the Heritage Council.

(3) Schedule 2 has effect with respect to meetings of the Heritage Council.

General functions and powers of Heritage Council

7—(1) The functions of the Heritage Council are—

- (a) to advise the Minister on matters relating to Tasmania's historic cultural heritage and the measures necessary to conserve that heritage for the benefit of the present community and future generations; and
- (b) to work within the planning system to achieve the proper protection of Tasmania's historic cultural heritage; and
- (c) to co-operate and collaborate with Federal, State and local authorities in the conservation of places of historic cultural heritage significance; and
- (d) to encourage and assist in the proper management of places of historic cultural heritage significance; and
- (e) to encourage public interest in, and understanding of, issues relevant to the conservation of Tasmania's historic cultural heritage; and
- (f) to encourage and provide public education in respect of Tasmania's historic cultural heritage; and

- (g) to assist in the promotion of tourism in respect of places of historic cultural heritage significance; and
- (h) to keep proper records, and encourage others to keep proper records, of places of historic cultural heritage significance; and
- (i) to perform any other function the Minister determines.

(2) The Heritage Council may do anything necessary or convenient to perform its functions.

Delegation by Minister

8—The Minister, in writing, may delegate to the chairperson or any other specified person any of the Minister's functions or powers, other than this power of delegation.

Delegation by Heritage Council

9—The Heritage Council, in writing, may delegate to any member, and with the approval of the Minister, to any person, body or authority, any of its functions or powers, other than this power of delegation.

Committees

10—(1) The Heritage Council may establish any committee to assist in the performance and exercise of its functions and powers.

(2) The Heritage Council may appoint any person, including a member, as a member of a committee on any terms and conditions, including remuneration, the Heritage Council determines.

Staff

11—(1) Subject to and in accordance with the *Tasmanian State Service Act 1984*, persons may be appointed or employed for the purposes of this Act.

(2) The Secretary of the Department may make arrangements with the Head of an Agency, within the meaning of the *Tasmanian State Service Act 1984*, for any employees in that Agency as may be considered necessary to be made available to perform functions under this Act.

(3) An employee made available under subsection (2) may hold office in conjunction with a position in the State Service.

PART 3

FINANCIAL PROVISIONS

Heritage Fund

12—(1) There is established a fund to be known as the Heritage Fund.

(2) There is to be paid into the Fund—

- (a) any money appropriated by Parliament for the purpose of administering this Act; and
- (b) any money received by the Heritage Council by any means; and
- (c) any income derived from the investment of money standing to the credit of the Fund.

(3) The Heritage Council, with the approval of the Treasurer, is to administer the Fund.

Application of Fund

13—The Heritage Council must apply money in the Fund for the following purposes:—

- (a) the payment of expenses, charges and obligations incurred by it in the administration of this Act;
- (b) the payment of salaries, remuneration, allowances and expenses payable under this Act;
- (c) the provision of financial or other assistance for the purposes of this Act.

Money and property on trust

14—(1) The Heritage Council, with the Treasurer's approval, may—

- (a) accept money or property on trust; and
- (b) invest any money held by it on trust in accordance with section 5 of the *Trustee Act 1898*.

(2) The Heritage Council may apply any money or property accepted by it on trust otherwise than in accordance with the trust or any condition on which it was accepted only if that application is in relation to its powers and functions.

PART 4**TASMANIAN HERITAGE REGISTER****Heritage Register**

15—(1) The Heritage Council is to keep a register to be known as the Tasmanian Heritage Register.

(2) The Heritage Register—

- (a) is to be in any form the Heritage Council considers appropriate; and
- (b) may consist of more than one document or record.

(3) The Heritage Council is to enter in the Heritage Register details of the following:—

- (a) any place provisionally entered under section 18 (2);
- (b) any place entered on a permanent basis under section 21 (1);
- (c) any heritage area;
- (d) any heritage agreement;
- (e) any variation of a heritage agreement under section 49;
- (f) the termination of a heritage agreement under section 49;

- (g) any order made under this Act;
 - (h) any shipwreck entered under section 65;
 - (i) any protected zone;
 - (j) any certificate issued under section 83;
 - (k) any other information the Heritage Council considers appropriate.
- (4) An entry of a place in the Heritage Register is to—
- (a) identify the place by reference to its rectangular grid co-ordinates on the Australian Map Grid or its latitude and longitude on the Australian Geodetic Datum; and
 - (b) define the boundaries of the place by reference to a plan registered under the *Survey Co-ordination Act 1944*; and
 - (c) describe the place; and
 - (d) state the historic cultural heritage significance of the place.
- (5) Any person may inspect the Heritage Register during normal business hours.
- (6) The expressions “**Australian Geodetic Datum**” and the “**Australian Map Grid**”—
- (a) have the meanings assigned to those expressions by the National Mapping Council of Australia; and
 - (b) may be read as a reference to any other similar expressions relating to any geodetic reference system which may replace the system represented by those expressions.

Required criteria for entry in Register

16—The Heritage Council may enter a place of historic cultural heritage significance in the Heritage Register if, in its opinion, it meets one or more of the following criteria:—

- (a) it is important in demonstrating the evolution or pattern of Tasmania’s history;
- (b) it demonstrates rare, uncommon or endangered aspects of Tasmania’s heritage;
- (c) it has potential to yield information that will contribute to an understanding of Tasmania’s history;

- (d) it is important as a representative in demonstrating the characteristics of a broader class of cultural places;
- (e) it is important in demonstrating a high degree of creative or technical achievement;
- (f) it has strong or special meaning for any group or community because of social, cultural or spiritual associations;
- (g) it has a special association with the life or work of a person, a group or an organisation that was important in Tasmania's history.

Provisional entry in Register

17—(1) The Heritage Council, on its own initiative or on application to it by any person, may decide to enter a place in the Heritage Register on a provisional basis if in its opinion it meets any one or more of the required criteria.

(2) A person who applies to have a place entered in the Heritage Register on a provisional basis must give any information the Heritage Council requires to enable it to deal with the application.

Penalty: Fine not exceeding 20 penalty units.

(3) The Heritage Council must not exclude a place from being entered in the Heritage Register on a provisional basis only on the ground that another place with similar characteristics is already entered in the Heritage Register.

Procedure relating to provisional entry in Register

18—(1) Before entering a place in the Heritage Register on a provisional basis, the Heritage Council may invite written submissions from—

- (a) any person or body with a special knowledge of, or interest in, the place; or
- (b) any person or body with a special interest in Tasmania's historic cultural heritage.

(2) After considering any submissions, the Heritage Council may provisionally enter a place in the Heritage Register.

(3) If the Heritage Council enters a place in the Heritage Register on a provisional basis, it must—

(a) give the owner of the place and the planning authority a written notice—

- (i) stating it has provisionally entered the place in the Heritage Register and that it intends to enter the place on a permanent basis; and
- (ii) stating the reasons and the required criteria on which the entry is based; and
- (iii) explaining the right to object to the place being entered in the Heritage Register on a permanent basis; and

(b) publish in a daily newspaper circulating in the area in which the place is situated a notice—

- (i) stating that it intends to enter the place in the Heritage Register on a permanent basis; and
- (ii) inviting written submissions relating to that intention; and
- (iii) explaining the right to object to the place being entered in the Heritage Register on a permanent basis.

(4) A notice to the owner of a place must be given at least 21 days and not more than 28 days before—

(a) the same notice is given to the planning authority; and

(b) a notice is published under subsection (3) (b).

(5) The Heritage Council must make available to the owner of a place registered in the Heritage Register on a provisional basis—

(a) the name of any person who has made an application under section 17 (1); and

(b) any information given under section 17 (2); and

(c) a copy of any submission made under section 18 (1).

Objection to permanent entry in Register

19—(1) Any person may object to the Heritage Council's intention to enter a place in the Heritage Register on a permanent basis.

(2) An objection must be—

(a) made in writing; and

(b) lodged with the Heritage Council within—

(i) 60 days after a notice was given or published under section 18 (3), whichever is the later; or

(ii) any further period the Heritage Council allows.

(3) An objection may be made only on the basis that the place does not satisfy any required criteria on which the entry is based.

(4) A person who lodged an objection may appear in person before the Heritage Council to make representations in relation to the objection.

Submission relating to permanent entry in Register

20—(1) Any person may make a submission in relation to the Heritage Council's intention to enter a place in the Heritage Register on a permanent basis.

(2) A submission is to be lodged with the Heritage Council within—

(a) 60 days after a notice was published under section 18 (3) (b); or

(b) any further period the Heritage Council allows.

Permanent entry in Register

21—(1) After considering any objection made under section 19 or any submission made under section 20, the Heritage Council may—

(a) enter the place in the Heritage Register on a permanent basis; or

(b) not enter the place in the Heritage Register on a permanent basis.

(2) If the Heritage Council does not enter a place in the Heritage Register on a permanent basis, it must remove the provisional entry of the place in the Heritage Register.

(3) The Heritage Council is to make a decision under subsection (1) within 120 days after provisionally entering the place in the Heritage Register.

Removal of place from Register

22—(1) The Heritage Council, on its own initiative or on application to it by any person, may decide to remove from the Heritage Register an entry relating to a place.

(2) A person who applies to have a place removed from the Heritage Register must give any information the Heritage Council requires to enable it to deal with the application.

Penalty: Fine not exceeding 20 penalty units.

(3) Before removing a place from the Heritage Register, the Heritage Council may invite written submissions from—

- (a) any person or body with special knowledge of, or interest in, the place; or
- (b) any person or body with a special interest in Tasmania's historic cultural heritage.

(4) After considering any submissions, the Heritage Council may decide to remove from the Heritage Register an entry relating to a place if it considers that the place no longer meets any of the required criteria.

(5) If the Heritage Council intends to remove from the Heritage Register an entry relating to a place, it must—

- (a) give the owner of the place and the planning authority a written notice—
 - (i) stating that it intends to remove the entry from the Heritage Register; and
 - (ii) stating the reasons for the removal; and
 - (iii) explaining the right to object to the removal; and
 - (b) publish in a daily newspaper circulating in the area in which the place is situated a notice—
 - (i) stating that it intends to remove the entry from the Heritage Register; and
 - (ii) inviting written submissions relating to that intention; and
 - (iii) explaining the right to object to the removal.
- (6) A notice to the owner of a place must be given at least 21 days and not more than 28 days before—
- (a) the same notice is given to the planning authority; and
 - (b) a notice is published under subsection (5) (b).

Objection to removal from Register

23—(1) Any person may object to the Heritage Council's intention to remove from the Heritage Register an entry relating to a place.

(2) An objection must be—

(a) made in writing; and

(b) lodged with the Heritage Council within—

(i) 30 days after a notice was given or published under section 22 (5), whichever is the later; or

(ii) any further period the Heritage Council allows.

Submission relating to removal from Register

24—(1) Any person may make a submission in relation to the Heritage Council's intention to remove from the Heritage Register an entry relating to a place.

(2) A submission is to be lodged with the Heritage Council within—

(a) 30 days after a notice was published under section 22 (5) (b); or

(b) any further period the Heritage Council allows.

Removal of entry from Register

25—(1) After considering any objection made under section 23 or submission made under section 24, the Heritage Council may—

(a) remove from the Heritage Register an entry relating to a place; or

(b) not remove the entry from the Heritage Register.

(2) The Heritage Council must not remove from the Heritage Register an entry relating to a place—

(a) until at least 31 days after a notice is given or published under section 26, whichever is the later; or

(b) if an appeal is made under section 27 and the Appeal Tribunal makes an order under section 28 (a), until after the date of the order.

Notice of entry in or removal from Register

26—The Heritage Council must notify the entry relating to a place on a permanent basis in, or the removal of an entry relating to a place from, the Heritage Register—

- (a) by written notice to—
 - (i) the owner of the place; and
 - (ii) any person who lodged an objection or submission under this Part; and
 - (iii) the planning authority; and
- (b) by notice published in a daily newspaper circulating in the area in which the place is situated; and
- (c) by notice published in the *Gazette*.

Appeal against Heritage Council's decision

27—(1) Any person who lodged an objection or submission under this Part may appeal to the Appeal Tribunal against a decision of the Heritage Council under section 21 or 25.

(2) An appeal must be—

- (a) in writing; and
- (b) lodged with the Appeal Tribunal within 30 days after a notice is given or published under section 26, whichever is the later.

(3) An appeal against the entry of a place in the Heritage Register on a permanent basis may be made only on the basis that the place does not satisfy any of the required criteria on which the entry is based.

(4) The Appeal Tribunal is to hear and determine an appeal in accordance with the *Resource Management and Planning Appeal Tribunal Act 1993*.

Determination of appeal

28—In hearing an appeal against the Heritage Council's decision under section 21 or 25, the Appeal Tribunal may—

- (a) confirm that decision; or
- (b) set aside that decision; or

- (c) set aside that decision and—
 - (i) substitute another decision; or
 - (ii) remit the matter to the Heritage Council for reconsideration.
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PART 5

HERITAGE AREAS

Declaration of heritage areas

29—(1) The Minister, by order, may declare an area to be a heritage area if it is an area which may contain any place of historic cultural heritage significance—

- (a) on the Heritage Council's advice; and
- (b) after consulting with any relevant planning authority and any other relevant body.

(2) The Heritage Council is to publish the order—

- (a) in the *Gazette*; and
- (b) in a daily newspaper circulating in the area.

(3) The order—

- (a) takes effect on the day on which it is published in the *Gazette*; and
- (b) remains in force for a period of 2 years or any further period, not exceeding 5 years, the Minister specifies in the order.

(4) The Heritage Council is to give the owner of any place within an area declared to be a heritage area a written notice stating—

- (a) the order; and
- (b) the reasons for declaring the area to be a heritage area; and
- (c) the rights and duties of the owner under this Act.

(5) Section 47 of the *Acts Interpretation Act 1931* applies to an order under this section as if it were a regulation.

Effect of order

30—(1) A person must not carry out any works within a heritage area which may affect the historic cultural heritage significance of that area unless—

- (a) the Heritage Council has granted an exemption under section 31; or
- (b) the works are approved under Part 6.

Penalty: In the case of—

- (a) a corporate body, a fine not exceeding 10 000 penalty units; or
- (b) an individual, a fine not exceeding 5 000 penalty units.

(2) A planning authority must ensure that a planning scheme under Part 3 of the *Land Use Planning and Approvals Act 1993* identifies and conserves any place of historic cultural heritage significance within a heritage area.

Exemptions

31—(1) The Minister, on the Heritage Council's advice, may exempt specified works and specified primary production within a heritage area from the provisions of section 30 (1).

(2) An exemption is to be—

- (a) included in an order made under section 29; or
- (b) published in the *Gazette*.

(3) The Minister may revoke an exemption for any reason the Minister considers appropriate.

PART 6**APPROVAL TO CARRY OUT WORKS****Application for approval to carry out works**

32—(1) A person must not carry out any works in relation to a registered place or a place within a heritage area which may affect the historic cultural heritage significance of the place unless the works are approved by the Heritage Council.

Penalty: In the case of—

- (a) a corporate body, a fine not exceeding 10 000 penalty units; or
- (b) an individual, a fine not exceeding 5 000 penalty units.

(2) A person may apply for approval to carry out works by lodging an application with the appropriate planning authority.

(3) An approval application is to—

- (a) be in writing; and
- (b) state the details of the works to be carried out.

(4) This section does not apply to any works within a church if—

- (a) the works are required solely for liturgical purposes; and
- (b) written notice is given to the Heritage Council at least 28 days before the works are to be carried out stating—
 - (i) the nature and detail of the works; and
 - (ii) the fact that the works are required solely for those purposes.

(5) This section applies only to any works in respect of a registered place which, if carried out, are likely to affect the ability of the place to meet any of the required criteria in respect of which the place is entered in the Heritage Register.

Dealing with application by planning authority**33—(1) The planning authority—**

- (a) may deal with a works application if it has a delegated power from the Heritage Council to do so; or
- (b) must refer the works application to the Heritage Council if it does not have that delegated power.

(2) The planning authority must deal with a works application in accordance with—

- (a) any directions given to it by the Heritage Council; and
- (b) the provisions of this Part.

(3) On receipt of a works application in respect of which it has delegated power, the planning authority may refuse to grant the application.

(4) The planning authority must serve a notice on the applicant of its refusal within 7 days of its decision.

Notice of application**34—(1) The planning authority must—**

- (a) give notice in the prescribed manner of a works application lodged under section 32; or
- (b) require the applicant to give notice in the prescribed manner of the works application.

(2) A notice is to—

- (a) state details of the works specified in the works application; and
- (b) state the place at which the works application and any documents submitted with it may be inspected during normal business hours; and
- (c) invite submissions relating to the works application; and
- (d) state any other prescribed matter.

(3) The planning authority is to pay any reasonable costs incurred by a person in giving notice under subsection (1) (b).

Submissions relating to works application

35—A person may make a submission in relation to a works application by lodging the submission with the planning authority within—

- (a) 14 days after a notice is given under section 34; or
- (b) any further period, not exceeding 14 days, the planning authority allows or, if the application is referred to the Heritage Council, the Heritage Council allows.

Approval of works application by planning authority

36—(1) After considering any submissions made under section 35 in respect of a works application it may deal with, the planning authority may—

- (a) approve the works application; or
- (b) refuse to approve the works application.

(2) The planning authority must approve or refuse to approve a works application—

- (a) not earlier than 14 days after a notice is given under section 34 or not earlier than the further period allowed under section 35 (b); and
- (b) not later than whichever of the following is the later:—
 - (i) 42 days after the works application was lodged;
 - (ii) any further period agreed to by the planning authority and the applicant.

Notification of decision by planning authority

37—(1) A planning authority must inform the Heritage Council of its decision under section 36 as soon as practicable.

(2) A planning authority must serve notice of its decision under section 36 within 7 days of the decision—

- (a) on the applicant; and
- (b) on any person who made a submission.

Referral to Heritage Council

38—In referring a works application to the Heritage Council under section 33 (1) (b), a planning authority must provide the Heritage Council with a copy of any submission received under section 35.

Approval of works application by Heritage Council

39—(1) After considering any submissions and consulting with any relevant person, body, authority, department or agency in respect of a works application referred to it, the Heritage Council may—

- (a) approve the works application subject to any condition or restriction; or
- (b) refuse to approve the works application.

(2) The Heritage Council must approve or refuse to approve a works application—

- (a) not earlier than 14 days after a notice is given under section 34 or not earlier than the further period allowed under section 35 (b); and
- (b) not later than 42 days after the works application was lodged; or
- (c) any further period agreed to by the Heritage Council and the applicant.

Notification of decision by Heritage Council

40—(1) The Heritage Council must notify the planning authority of—

- (a) its decision; and
- (b) any condition or restriction it imposed on the approval of a works application.

(2) The planning authority must serve notice of the Heritage Council's decision within 7 days after it is notified under subsection (1)—

- (a) on the applicant; and
- (b) on any person who made a submission.

Approval of certain works

41—The Heritage Council or planning authority may only approve a works application in respect of works which are likely to destroy or reduce the historic cultural heritage significance of a registered place or a place within a heritage area if satisfied that there is no prudent and feasible alternative to carrying out the works.

Approval without determination

42—An application is taken to have been approved if it is not determined—

- (a) within 42 days after it is lodged; or
- (b) within any further period the Heritage Council or the planning authority and the applicant agree.

Appeal against approval to carry out works

43—(1) A person may appeal to the Appeal Tribunal against the approval of, or refusal to approve, a works application.

(2) An appeal is to be—

- (a) made in writing; and
- (b) lodged with the Appeal Tribunal within—
 - (i) 40 days after a notice is given of the approval of, or refusal to approve, a works application; or
 - (ii) after the relevant period referred to in section 42 has elapsed.

(3) The Appeal Tribunal is to hear and determine an appeal under the *Resource Management and Planning Appeal Tribunal Act 1993*.

Determination of appeal

44—(1) In hearing an appeal against the approval of, or refusal to approve, a works application, the Appeal Tribunal may—

- (a) confirm the approval or refusal to approve; or

- (b) vary or substitute any condition or restriction of the approval; or
- (c) set aside the approval or refusal to approve; or
- (d) remit the matter to the Heritage Council or planning authority for reconsideration.

(2) The Appeal Tribunal may make any order or give any direction or recommendation with respect to its determination under subsection (1).

Supervision and standards

45—(1) As a condition of approving a works application, the Heritage Council may—

- (a) set standards by which the works are to be carried out by the applicant; or
- (b) require the applicant to engage suitably qualified persons to supervise or undertake the works or any part of the works; or
- (c) require the applicant to arrange appropriate curation and storage of items removed from a place.

(2) A person must comply with any standard or requirement under subsection (1).

Penalty: Fine not exceeding 1 000 penalty units.

Revocation of approval to carry out works

46—The Heritage Council, by notice in writing, may revoke an approval to carry out works if any condition, restriction, requirement or standard is not complied with.

PART 7**HERITAGE AGREEMENTS****Heritage agreement**

47—(1) Subject to subsections (2) and (3), the following may make an agreement with the owner of a place of historic cultural heritage significance relating to the conservation of the place:—

- (a) the Minister;
- (b) the National Trust with the Minister's approval;
- (c) the relevant planning authority with the Minister's approval.

(2) The Minister or the National Trust may only make a heritage agreement after—

- (a) obtaining and considering the Heritage Council's advice; and
- (b) consulting with the relevant planning authority.

(3) A planning authority may only make a heritage agreement after obtaining and considering the Heritage Council's advice.

(4) A planning authority may be a party to a heritage agreement.

Provisions of heritage agreement

48—A heritage agreement in respect of a place may include provisions relating to any or all of the following:—

- (a) the conservation of the place;
- (b) the financial, technical or other professional advice or assistance required for the conservation of the place;
- (c) the review of the valuation of the place;
- (d) the restriction on the use of the place;
- (e) the requirement to carry out specified works or works of a specified kind;
- (f) the standards by which the works are to be carried out;
- (g) the restriction on the kind of works that may be carried out;

- (h) the exemption of specified works or works of a specified kind from Part 6;
- (i) the public appreciation of the historic cultural heritage significance of the place;
- (j) the availability for public inspection;
- (k) the charges made for admission.

Variation or termination of heritage agreement

49—(1) Subject to subsection (2), the Minister, the National Trust with the Minister's approval or the relevant planning authority with the Minister's approval, may vary or terminate a heritage agreement—

- (a) by a subsequent agreement with the other party; or
- (b) in a manner specified in the original agreement.

(2) The Minister, the National Trust or the relevant planning authority may only vary or terminate a heritage agreement on the Heritage Council's advice.

Notification to Recorder of Titles

50—(1) The Minister, the National Trust or the relevant planning authority must lodge for registration with the Recorder of Titles notice of—

- (a) any heritage agreement that comes into effect; and
- (b) any variation or termination of a heritage agreement.

(2) A notice is to be lodged—

- (a) in a form approved by the Recorder of Titles; and
- (b) at the same time as the relevant entry is made in the Heritage Register; and
- (c) in any manner approved by the Recorder of Titles.

(3) A notice is a dealing for the purposes of the *Land Titles Act 1980*.

Duration of heritage agreement

51—A heritage agreement—

- (a) takes effect on a date specified in the agreement; and
- (b) expires on a date specified in the agreement.

Binding nature of heritage agreement

52—A heritage agreement attaches to the land on which the place is situated and is binding on—

- (a) the owner of the place; and
- (b) the occupier of the place.

Enforcement order

53—(1) Any party to a heritage agreement may apply to the Appeal Tribunal for an enforcement order if—

- (a) any person fails to comply with, or contravenes, any provision of the heritage agreement; or
- (b) there are reasonable grounds for believing that any person may fail to comply with, or contravene, any provisions of the heritage agreement.

(2) The Appeal Tribunal is to hear and determine the application as if it were an application for an order under section 64 of the *Land Use Planning and Approvals Act 1993*.

(3) The Heritage Council—

- (a) is to enter details of an enforcement order in the Heritage Register as soon as practicable after the order is made; and
- (b) may lodge a copy of the enforcement order with the Recorder of Titles as if—
 - (i) the Heritage Council were a judgment creditor; and
 - (ii) the order were a judgment.

Appeal against enforcement order

54—(1) A person may appeal to the Supreme Court against an order of the Appeal Tribunal—

- (a) granting an application for an enforcement order; or
- (b) refusing to grant the application.

- (2) An appeal is to be—
 - (a) made in writing; and
 - (b) lodged with the Supreme Court within 30 days after the date of the order or any further period the Supreme Court allows.
- (3) The Supreme Court may—
 - (a) confirm the order of the Appeal Tribunal; or
 - (b) quash the order.
- (4) If the Supreme Court quashes the order of the Appeal Tribunal to grant an application for an enforcement order, the Heritage Council is to—
 - (a) remove the entry in the Heritage Register relating to the enforcement order; and
 - (b) notify the Recorder of Titles accordingly.

Financial and other assistance

55—(1) The Heritage Council may provide, or arrange for the provision for, any financial, technical or other assistance it considers necessary for the conservation of a place which is the subject of a heritage agreement.

(2) The Heritage Council, with the approval of the relevant planning authority, may arrange for reductions to be made in any rates, charges, duties or taxes payable in respect of the place.

Non-application of other laws

56—(1) The Minister, on the Heritage Council's recommendation, may by order declare that a law does not apply, or applies subject to modification, to a place which is the subject of a heritage agreement if—

- (a) the law regulates or prohibits the conservation of the place; and
 - (b) the Minister considers it is necessary to make the order to ensure the conservation of the place.
- (2) An order in respect of a place—
 - (a) is to be published in the *Gazette*; and

- (b) takes effect on the date of its publication in the *Gazette*; and
 - (c) remains in force for the duration of the heritage agreement relating to the place.
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PART 8

STOPWORK ORDERS AND REPAIR NOTICES

Stopwork order

57—(1) The Heritage Council, or the Minister on the advice of the Heritage Council, may make an order under subsection (2) if of the opinion that it is necessary for the immediate protection of the historic cultural heritage significance of a place.

(2) An order may require any person to stop or not commence any works in respect of a registered place or a place which, in the opinion of the Heritage Council, should be a registered place.

(3) The Heritage Council or the Minister is to—

- (a) serve the stopwork order on the owner of the place affected by the order; and
- (b) cause a copy of the order to be fixed in a prominent position on the place.

(4) A person must comply with a stopwork order during the period it remains in force.

Penalty: Fine not exceeding 10 000 penalty units.

(5) The Heritage Council—

- (a) is to enter details of a stopwork order in the Heritage Register as soon as practicable after the order is made; and
- (b) may lodge a copy of the stopwork order with the Recorder of Titles as if—
 - (i) the Heritage Council were a judgment creditor; and
 - (ii) the order were a judgment.

Duration of stopwork order

58—A stopwork order in relation to a place takes effect from whichever is the earlier of the following:—

- (a) the time at which, and date on which, the order is served under section 57 (3) (a);
 - (b) the time at which, and date on which, the order is fixed to the place under section 57 (3) (b).
- (2) A stopwork order, unless it is sooner revoked, remains in force until whichever is the later of the following:—
- (a) the end of the period, not exceeding 14 days, specified in the order;
 - (b) any further period the Appeal Tribunal allows under subsection (3).
- (3) The Heritage Council may apply to the Appeal Tribunal to extend the period during which a stopwork order remains in force.

Revocation of stopwork order

59—(1) The Heritage Council, on its own initiative or on application to it by any person, or the Minister on the Heritage Council's advice, may revoke a stopwork order within 14 days after it takes effect if it is appropriate to do so.

(2) The Heritage Council or the Minister, by notice in writing served on the owner of the place which is the subject of the stopwork order, is to advise the owner of the revocation of the order.

(3) A revocation of a stopwork order takes effect at the time at which, and on the date on which, the notice is served under subsection (2).

Notice to take or stop action

60—(1) The Heritage Council may serve a notice on the owner of a registered place who by any intentional act or omission is likely to affect the historic cultural heritage significance of the place.

(2) A notice may require the owner of a registered place—

- (a) to take specified action to repair any damage; or
- (b) to cease any specified action; or
- (c) to commence or complete any specified works.

(3) A notice must state the period within which anything specified in the notice is to be done which must be more than 30 days starting on the day the notice is served.

(4) A person must comply with a notice.

Penalty: Fine not exceeding 10 000 penalty units.

Appeal against notice

61—(1) An owner of a registered place may appeal to the Appeal Tribunal against a notice served under section 60 on the ground—

- (a) that any act or omission is not likely to affect the historic cultural heritage significance of the place; or
- (b) of financial hardship; or
- (c) that it is unreasonable to comply with the notice in all the circumstances.

(2) An appeal must be—

- (a) in writing; and
- (b) lodged with the Appeal Tribunal within 30 days after the notice is served.

(3) The Appeal Tribunal is to hear and determine an appeal under the *Resource Management and Planning Appeal Tribunal Act 1993*.

Determination of appeal

62—(1) In hearing an appeal under section 61 against a notice, the Appeal Tribunal may—

- (a) confirm the requirements of that notice; or
- (b) vary those requirements; or
- (c) set aside those requirements; or

- (d) set aside those requirements and—
 - (i) substitute other requirements; or
 - (ii) remit the matter to the Heritage Council for reconsideration.

(2) The Appeal Tribunal may make an order specifying the period in which the owner of a registered place is to—

- (a) take any specified action; or
- (b) cease taking any specified action; or
- (c) commence or complete any specified works.

(3) If the Appeal Tribunal makes an order under subsection (1) (c) in respect of a notice, it may also order that the Heritage Council pay for—

- (a) any costs relating to the making and hearing of the appeal; and
- (b) any reasonable costs incurred by the appellant as a result of complying with that notice.

Failure to comply with notice or order

63—(1) If the owner of a registered place fails to comply with a notice under section 60 and has not lodged an appeal against the notice within the required period, the Heritage Council may—

- (a) enter the place or any land on which the place is situated; and
- (b) take any action specified in the notice; and
- (c) commence or complete any works specified in the notice.

(2) If the owner of a registered place fails to comply with an order under section 62 (2), the Heritage Council may—

- (a) enter the place or any land on which the place is situated; and
- (b) take any action specified in the order; and
- (c) commence or complete any works specified in the order.

(3) The Heritage Council may charge the owner for any costs incurred in doing anything under subsection (1) or (2).

(4) A charge under subsection (3) is a debt due to the Heritage Council and is recoverable in a court of competent jurisdiction.

(5) If the Appeal Tribunal makes an order under section 62 (1) (c) in respect of a registered place on the grounds of financial hardship, the Heritage Council, at its own expense, may—

- (a) enter the place or any land on which the place is situated; and
 - (b) take any action specified in a notice under section 60; and
 - (c) commence or complete any works specified in the notice.
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PART 9

SHIPWRECKS

Application of Part

64—(1) This Part applies to—

- (a) a shipwreck which is at least 75 years old from the date of the wreck; and
- (b) a shipwreck which is a registered shipwreck.

(2) This Part applies to a shipwreck referred to in subsection (1) which is—

- (a) under or above the water; or
- (b) both under and above the water; or
- (c) above or below high-water mark.

Shipwrecks in Register

65—(1) The Heritage Council, on its own initiative or on application to it by any person, may enter a shipwreck in the Heritage Register under Part 4.

(2) An entry in the Heritage Register relating to a shipwreck need only contain a general description of the shipwreck and its general location.

Activity disturbing shipwrecks

66—(1) A person must not undertake any activity which is likely to result in the physical disturbance or change to the fabric or condition of a shipwreck without the Heritage Council's approval.

Penalty: Fine not exceeding 10 000 penalty units.

(2) A person may apply to the Heritage Council for approval to undertake activity of a kind referred to in subsection (1) by lodging an application—

(a) in writing; and

(b) stating the details of the activity proposed to be undertaken.

Approval of application to undertake activity

67—The Heritage Council, by notice in writing, may—

(a) grant the application for approval under section 66 with or without conditions; or

(b) refuse to grant the application.

Revocation of approval to undertake activity

68—The Heritage Council, by notice in writing, may revoke an approval granted under section 67—

(a) if any condition is not complied with; or

(b) in any circumstances it considers necessary.

Protected zone

69—(1) The Heritage Council, by notice in the *Gazette*, may declare a shipwreck to be a protected zone if satisfied that it is necessary to do so to protect the shipwreck.

(2) A protected zone may be any area not exceeding 100 hectares.

(3) A person must not enter a protected zone without the Heritage Council's approval.

Penalty: Fine not exceeding 50 penalty units.

(4) A person may apply to the Heritage Council for approval to enter a protected zone by lodging an application—

(a) in writing; and

(b) stating the reasons for entering the protected zone.

Approval of application to enter protected zone

70—The Heritage Council, by notice in writing, may—

(a) grant the application for approval under section 69 with or without conditions; or

(b) refuse to grant the application.

Revocation of approval to enter protected zone

71—The Heritage Council, by notice in writing, may revoke an approval granted under section 70—

(a) if any condition is not complied with; or

(b) in any circumstances it considers necessary.

Finding shipwreck

72—A person who finds a shipwreck must report the finding to the Heritage Council within 30 days after finding it.

Penalty: Fine not exceeding 100 penalty units.

PART 10**ADDITIONAL ORDERS****Order to repair damage**

73—(1) A court may order a person convicted of an offence under this Act to carry out any order to repair, to the satisfaction of the Minister, any damage caused by, or resulting from, the commission of the offence.

(2) If a person fails to comply with the order, the Minister may—

(a) cause repairs to be carried out; and

(b) charge the person for any costs incurred in carrying out the repairs.

(3) A charge under subsection (2) is a debt due to the Crown and is recoverable in a court of competent jurisdiction.

(4) A court may revoke an order on the recommendation of the Minister.

Order prohibiting works

74—(1) The Minister, by order, may prohibit the owner of a registered place convicted of an offence relating to the destruction of, or damage to, the place from carrying out any works in relation to the place.

(2) Before making an order, the Minister must give the owner a reasonable opportunity to show cause why the order should not be made.

(3) An order is to—

(a) be served on the owner; and

(b) specify the period, not exceeding 5 years, for which the order is in force.

(4) The Minister may revoke an order for any reason.

Lodgment of orders with Recorder of Titles

75—(1) The Minister is to cause a copy of an order made under this Part to be forwarded to the Heritage Council.

(2) The Heritage Council—

- (a) is to enter details of an order made under this Part in the Heritage Register as soon as practicable after the order is made; and
- (b) may lodge a copy of the order with the Recorder of Titles as if—
 - (i) the Heritage Council were a judgment creditor; and
 - (ii) the order were a judgment.

Order charge on land

76—An order under this Part—

- (a) is a charge on the land; and
- (b) is enforceable in priority to any mortgage, charge, lien and encumbrance; and
- (c) ranks equally with any other debt in respect of the land.

Failure to comply with order

77—A person must comply with an order under this Part.
Penalty: Fine not exceeding 10 000 penalty units.

PART 11

CERTIFICATES

Application for certificate for unregistered place

78—(1) The owner of a place may apply to the Heritage Council for a certificate stating that the place is not a registered place.

(2) An application is to—

- (a) be made in writing; and

- (b) contain any prescribed information; and
- (c) be accompanied by the prescribed fee.

(3) The Heritage Council may require an applicant to provide any further information it needs to decide the application.

Separate applications for separate titles

79—An owner of a place which consists of land comprised in separate titles must make separate applications under section 78 for each of those titles unless the land forms a single parcel of contiguous land.

Issue of certificate for unregistered place

80—(1) On receipt of an application under section 78, the Heritage Council may decide to issue a certificate stating that a specified place is not a registered place if it is satisfied that—

- (a) the application is not frivolous or vexatious; and
- (b) the place or part of the place does not meet any of the required criteria.

(2) If the Heritage Council is satisfied, as required under subsection (1), it must—

- (a) give the planning authority a written notice—

- (i) stating that it intends to issue a certificate that a specified place is not a registered place; and
 - (ii) stating the reasons for its intention; and
 - (iii) explaining the right to object to the issue of the certificate; and

- (b) publish in a daily newspaper circulating in the area in which the place is situated a notice—

- (i) stating that it intends to issue a certificate that a specified place is not a registered place; and
 - (ii) inviting written submissions relating to that intention; and
 - (iii) explaining the right to object to the issue of the certificate.

(3) If the Heritage Council is not satisfied as required under subsection (1), it must—

- (a) refuse to issue the certificate; and

- (b) advise the applicant, by notice in writing—
 - (i) of the reasons for the refusal; and
 - (ii) of any intention it has to deal with the place under Part 4.

Objection to intention to issue certificate for unregistered place

81—(1) Any person may object to the Heritage Council's intention to issue a certificate that a place is not a registered place.

- (2) An objection must be—
 - (a) made in writing; and
 - (b) lodged with the Heritage Council within—
 - (i) 30 days after a notice was given or published under section 80 (2), whichever is the later; or
 - (ii) any further period the Heritage Council allows.

Submission relating to certificate for unregistered place

82—(1) Any person may make a submission in relation to the Heritage Council's intention to issue a certificate that a place is not a registered place.

- (2) A submission is to be lodged with the Heritage Council within—
 - (a) 30 days after a notice was published under section 80 (2) (b); or
 - (b) any further period the Heritage Council allows.

Issue of certificate

83—After considering any objection made under section 81 or submission made under section 82, the Heritage Council may—

- (a) issue a certificate stating that a specified place is not a registered place; or
- (b) refuse to issue such a certificate.

Duration of certificate for unregistered place

84—A certificate issued under section 83 remains in force for a period of 5 years from the date specified in the certificate.

Prohibition on dealing with unregistered place

85—If the Heritage Council issues a certificate under section 83 in respect of a place, it must not deal with the place under Part 4 within the period during which it remains in force.

Application for certificate for affected place

86—(1) A person may apply to the Heritage Council for a certificate stating whether or not a place is affected by—

- (a) any action of the Minister or the Heritage Council made under this Act; or
- (b) any decision or determination under this Act.

(2) An application is to—

- (a) be made in writing; and
- (b) contain any prescribed information; and
- (c) be accompanied by the prescribed fee.

Issue of certificate for affected place

87—(1) On receipt of an application under section 86, the Heritage Council must issue the certificate if satisfied that the application is not frivolous or vexatious.

(2) If the Heritage Council is not satisfied as required under subsection (1), it must—

- (a) refuse to issue the certificate; and
- (b) advise the applicant, by notice in writing, of the reasons for the refusal.

Certificate as evidence

88—Any certificate under this Part signed by the chairperson stating any matter is evidence of that matter.

PART 12**MISCELLANEOUS****Assistance to Heritage Council**

89—A planning authority is to give all reasonable assistance to the Heritage Council to enable it to perform its functions and exercise its powers.

Matters to take into account

90—In exercising any powers or performing any functions under this Act in relation to a place, a person must take into account—

- (a) the retention of the historic cultural heritage significance of the place; and
- (b) the objectives of the resource management and planning system and the planning process set out in Schedule 1 to the *Land Use Planning and Approvals Act 1993*; and
- (c) any relevant provisions of the *Local Government (Building and Miscellaneous Provisions) Act 1993*.

Immunity from liability

91—A member or person acting under any direction of the Heritage Council is not personally liable for an honest act done or omission made in the exercise or purported exercise of a power or the performance or purported performance of a function under this Act.

Annual report

92—(1) The Heritage Council, on or before 31 October in each year, must submit to the Minister a written report on its activities during the financial year ending on 30 June in that year.

(2) A report must contain—

- (a) details of all entries and changes made to the Heritage Register; and
- (b) details of the activities of the Fund; and
- (c) any other details the Minister requires.

Evidence of Register

93—A document purporting to be a certified copy of the Heritage Register or part of the Heritage Register is evidence of any fact contained in it.

Amendment of Register

94—(1) The Heritage Council may amend an entry in the Heritage Register—

- (a) to update any details originally contained in the entry;
or
- (b) to correct an error made in the entry; or
- (c) to give effect to any decision of the Appeal Tribunal under Part 4.

(2) The Heritage Council is to notify the owner of a place in respect of which an entry is amended.

False and misleading statements

95—A person, in making an application or giving any information under this Act, must not—

- (a) make a statement knowing it to be false or misleading;
or
- (b) omit any matter from a statement knowing that without that matter the statement is misleading.

Penalty: Fine not exceeding 50 penalty units.

Regulations

96—(1) The Governor may make regulations for the purposes of this Act.

(2) Regulations made under this section may prescribe fees and charges payable in relation to any matter under this Act.

(3) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(4) Regulations made under this section may take effect from the commencement of this Act.

(5) The regulations may—

- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
- (b) in respect of such an offence, provide for the imposition of a fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.

Listed places

97—(1) Within 6 months after this Act commences, the Minister, on the Heritage Council's advice and by notice published in the *Gazette*, is to list any place in any of the following registers and schemes which, in the opinion of the Heritage Council, is a place of historic cultural heritage significance:—

- (a) the Register of the National Estate kept by the Australian Heritage Commission;
 - (b) the National Trust Register;
 - (c) sealed planning schemes of the Hobart City Council;
 - (d) sealed planning schemes of the Launceston City Council.
- (2) Any place listed in a notice referred to in subsection (1)—
- (a) is taken to be provisionally entered in the Heritage Register under Part 4; and
 - (b) is to be dealt with under that Part.

(3) A person may make an objection or a submission under Part 4 in respect of a place listed in a notice under subsection (1) within—

(a) a period of 12 months after the notice is published;
or

(b) any further period the Minister allows.

(4) The Heritage Council is to deal with any objection or submission within—

(a) a period of 12 months after receipt of the last objection or last submission; or

(b) any further period the Minister allows.

Non-application of Act

98—This Act does not apply to a place that is of historic cultural heritage significance only on the ground of its association with—

(a) Aboriginal history or tradition; or

(b) Aboriginal traditional use.

Exemption from Act

99—A place may be exempted from the provisions of this Act on the joint resolution of both Houses of Parliament.

Mineral exploration

100—An order or notice under this Act does not affect the carrying out of any mining operations under an exploration licence or a retention licence under the *Mining Act 1929*.

Administration of Act

101—Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Minister for Environment and Land Management; and
 - (b) the Department responsible to the Minister for Environment and Land Management in relation to the administration of this Act is the Department of Environment and Land Management.
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SCHEDULE 1**Section 6 (2)****PROVISIONS WITH RESPECT TO MEMBERSHIP OF HERITAGE
COUNCIL****Term of office**

1—(1) A member is to be appointed for a period, not exceeding 3 years, specified in the member's instrument of appointment.

(2) A member is eligible to be re-appointed, if qualified, for a further period not exceeding 3 years.

(3) A member may not be appointed for a third term of office unless one year has expired since the end of the second term of office.

Holding other office

2—The holder of an office who is required under any Act to devote the whole of the time to the duties of that office is not disqualified from—

- (a) holding that office and also the office of a member;
or
- (b) accepting any remuneration payable to a member.

Remuneration of members

3—A member is entitled to be paid any remuneration (including travelling and subsistence allowances) the Minister determines.

Vacation of office

4—(1) A member vacates office if the member—

- (a) dies; or
- (b) resigns; or
- (c) is removed from office under subclause (2) or (3).

(2) The Minister may remove a member from office if the member—

- (a) is absent from 3 consecutive meetings of the Heritage Council without the permission of the other members of the Heritage Council; or

- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or
- (c) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for 12 months or longer; or
- (d) is convicted of an offence against this Act.

(3) The Minister may remove a member from office if satisfied that the member—

- (a) has participated in, or has claimed to be entitled to participate in, the profit of, or any benefit arising from, any contract, agreement or arrangement made by or on behalf of the Heritage Council, other than a contract, agreement or arrangement for a service ordinarily supplied by the Heritage Council on the same terms as that service is supplied to other persons in the same situation; or
- (b) has voted at any meeting of the Heritage Council in respect of any matter in which that member was at that time interested, otherwise than as—
 - (i) a member of the public; or
 - (ii) an elector of, or ratepayer to, any municipality; or
 - (iii) a shareholder in a company in which there were at that time more than 20 members and of which that member was not at that time a director or officer; or
- (c) is unable to perform adequately or competently the functions of office.

(4) If the Minister removes a member from office, the Minister may appoint a suitable person as a member for the remainder of that member's term of office.

Filling of vacancies

5—If the office of a member becomes vacant, the Minister may appoint a suitable person to the vacant office for the remainder of that member's term of office.

SCHEDULE 2

Section 6 (3)

**PROVISIONS WITH RESPECT TO MEETINGS OF HERITAGE
COUNCIL**

Convening of meetings

1—(1) The chairperson may convene an ordinary meeting of the Heritage Council.

(2) The chairperson or 3 other members may convene an extraordinary meeting of the Heritage Council.

Notices of ordinary meetings

2—(1) The chairperson is to give at least 2 days' notice of any ordinary meeting.

(2) A notice is to be in writing and served on each member by hand or post at the usual place of residence or business of the member.

Quorum at meetings

3—(1) The quorum at any duly convened meeting of the Heritage Council is 7 members.

(2) Any duly convened meeting of the Heritage Council at which a quorum is present is competent to transact any business of the Council.

(3) Business of the Heritage Council is not to be transacted at any meeting unless a quorum is present.

(4) If a quorum is not present at a meeting within 20 minutes after the time appointed for holding the meeting, the chairperson may adjourn the meeting.

Chairperson

4—(1) The chairperson is to preside at the meetings of the Heritage Council.

(2) If the chairperson is not present at a meeting of the Heritage Council a member elected by the members present is to preside at that meeting.

Resolutions

5—(1) A resolution for the transaction of business at a meeting of the Heritage Council is to be determined in the affirmative if it receives the support of the majority of the members present and voting at that meeting.

(2) A resolution or decision at a meeting of the Heritage Council may only be revoked or altered by a majority of the members present and voting at that meeting.

Disclosure of interests

6—(1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Heritage Council, as soon as possible after the relevant facts have come to that member's knowledge, must disclose the nature of that interest at a meeting of the Heritage Council.

(2) A disclosure is to be recorded in the minutes of the meeting of the Heritage Council and the member, unless the Heritage Council otherwise determines, must not—

- (a) be present during any deliberation of the Heritage Council with respect to that matter; or
- (b) take part in any decision of the Heritage Council with respect to that matter.

(3) For the purposes of making a determination under subclause (2), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates must not take part in the making of the determination.

General procedure

7—Subject to this Schedule, the procedures for the calling of, and for the conduct of business at, meetings of the Heritage Council are as determined by the Heritage Council.

Presumptions

8—In any proceedings by or against the Heritage Council, unless evidence is given to the contrary, proof is not required of—

- (a) the constitution of the Heritage Council; or
- (b) the appointment of any member; or
- (c) the presence of a quorum at any meeting of the Heritage Council; or
- (d) any resolution of the Heritage Council.

Validity of acts and proceedings

9—(1) An act or proceeding of the Heritage Council or of a person acting under the direction of the Heritage Council is not invalid by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the membership of the Heritage Council.

(2) An act or proceeding of the Heritage Council or of a person acting under the direction of the Council is valid even if—

- (a) the appointment of a member of the Heritage Council was defective; or
- (b) a person appointed as a member of the Heritage Council was disqualified from acting as, or incapable of being, such a member.

*[Second reading presentation speech made in:—
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