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Robyn Webb
Chief Parliamentary Counsel
Dated 15 October 2019



TASMANIA

HISTORIC CULTURAL HERITAGE ACT 1995

No. 117 of 1995

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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

1. Short title

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

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2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

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

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- (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;

GDA means –

- (a) the Geocentric Datum of Australia (also known as “the GDA” or “GDA94”) as defined in the *Commonwealth Gazette* No. GN 35, 6 September 1995, as amended from time to time; or
- (b) another geodetic reference system substituted for the Geocentric Datum of Australia referred to in paragraph (a) by the Intergovernmental Committee on Surveying and Mapping (established in 1988), as amended from time to time;

guidelines means guidelines issued and in force under section 90A;

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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, of a place, means its significance in terms of the registration criteria;

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;

local public notice, in relation to any process affecting any place, means a notice published –

- (a) in a daily newspaper published in the State and circulating generally in the region in which the place is located; and

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(b) by one or more of the following means also:

(i) in the *Gazette*;

(ii) any electronic means the Heritage Council considers appropriate in the circumstances;

member means a member of the Heritage Council and includes an alternate member;

National Trust means the National Trust of Australia (Tasmania) established under the *National Trust Act 2006*;

notify means give notice in writing;

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

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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 Act means the *Land Use Planning and Approvals Act 1993*;

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)

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

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- (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 means entered in the Heritage Register;

registration criteria means the criteria set out in section 16(2);

responsibilities means powers, functions and duties;

shipwreck includes a shipwreck site and any maritime relic;

statutory rule means a statutory rule for the purposes of the *Rules Publication Act 1953*;

stopwork order means an order made under Part 8;

use has the same meaning as in the Planning Act;

works includes –

- (a) any development; and
- (b) any physical intervention, excavation or action which may result in a change to the nature or

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appearance of the fabric of a place; and

(c) any change to the natural or existing condition or topography of land; and

(d)

(e) any removal of vegetation or topsoil;

works guidelines – see section 90A(1)(b).

3A. Timing of actions

Where a provision of this Act requires or directs a person to take an action consequent on making a decision or another occurrence, then, unless the contrary intention appears, the provision is to be taken as requiring or directing the person to take the action as soon as practicable after making the decision or as soon as practicable after the other occurrence.

4. Act binds Crown

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

4A. Matters to be regarded

(1) In performing or exercising any functions or powers under this Act in relation to a place, the

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Heritage Council, the Minister and any other person must have regard to –

- (a) the retention of the historic cultural heritage significance of the place; and
 - (b) any relevant provisions of the *Building Act 2016*.
- (2) The Heritage Council, the Minister and any other person who performs or exercises functions or powers under this Act in relation to a place must do so in a manner that is consistent with the objectives of the resource management and planning system and the planning process set out in Schedule 1 to the Planning Act.

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Part 2 – Tasmanian Heritage Council

PART 2 – TASMANIAN HERITAGE COUNCIL

5. Establishment of Heritage Council

- (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 Planning Act.

6. Constitution of Heritage Council

- (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

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- (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 Tourism Council of Tasmania; and
 - (l) one is a person representing the Tasmanian Council of Churches.
- (1A) If an association or a body referred to in subsection (1) changes its name, the Minister, by order, may amend that subsection by substituting the new name.

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- (1B) If an association or a body referred to in subsection (1) ceases to exist, the Minister, on the recommendation of the Heritage Council, by order, may amend that subsection by substituting the name of an association or a body that the Minister is satisfied substantially represents the interests of that association or body.
- (1C) The Minister may appoint a State Service officer or State Service employee employed in the Department, or having knowledge or expertise in relation to the State's historic cultural heritage, as an alternate member for the member referred to in subsection (1)(b).
- (1D) The alternate member is to act as a member of the Heritage Council only if the member referred to in subsection (1)(b) is –
- (a) absent from a meeting of the Heritage Council; or
 - (b) incapable of acting as a member of the Heritage Council.
- (1E) If the alternate member acts as a member of the Heritage Council –
- (a) he or she may exercise all the powers of the member for whom he or she is an alternate; and
 - (b) all things done or omitted to be done by the alternate member are as valid, and have the same consequences, as if they had been done or omitted to be done by

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the member for whom he or she is an alternate.

- (1F) The members of the Heritage Council may elect a member to be deputy chairperson of the Heritage Council.
- (1G) If the chairperson is unable for any reason to perform the duties of chairperson, the deputy chairperson may perform those duties and, when doing so, is taken to be the chairperson.
- (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.

7. General functions and powers of Heritage Council

- (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

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- (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.

8. Delegation by Minister

The Minister may delegate to the chairperson or any other person any of the Minister's functions or powers under this Act, other than –

- (a) this power of delegation; and
- (b) a function or power under section 10A.

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9. Delegation by Heritage Council

The Heritage Council may delegate to a planning authority or any other person any of its functions or powers other than –

- (a) this power of delegation; and
- (b) a function or power under section 10B.

10. Committees

- (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.

10A. Statements of expectation

- (1) The Minister is to issue the Heritage Council with triennial statements of expectation and the Heritage Council is to discharge its responsibilities consistently with those statements.
- (2) A statement of expectation is to set out the Minister's aims for the Heritage Council for the relevant triennium but not so as to purport to –
 - (a) enlarge or diminish its responsibilities; or

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- (b) interfere with, or impede, the discharge of its responsibilities.
- (3) The Minister, on his or her own motion or at the request of the Heritage Council, may at any time –
 - (a) amend a statement of expectation; or
 - (b) revoke a statement of expectation.
- (4) In preparing a statement of expectation or any amendment to a statement of expectation, the Minister –
 - (a) is to consult the Heritage Council; and
 - (b) may consult any planning authorities or other persons.
- (5) A statement of expectation or any amendment to a statement of expectation is to be in writing and signed by the Minister.
- (6) A statement of expectation or any amendment to a statement of expectation takes effect on such day, following its day of issue, as it specifies.
- (7) The Heritage Council is to ensure that the public has reasonable access to all statements of expectation, including those that have been superseded.
- (8) Without limiting the generality of subsection (7), the Heritage Council is to ensure that any person presenting at any of its offices during normal business hours may –

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- (a) inspect any statement of expectation without charge; and
- (b) obtain a copy of any statement of expectation.

10B. Statements of intent

- (1) On being issued with a statement of expectation under section 10A, the Heritage Council is to give the Minister a statement of intent in response.
- (2) The statement of intent is to indicate in general terms how the Heritage Council proposes to realise the ministerial aims set out in the statement of expectation.
- (3) The statement of intent is to be –
 - (a) in writing; and
 - (b) signed by the chairperson; and
 - (c) given to the Minister within 3 months after the Heritage Council is issued with the statement of expectation.
- (4) The Heritage Council is to ensure that the public has reasonable access to all statements of intent, including those that have been superseded.
- (5) Without limiting the generality of subsection (4), the Heritage Council is to ensure that any person presenting at any of its offices during normal business hours may –

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- (a) inspect any statement of intent without charge; and
- (b) obtain a copy of any statement of intent.

11. Staff

- (1) Subject to and in accordance with the *State Service Act 2000*, persons may be appointed or employed for the purposes of this Act.
- (2) The Secretary of the Department may make arrangements with another Head of a State Service Agency for any State Service officers and State Service employees employed in that Agency to be made available to perform functions under this Act.
- (3) An officer or employee made available under subsection (2) may hold office in conjunction with State Service employment.

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PART 3 – FINANCIAL PROVISIONS

12. Heritage Fund

- (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.

13. Application of Fund

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;

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- (c) the provision of financial or other assistance for the purposes of this Act.

14. Money and property on trust

- (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.

14A. Accounting records

- (1) The Heritage Council is to keep accounting records that correctly record and explain its transactions and financial position.
- (2) The records are to be kept in a manner that –
 - (a) allows true and fair accounts of the Heritage Council to be prepared; and
 - (b) allows its accounts to be conveniently and properly audited or reviewed; and

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- (c) subject to any contrary direction of the Treasurer, complies with Australian Accounting Standards; and
- (d) complies with any direction of the Minister.

14B. Financial statements

- (1) The Heritage Council is to prepare and forward to the Auditor-General a copy of its financial statements for each financial year in accordance with the *Audit Act 2008*.
- (2) Financial statements are to contain any information the Treasurer may determine.

14C - 14D.

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Part 4 – Tasmanian Heritage Register

PART 4 – TASMANIAN HERITAGE REGISTER

15. Heritage Register

- (1) The Heritage Council is to keep a register to be known as the Tasmanian Heritage Register.
- (1A) The purpose of the Heritage Register is to ensure that Tasmania –
 - (a) keeps an inventory of places of State historic cultural heritage significance; and
 - (b) accords those places status and recognition; and
 - (c) has a basis for protecting that historic cultural heritage significance.
- (1B) Subsection (1A) does not apply in respect of places whose historic cultural heritage significance derives solely from their cultural value to the Aboriginal people of Tasmania.
- (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:

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- (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 any, or any combination of, the following:
 - (i) its address;
 - (ii) its title particulars;
 - (iii) its GDA coordinates; and

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- (b) define the boundaries of the place by reference to either or both of the following:
 - (i) its title;
 - (ii) a plan in the Central Plan Register; and
- (c) describe the place; and
- (d) state the historic cultural heritage significance of the place, including –
 - (i) the registration criteria on which the entry is based; and
 - (ii) the way in which the place meets those registration criteria.
- (5) Any person may inspect the Heritage Register during normal business hours.
- (6)

16. Entry of places in Heritage Register

- (1) The Heritage Council may enter a place in the Heritage Register if it is satisfied that the place has historic cultural heritage significance.
- (2) For the purposes of subsection (1), the Heritage Council may determine that a place has historic cultural heritage significance if it is satisfied that the place meets one or more of the following criteria:

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- (a) the place is important to the course or pattern of Tasmania's history;
- (b) the place possesses uncommon or rare aspects of Tasmania's history;
- (c) the place has the potential to yield information that will contribute to an understanding of Tasmania's history;
- (d) the place is important in demonstrating the principal characteristics of a class of place in Tasmania's history;
- (e) the place is important in demonstrating a high degree of creative or technical achievement;
- (f) the place has a strong or special association with a particular community or cultural group for social or spiritual reasons;
- (g) the place has a special association with the life or works of a person, or group of persons, of importance in Tasmania's history;
- (h) the place is important in exhibiting particular aesthetic characteristics.

17. Provisional entry in Register

- (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

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provisional basis if in its opinion it meets any one or more of the registration 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.

18. Procedure relating to provisional entry in Register

- (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 –

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- (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 registration 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 a local public 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

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- (b) a local public notice is published under subsection (3)(b).
- (4A) The Heritage Council may give such other notice of a decision to provisionally enter a place in the Heritage Register as it considers appropriate.
- (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).

19. Objection to permanent entry in Register

- (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

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- (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 of the registration criteria on which the entry is intended to be based.
- (4) A person who lodged an objection may appear in person before the Heritage Council to make representations in relation to the objection.

20. Submission relating to permanent entry in Register

- (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 the relevant local public notice is published under section 18(3)(b); or
 - (b) any further period the Heritage Council allows.

21. Permanent entry in Register

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

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- (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.

22. Removal of place from Register

- (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.
- (1A) However, the Heritage Council may only make a decision under subsection (1) in respect of a place if it is satisfied that –
- (a) the place has been destroyed; or
 - (b) because of new information or for some other reason, the place does not meet, or no longer meets, any of the registration criteria; or
 - (c) the entry duplicates or substantially duplicates an existing entry; or

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- (d) the removal is required by law.
- (2) A person who applies to have a place removed from the Heritage Register is to give any information the Heritage Council requires to enable it to deal with the application.
- (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 registration 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

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- (iii) explaining the right to object to the removal; and
 - (b) unless subsection (1A)(a), (c) or (d) applies, publish a local public 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) the relevant local public notice is published under subsection (5)(b).
- (7) The Heritage Council may give such other notice of a prospective removal of a place from the Heritage Register as it considers appropriate.

23. Objection to removal from Register

- (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 –

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- (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.

24. Submission relating to removal from Register

- (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 the relevant local public notice is published under section 22(5)(b); or
 - (b) any further period the Heritage Council allows.

25. Removal of entry from Register

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

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- (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.

26. Notice of entry in or removal from Register

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) if an objection or submission was lodged under this Part, by a local public notice.

(c)

27. Appeal against Heritage Council’s decision

- (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 is to 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 registration 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*.

28. Determination of appeal

In hearing an appeal against the Heritage Council’s decision under section 21 or 25, the Appeal Tribunal may –

- (a) confirm that decision; or

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- (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.

PART 5 – HERITAGE AREAS

29. Declaration of heritage areas

- (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 local public notice (other than in the *Gazette*).
- (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

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- (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) An order under this section is not a statutory rule but section 47 of the *Acts Interpretation Act 1931* applies to such an order as if it were a regulation.

30. Effect of order

- (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 Planning Act identifies and conserves any place of historic cultural heritage significance within a heritage area.

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31. Exemptions

- (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.

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32. Interpretation of Part

(1) In this Part –

application day, in relation to any heritage works, means the day on which the relevant planning authority receives a valid permit application to carry out the heritage works;

assessment period, in relation to a permit application, means the following:

- (a) in the case of an application for a discretionary permit, the period, or further period (if any), applicable to that application under section 57(6)(b) of the Planning Act;
- (b) in the case of an application for a combined permit under section 40T of the Planning Act that accompanies a request to amend an LPS, the periods applicable to the amendment of that LPS under sections 38(2) and 40D(a) of that Act;
- (c) in the case of an application for a combined permit under section 43A of the former Planning Act that accompanies a request to amend a planning scheme, the

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periods applicable to the amendment of that planning scheme under sections 33(3) and 33(3AA) of the former Planning Act;

- (d) in the case of a permit application to which section 25 of the *Environmental Management and Pollution Control Act 1994* applies, the period applicable to that application under subsection (8D) of that section;

certificate of exemption means a certificate under section 42;

combined permit means a permit, the application for which is combined with the planning scheme amendment process under –

- (a) Division 2A of Part 3 of the former Planning Act; or
- (b) Division 4 of Part 3B of the Planning Act;

combined permit application means an application for a combined permit to carry out heritage works;

discretionary permit means a permit to which section 57 of the Planning Act applies;

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discretionary permit application means an application for a discretionary permit to carry out heritage works;

exemption certificate application means an application for a certificate of exemption made under section 42(1);

former Planning Act means the Planning Act as in force immediately before the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*;

heritage works means works, as defined in section 3, when carried out to or in relation to a registered place or heritage area;

permit application means an application for –

- (a) a discretionary permit to carry out heritage works; or
- (b) a combined permit to carry out heritage works;

relevant planning authority, in relation to any heritage works, means the planning authority of the municipal area in which the heritage works are carried out or, if applicable, proposed to be carried out;

relevant planning scheme, in relation to any heritage works, means the planning scheme in force in the place where the

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heritage works are carried out or, if applicable, proposed to be carried out;

relevant special planning order, in relation to any heritage works, means the special planning order, if any, in force in the place where the heritage works are carried out or, if applicable, proposed to be carried out.

- (2) Unless the contrary intention appears in this Part, expressions that are defined in the Planning Act and used in this Part have, apart from the expression “works”, the same meaning in this Part as they have in that Act.

33. Application of Planning Act to heritage works is subject to this Part

The provisions of this Part prevail, to the extent of any inconsistency, over the provisions of the Planning Act and any planning scheme or special planning order or planning directive in force under that Act.

34. Legal status of heritage works if no certificate of exemption, &c.

- (1) This section applies to heritage works for which a certificate of exemption has not been issued.
- (2) For all purposes –
- (a) the heritage works are taken to be a development under the Planning Act; and

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- (b) the relevant planning scheme or relevant special planning order, if it does not do so, is taken to require a permit for that development; and
- (c) the relevant planning scheme or relevant special planning order, if it does not do so, is taken to specify that development as being of a kind which a planning authority has a discretion to refuse or permit.

35. Heritage works require heritage approval

- (1) A person must not carry out any heritage works unless those heritage works have heritage approval.

Penalty: Fine not exceeding –

- (a) 10 000 penalty units for a body corporate; or
 - (b) 5 000 penalty units for an individual.
- (2) For the purposes of subsection (1), heritage works are taken to have heritage approval if, and only if –
 - (a) in a case where a certificate of exemption has been issued, the heritage works are carried out in accordance with –
 - (i) that certificate of exemption; and

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- (ii) if a discretionary permit or other permit is required for the heritage works under the Planning Act, that discretionary permit or other permit; or
 - (b) in a case where a certificate of exemption has not been issued, the heritage works are carried out in accordance with a discretionary permit or a combined permit.
- (3) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that –
 - (a) the heritage works were carried out in response to an emergency; and
 - (b) the heritage works were, both as to nature and extent, reasonably necessary for the purposes of responding to the emergency; and
 - (c) in the circumstances, it was not practicable to seek a certificate of exemption; and
 - (d) the defendant, before, while or as soon as practicable after carrying out the heritage works, notified the Heritage Council, in writing, of the emergency and the details of the heritage works.
- (4) Subsection (1) does not apply to –

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- (a) heritage works that solely involve forest practices, as defined in the *Forest Practices Act 1985*, carried out under and in accordance with another law of the State; or
 - (b) heritage works that solely involve mining, as defined in the *Mineral Resources Development Act 1995*, carried out under and in accordance with another law of the State; or
 - (c) heritage works to a registered place of worship that are required solely for liturgical purposes.
- (5) In this section –
- emergency*** means an event that –
- (a) endangers, destroys or threatens to endanger or destroy human life, property or the environment; or
 - (b) causes or threatens to cause injury to persons.

36. Discretionary permit application to be sent to and considered by Heritage Council

- (1) This section applies if a person makes a permit application.
- (2) The relevant planning authority must give a copy of the permit application to the Heritage Council

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as soon as practicable (and in any event within 5 days) after the application day.

- (3) Within 7 days after receiving a copy of a permit application, the Heritage Council is to consider the permit application and notify the relevant planning authority that –
 - (a) the Heritage Council has no interest in the permit application; or
 - (b) the Heritage Council wishes to be involved in determining the permit application.
- (4) If the Heritage Council notifies the relevant planning authority that it wishes to be involved in determining a permit application, it may state in the notification that, to further consider the permit application under section 39, it requires additional information as specified in the notification.
- (5) If the relevant planning authority fails to give a copy of the permit application to the Heritage Council within 5 days after the application day, the assessment period for that application ceases to run until the Heritage Council has received a copy of the application.

37. Procedure if Heritage Council requires additional information to consider discretionary permit application

- (1) This section applies if, in respect of a permit application, the Heritage Council gives the

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relevant planning authority a notification referred to in section 36(3)(b) that states that the Heritage Council requires additional information as specified in the notification.

- (2) As soon as practicable after receiving the notification referred to in subsection (1) (and in any event within 5 days), the relevant planning authority must, require the applicant to provide it with the additional information required by the notification.
- (3) As soon as practicable after receiving the additional information (and in any event within 5 days), the relevant planning authority must give it to the Heritage Council.
- (4) As soon as practicable after receiving the additional information from the relevant planning authority (and in any event within 14 days), the Heritage Council must notify the relevant planning authority as to whether or not it is satisfied that the additional information answers the requirement in the notification referred to in subsection (1).
- (5) The assessment period for the permit application ceases to run until the Heritage Council provides notice to the relevant planning authority under subsection (4) that it is satisfied that the additional information answers the requirement in the notification referred to in subsection (1).

38. Procedure if Heritage Council has no interest in permit application

- (1) This section applies if, in respect of a permit application –
 - (a) the Heritage Council gives the relevant planning authority the notification referred to in section 36(3)(a); or
 - (b) the Heritage Council fails to give the relevant planning authority a notification of any kind under section 36(3) within the time that section requires.
- (2) Section 34(2) ceases to apply in relation to the heritage works to which the permit application relates (the *relevant heritage works*).
- (3) If, but for section 34(2), no permit (discretionary or otherwise) in respect of the relevant heritage works would have been required under the Planning Act –
 - (a) the permit application is taken to have been withdrawn; and
 - (b) the relevant planning authority is to notify the applicant and the Heritage Council that a permit is not so required and that the permit application is so taken to have been withdrawn.
- (4) If, but for section 34(2), a discretionary permit would not have been required under the Planning Act but another permit would have been so required in respect of the relevant heritage

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works, the permit application is taken to be an application made under the appropriate section of the Planning Act for that other permit and the relevant planning authority is to –

- (a) if the application was made under –
 - (i) Division 2A of Part 3, or Division 2 of Part 4, of the Planning Act as in force before the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015* – determine the application under the appropriate provisions of that Division; or
 - (ii) Division 4 of Part 3B, or Division 2A of Part 4, of the Planning Act as in force after the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015* – determine the application under the appropriate provisions of that Division; and
 - (b) once it has determined the application, notify the Heritage Council of that determination.
- (5) If a permit is required under the Planning Act in respect of the relevant heritage works regardless

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of the operation of section 34(2), the relevant planning authority is to –

- (a) determine the permit application under the appropriate provisions of Division 2A of Part 3, or Division 2 of Part 4, of the Planning Act; and
 - (b) once it has determined the permit application, notify the Heritage Council of that determination.
- (6) The Heritage Council is not entitled to –
- (a) make representations under the Planning Act in relation to the withdrawal of the permit application by reason of subsection (3)(a) or the determination of the permit application (whether as a discretionary permit application or as another permit application under the Planning Act) pursuant to subsection (5)(a) or subsection (4)(a); or
 - (b) take any other action in relation to the permit application or the relevant heritage works.

39. Procedure if Heritage Council wishes to be involved in determining discretionary permit application

- (1) This section applies if, in respect of a discretionary permit application, the Heritage Council gives the relevant planning authority the notification referred to in section 36(3)(b).

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- (2) The Heritage Council is to further consider the discretionary permit application and in so doing –
 - (a) is to have regard to the likely impact of the proposed heritage works on the historic cultural heritage significance of the relevant registered place or heritage area; and
 - (b) may have regard to any representations made in respect of the application; and
 - (c) is to have regard to any matters prescribed by the regulations for the purposes of this subsection; and
 - (d) is to have regard to any relevant works guidelines; and
 - (e) may liaise with the relevant planning authority.
- (3) As soon as practicable after the application day, the Heritage Council may notify the relevant planning authority that it requires an extra 14 days to consider the discretionary permit application, in which case the relevant planning authority is to notify the applicant of the Heritage Council's requirement.
- (4) As soon as practicable after receiving a representation in relation to the discretionary permit application, the relevant planning authority must give a copy of the representation to the Heritage Council.

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- (5) If the relevant planning authority becomes aware that the length of the assessment period for the discretionary permit application has been extended or shortened under any Act, the relevant planning authority is to notify the Heritage Council as soon as practicable after becoming so aware.
- (6) At least 7 days before the assessment period for the discretionary permit application expires, the Heritage Council is to notify the relevant planning authority that –
- (a) the Heritage Council consents to the discretionary permit being granted; or
 - (b) the Heritage Council consents to the discretionary permit being granted subject to the conditions specified in the notification; or
 - (c) the discretionary permit should be refused.
- (7) For the purposes of subsection (6)(b), the Heritage Council may, without limiting its discretion, specify conditions that –
- (a) set standards by which the heritage works are to be carried out; and
 - (b) require that suitably qualified persons be engaged to supervise, manage or do the heritage works or any part or stage of the heritage works; and

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- (c) require that arrangements be made for the curation and storage of items removed from the registered place or heritage area; and
 - (d) require that a photographic or other record be made of the heritage works or any part or stage of the heritage works.
- (8) If subsection (6)(a) applies or the Heritage Council fails to give the relevant planning authority a notification of any kind under subsection (6) within the assessment period for the discretionary permit application, then, subject to section 39C(4) –
- (a) the relevant planning authority may determine the discretionary permit application without further reference to the Heritage Council; and
 - (b) the Heritage Council is not entitled to take any further action in relation to the discretionary permit application or the relevant heritage works; and
 - (c) once it has determined the discretionary permit application, the relevant planning authority is to notify the Heritage Council of its determination.
- (9) If subsection (6)(b) applies and the relevant planning authority grants the discretionary permit –

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- (a) it must do so subject to (at least) the conditions required by the Heritage Council; and
 - (b) it must not make the discretionary permit subject to a condition that conflicts with any condition required by the Heritage Council.
- (10) If subsection (6)(c) applies, the relevant planning authority must refuse to grant the discretionary permit.
- (11) If the relevant planning authority grants the discretionary permit, it must give a copy of the discretionary permit to the Heritage Council.
- (12)

39A. Procedure if Heritage Council wishes to be involved in determining combined permit application

- (1) This section applies if, in respect of a combined permit application, the Heritage Council gives the relevant planning authority the notification referred to in section 36(3)(b).
- (2) The Heritage Council is to further consider the combined permit application and in so doing –
 - (a) is to have regard to the likely impact of the proposed heritage works on the historic cultural heritage significance of the relevant registered place or heritage area; and

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- (b) is to have regard to any matters prescribed by the regulations for the purposes of this subsection; and
 - (c) is to have regard to any relevant works guidelines; and
 - (d) may liaise with the relevant planning authority.
- (3) As soon as practicable after the application day, the Heritage Council may notify the relevant planning authority that it requires an extra 14 days to consider the combined permit application, in which case the relevant planning authority is to notify the applicant of the Heritage Council's requirement.
- (4) If the Heritage Council makes a notification under subsection (3) in relation to the combined permit application, the assessment period for that application is extended by 14 days.
- (5) If the relevant planning authority becomes aware that the length of the assessment period for the combined permit application has been extended or shortened under any Act, the relevant planning authority is to notify the Heritage Council as soon as practicable after becoming so aware.
- (6) At least 7 days before the assessment period for the combined permit application expires, the Heritage Council is to notify the relevant planning authority that –

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- (a) the Heritage Council consents to the combined permit being granted; or
 - (b) the Heritage Council consents to the combined permit being granted subject to the conditions specified in the notification; or
 - (c) the combined permit should be refused.
- (7) For the purposes of subsection (6)(b), without limiting the discretion of the Heritage Council, the Heritage Council may specify conditions that –
- (a) set standards by which the heritage works are to be carried out; and
 - (b) require that suitably qualified persons be engaged to supervise, manage or do the heritage works or any part or stage of the heritage works; and
 - (c) require that arrangements be made for the curation and storage of items removed from the registered place or heritage area; and
 - (d) require that a photographic or other record be made of the heritage works or any part or stage of the heritage works.
- (8) If subsection (6)(a) applies or the Heritage Council fails to give the relevant planning authority a notification of any kind under subsection (6) within the time that subsection requires, then, subject to section 39C(5) –

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- (a) the relevant planning authority may determine the application without further reference to the Heritage Council; and
 - (b) once it has determined the application, the relevant planning authority is to notify the Heritage Council of its determination.
- (9) If subsection subsection (6)(b) applies and the relevant planning authority decides to grant the combined permit –
 - (a) it must do so subject to (at least) the conditions specified in the notification given by the Heritage Council under subsection (6); and
 - (b) it must not decide to make the combined permit subject to a condition that conflicts with any condition specified in the notification given by the Heritage Council under subsection (6).
- (10) If subsection (6)(c) applies, the relevant planning authority must make a decision to refuse to grant the combined permit.
- (11) The relevant planning authority must –
 - (a) as soon as practicable after deciding under section 40Y of the Planning Act or section 43F(1) of the former Planning Act to grant, or refuse to grant, the combined permit, provide a copy of that decision to the Heritage Council; and

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- (b) within 7 days after the expiration of the relevant exhibition period, provide the Heritage Council with a copy of representations received in relation to the combined permit under section 41(1) of the Planning Act or section 43F(5) of the former Planning Act.
- (12) The Heritage Council must, within 28 days after receiving representations under subsection (11), provide a report to the Commission containing –
 - (a) a statement of its opinion as to the merit of each representation that addresses historic cultural heritage concerns, including, in particular, its views as to the need, in light of that representation, for modification of the relevant planning authority’s decision in relation to the combined permit application; and
 - (b) the recommendations, in respect of the decision in relation to the combined permit application, that the Heritage Council thinks fit.
- (13) The Commission must, before making a decision in relation to the combined permit application under section 42B(1) of the Planning Act or section 43H(1) of the former Planning Act, consider the statements and recommendations provided to the Commission in relation to that application by the Heritage Council under this section.

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- (14) The Commission must give the Heritage Council notice in writing of any decision the Commission makes under section 42B(1) of the Planning Act or section 43H(1) of the former Planning Act in relation to the combined permit application.
- (15) In this section –
- relevant exhibition period*, in relation to a combined permit application, means –
- (a) in the case of an application under section 40T of the Planning Act that accompanies a request to amend an LPS, the period specified, in accordance with section 40G(3)(a) of that Act, in the exhibition notice as the exhibition period for the consequent draft amendment of the LPS; and
 - (b) in the case of an application under section 43A of the former Planning Act that accompanies a request to amend a planning scheme, the exhibition period under section 38(1)(a) of that Act for the consequent draft amendment of the planning scheme.

39B. Provision of further information to Heritage Council

If, after a person has made a permit application, the relevant planning authority receives any further information from the applicant in relation to that application, the relevant planning authority must as soon as practicable after receiving the information (and in any event within 5 days) provide that further information to the Heritage Council.

39C. Substantial changes to proposed heritage works

- (1) This section applies if –
 - (a) the Heritage Council receives further information in relation to a permit application under section 39B; and
 - (b) as a consequence of that further information, the Heritage Council believes there is a substantial change to the heritage works proposed to be carried out in the permit application.
- (2) If the further information is received after the Heritage Council has given a notification to the relevant planning authority in relation to the permit application under section 36(3), the Heritage Council is to, within 7 days after receiving that further information, reconsider that application and do either of the following:

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- (a) give a new notification under section 36(3) in substitution for the original notification;
 - (b) confirm the original notification.
- (3) If the Heritage Council gives a new notification under section 36(3)(b) that states that the Heritage Council requires additional information to further consider the permit application the periods referred to in subsections (4) and (5) cease to run in relation to that application until the Heritage Council provides notice to the relevant planning authority under section 37(4) that it is satisfied that the additional information answers the requirement in the new notification.
- (4) If the further information is received after the Heritage Council has given notification under section 39(6) in relation to a discretionary permit application, the Heritage Council may, within 35 days after receiving that further information, reconsider that application in accordance with section 39(2) and do either of the following:
 - (a) give a new notification under section 39(6) in substitution for the original notification;
 - (b) confirm the original notification.
- (5) If the further information is received after the Heritage Council has given notification under section 39A(6) in relation to a combined permit application, the Heritage Council may, within 35 days after receiving that further information,

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reconsider that application in accordance with section 39A(2) and do either of the following:

- (a) give a new notification under section 39A(6) in substitution for the original notification;
 - (b) confirm the original notification.
- (6) If, in accordance with this section, the Heritage Council reconsiders a permit application, the assessment period ceases to run for that application while the Heritage Council reconsiders that application.

40. Consideration, &c., of application under delegation

- (1) This section applies if the responsibilities of the Heritage Council under section 36 are discharged by a delegate of the Heritage Council.
- (2) The delegate is to keep the Heritage Council informed of all decisions taken by the delegate, under and in relation to this Part, regarding the relevant application.

41. Correction and minor amendment of permits

- (1) This section applies if, pursuant to section 42D, 43, 55 or 56 of the Planning Act or section 43J or 43K of the former Planning Act, an authority intends to make any correction or minor amendment of a discretionary permit in respect of which it has been given a notification by the

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Heritage Council under section 39(6)(a) or (b) section 39A(6)(a) or (b).

- (2) Before making the correction or minor amendment, the authority must –
 - (a) consult the Heritage Council; and
 - (b) have regard to any submissions made by the Heritage Council pursuant to that consultation.
- (3) However, the authority is not obliged to comply with subsection (2) if it reasonably determines that the correction or minor amendment will have no impact on –
 - (a) historic cultural heritage significance; or
 - (b) any permit condition required by the Heritage Council under section 39(6)(b) or section 39A(6)(b).
- (4) In this section –

authority means the Commission or a planning authority.

42. Certificates of exemption for heritage works

- (1) A person may apply to the Heritage Council for a certificate of exemption for heritage works.
- (2) The exemption certificate application –
 - (a) is to be in a form provided or approved by the Heritage Council; and

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- (b) is to be supported by such information as the Heritage Council requires, either at the time of lodgment or subsequently.
- (3) The Heritage Council may –
 - (a) approve the exemption certificate application; or
 - (b) refuse the exemption certificate application.
- (4) Without limiting its discretion, the Heritage Council must approve the exemption certificate application if it is reasonably satisfied that the heritage works –
 - (a) are identified in the works guidelines as works that will have no impact or only negligible impact on the historic cultural heritage significance of the relevant registered place or heritage area; and
 - (b) are capable of being carried out in accordance with the works guidelines.
- (5) If subsection (3)(b) applies, the Heritage Council is to notify the applicant of –
 - (a) the refusal; and
 - (b) the reasons for the refusal.
- (6) If subsection (3)(a) applies, the Heritage Council is to –
 - (a) issue the applicant with the certificate of exemption; and

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- (b) immediately give the relevant planning authority a copy of the certificate of exemption.
- (7) If issued, the certificate of exemption may be in such form and contain such information as the Heritage Council determines but it must clearly identify –
 - (a) the heritage works for which it is issued; and
 - (b) the registered place or heritage area in relation to which those heritage works may be carried out.
- (8) In this section –
 - heritage works* means –
 - (a) specific heritage works; or
 - (b) a series of heritage works.

43. Effect of certificates of exemption

- (1) Subject to subsection (2), a certificate of exemption allows the heritage works identified in the certificate to be carried out in relation to the registered place or heritage area identified in the certificate.
- (2) If the carrying out of the heritage works identified in a certificate of exemption, or any part of those heritage works, requires a discretionary permit or other permit under the

Planning Act, the certificate of exemption does not annul, qualify or displace that requirement.

44. Contravention of heritage works conditions

A person must not contravene a condition of a discretionary permit, or a combined permit, for heritage works.

Penalty: Fine not exceeding –

- (a) 2 000 penalty units for a body corporate; or
- (b) 1 000 penalty units for an individual.

45. Appeals concerning applications

- (1) Where, in respect of a discretionary permit application, the Heritage Council gives the relevant planning authority the notification under section 36(4) and the applicant consequently lodges an appeal under section 61(3) of the Planning Act, the Heritage Council is joined as a respondent to the appeal.
- (2) Where, in respect of a discretionary permit application, the Heritage Council gives the relevant planning authority the notification under section 39(6)(a) or (b), the Heritage Council is joined as a respondent to any appeal under section 61(4) or (5) of the Planning Act in respect of the discretionary permit.

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- (3) Where, in respect of a discretionary permit application, the Heritage Council gives the relevant planning authority the notification under section 39(6)(c) and the permit is refused partly on the grounds of that notification and partly on other grounds, the Heritage Council is, for the purposes of section 61(4) of the Planning Act, joined as a respondent to any appeal in respect of the refusal.
- (4) Where, in respect of a discretionary permit application, the Heritage Council gives the relevant planning authority the notification under section 39(6)(c) and the permit is refused solely because of that notification, the Heritage Council is, for the purposes of section 61(4) of the Planning Act, the respondent to any appeal in respect of the refusal and the relevant planning authority is not joined as a respondent.
- (5) Where, in respect of a discretionary permit application, the Heritage Council gives the relevant planning authority the notification under section 36(3) and the applicant applies under section 59(3) of the Planning Act to the Appeal Tribunal, within the meaning of that Act, the Heritage Council is, for the purposes of that Act, joined as a respondent to the application.

46. Applications made before commencement of
Historic Cultural Heritage Amendment Act 2013

- (1) In this section –

former Act means this Act as in force at any time before the Part 6 substitution day;

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former Part 6 means Part 6 of this Act as in force at any time before the Part 6 substitution day;

interim period means the period –

- (a) beginning on the Part 6 substitution day; and
- (b) ending immediately before the validation Act commencement day;

interim period approval means –

- (a) an approval that –
 - (i) was, during the interim period, purportedly given, under the former Part 6, in relation to a surviving application; and
 - (ii) would have been valid if the former Part 6 had applied (other than by virtue of this section), in relation to the surviving application, during the interim period; or
- (b) if the former Part 6 had applied (other than by virtue of this section), before the validation Act commencement day, in relation to a surviving application, an approval that would have been

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taken to have been given under section 42 of this Act, as in force immediately before the Part 6 substitution day, in relation to the surviving application;

Part 6 substitution day means the day on which section 22 of the *Historic Cultural Heritage Amendment Act 2013* commenced;

surviving application means an application that –

- (a) was lodged under section 32 of this Act as in force at any time before the Part 6 substitution day; and
- (b) was not, before the Part 6 substitution day –
 - (i) approved under the former Act; or
 - (ii) taken to be approved under the former Act; or
 - (iii) refused under the former Act; or
 - (iv) withdrawn;

validation Act commencement day means the day on which the *Historic Cultural Heritage Amendment (Validation) Act 2015* commences.

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- (2) Part 6 of this Act, as in force immediately before the Part 6 substitution day, is to be taken to have been in force in the interim period, and is to be taken to be in force after the validation Act commencement day, in relation to –
- (a) a surviving application; and
 - (b) an interim period approval; and
 - (c) an approval given, in relation to a surviving application, under Part 6 of the Act as applied by virtue of this subsection –

until the application, interim period approval, or approval, respectively, ceases to be in force under Part 6 of the Act as applied by virtue of this section.

46A. Applications made before commencement of *Historic Cultural Heritage Amendment Act 2019*

The amendments to this Act made by the *Historic Cultural Heritage Amendment Act 2019* do not apply in relation to a permit application that is made before the commencement of that Act.

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Part 7 – Heritage Agreements

PART 7 – HERITAGE AGREEMENTS

47. Heritage agreement

- (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)
 - (c) the relevant planning authority with the Minister’s approval.
- (2) The Minister 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.

48. Provisions of heritage agreement

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

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- (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.

49. Variation or termination of heritage agreement

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

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- (a) by a subsequent agreement with the other party; or
 - (b) in a manner specified in the original agreement.
- (2) The Minister or the relevant planning authority may only vary or terminate a heritage agreement on the Heritage Council’s advice.

50. Notification to Recorder of Titles

- (1) The Minister 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*.

51. Duration of heritage agreement

A heritage agreement –

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

52. Binding nature of heritage agreement

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.

53. Enforcement order

- (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 Planning Act.

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- (3) The Heritage Council –
 - (a) is to enter details of an enforcement order in the Heritage Register 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.

54. Appeal against enforcement order

- (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.

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- (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.

55. Financial and other assistance

- (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.

56. Non-application of other laws

- (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.

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- (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.
- (3) An order in respect of a place is not a statutory rule.

**PART 8 – STOPWORK ORDERS AND REPAIR
NOTICES**

57. Stopwork order

- (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 after the order is made; and

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- (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.

58. Duration of stopwork order

- (1) 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.

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59. Revocation of stopwork order

- (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).

60. Notice to take or stop action

- (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.

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(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.

61. Appeal against notice

(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 is to 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*.

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62. Determination of appeal

- (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

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- (b) any reasonable costs incurred by the appellant as a result of complying with that notice.

63. Failure to comply with notice or order

- (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).

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- (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

PART 9 – SHIPWRECKS

64. Application of Part

- (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.

65. Shipwrecks in Register

- (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.

66. Activity disturbing shipwrecks

- (1) A person must not undertake any activity which is likely to result in the physical disturbance or

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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.

67. Approval of application to undertake activity

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.

68. Revocation of approval to undertake activity

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.

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Part 9 – Shipwrecks

69. Protected zone

- (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.
- (5) A notice under subsection (1) is not a statutory rule.

70. Approval of application to enter protected zone

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.

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71. Revocation of approval to enter protected zone

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.

72. Finding shipwreck

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.

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Part 10 – Additional orders

PART 10 – ADDITIONAL ORDERS

73. Order to repair damage

- (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.

74. Order prohibiting works

- (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.

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- (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.
- (5) An order is not a statutory rule.

75. Lodgment of orders with Recorder of Titles

- (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 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.

76. Order charge on land

An order under this Part –

- (a) is a charge on the land; and

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- (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.

77. Failure to comply with order

A person must comply with an order under this Part.

Penalty: Fine not exceeding 10 000 penalty units.

PART 11 – CERTIFICATES

78. Application for certificate for unregistered place

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

79. Separate applications for separate titles

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.

80. Issue of certificate for unregistered place

- (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 –

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Part 11 – Certificates

- (a) the application is not frivolous or vexatious; and
 - (b) the place or part of the place does not meet any of the registration criteria.
- (2) If the Heritage Council is satisfied, as required under subsection (1), it must –
- (a) give the relevant 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 a local public 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.
- (2A) The Heritage Council may give such other notices for the purposes of this section as it considers appropriate.

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- (3) If the Heritage Council is not satisfied as required under subsection (1), it must –
- (a) refuse to issue the certificate; and
 - (b) notify the applicant–
 - (i) of the reasons for the refusal; and
 - (ii) of any intention it has to deal with the place under Part 4.

81. Objection to intention to issue certificate for unregistered place

- (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.

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82. Submission relating to certificate for unregistered place

- (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 the relevant local public notice is published under section 80(2)(b); or
 - (b) any further period the Heritage Council allows.

83. Issue of certificate

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.

84. Duration of certificate for unregistered place

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

85. Prohibition on dealing with unregistered place

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.

86. Application for certificate for affected place

- (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, if any.

87. Issue of certificate for affected place

- (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 –

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- (a) refuse to issue the certificate; and
- (b) notify the applicant of the reasons for the refusal.

88. Certificate as evidence

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

PART 12 – MISCELLANEOUS

89. Assistance to Heritage Council

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

90.

90A. Guidelines

- (1) The Heritage Council may issue –
 - (a) guidelines on registration procedures and other matters relating to the registration of places under this Act (*registration guidelines*); and
 - (b) guidelines for the purposes of Part 6 (*works guidelines*); and
 - (c) guidelines on other matters prescribed by the regulations.
- (2) The Heritage Council may amend or revoke any guidelines.
- (3) Guidelines –
 - (a) are to be written in plain language; and
 - (b) may be made so as to apply differently according to such factors as are specified in them; and

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- (c) may adopt, either wholly or in part and with or without modification, and either specifically or by reference, any standards, codes or other documents (whether published or issued before or after the commencement of this Act); and
 - (d) may not contain provisions that are repugnant to this Act, the regulations or a ministerial direction or statement of expectation under this Act; and
 - (e) may not purport to impose penalties or sanctions of any kind; and
 - (f) are binding on the Heritage Council itself; and
 - (g) are not statutory rules.
- (4) The *Acts Interpretation Act 1931* applies to the interpretation of guidelines as if they were by-laws.
- (5) The Heritage Council is to –
- (a) give public notice of the issue, amendment or revocation of any guidelines; and
 - (b) ensure that the public has reasonable access to guidelines.
- (6) Without limiting the generality of subsection (5)(b), the Heritage Council is to ensure that any person presenting at any of its offices during normal working hours can –

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- (a) inspect any guidelines without charge; and
 - (b) obtain a copy of any guidelines.
- (7) Subject to the requirements of this section, the Heritage Council may publish any guidelines as it considers necessary or expedient having regard to their intended application.

90B. Authorised officers

- (1) The Heritage Council may appoint a State Service officer or State Service employee to be an authorised officer for the purpose of this Act and that officer or employee may hold that office in conjunction with State Service employment.
- (2) An authorised officer may, if reasonably required for a purpose connected with the administration or enforcement of this Act, enter and inspect any place if –
 - (a) the occupier of the place consents to the officer's entry; or
 - (b) the entry is made under a warrant issued under section 90C; or
 - (c) the place is a public place and the entry occurs when the place is open to the public.
- (3) An authorised officer may, if reasonably required for a purpose connected with the administration or enforcement of this Act –

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- (a) take photographs, films or audio, video or other recordings; or
 - (b) examine or test any air or thing from a place or require the thing to be examined or tested or provided to the officer for examination or testing.
- (4) An authorised officer may require a person to provide to the officer a document, or a copy of a document, in the possession of the person, if the document is reasonably required for a purpose connected with the administration or enforcement of this Act.
- (5) The documents that a person may be required under subsection (4) to provide include, but are not limited to including, a document in writing that reproduces in a comprehensible form information in the possession of the person that is stored by an electronic device, object or process.
- (6) An authorised officer may examine, copy or take extracts from a document provided in accordance with a requirement imposed under subsection (5) or found in the conduct of a search under this Act.
- (7) An authorised officer may require a person to provide information to the officer that is reasonably required for a purpose connected with the administration or enforcement of this Act.
- (8) An authorised officer may only require a person to answer questions in relation to a matter if –

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- (a) the questions relate to a matter in respect of which information is reasonably required for a purpose connected with the administration or enforcement of this Act; and
 - (b) the officer reasonably suspects that the person may have the information.
- (9) An authorised officer may require a person who the officer reasonably suspects has committed, is committing, or is about to commit, an offence against this Act to –
- (a) state the person’s full name, date of birth and usual place of residence; and
 - (b) produce evidence of the person’s identity.

90C. Entry and search warrants

- (1) A magistrate may issue a warrant authorising an authorised officer to enter land, and any premises on land, that is land specified in the warrant.
- (2) A magistrate may issue a warrant under subsection (1) in relation to land, and any premises on land, if the magistrate is satisfied, on the application of an authorised officer, that there are reasonable grounds to believe –
 - (a) that a contravention of, or failure to comply with, this Act has been, is being,

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- or is about to be, committed on the land or the premises; or
- (b) that an object may be found, in or on the land or the premises, that constitutes evidence of a contravention of, or failure to comply with, this Act.
- (3) The grounds for an application for a warrant must be verified by affidavit.
- (4) A warrant issued under subsection (1) must specify –
- (a) the offence to which the warrant relates; and
 - (b) a description of the land to which the warrant relates; and
 - (c) the kinds of evidential material that are to be searched for under the warrant; and
 - (d) the name of the authorised officer or officers who is or are to be responsible for executing the warrant; and
 - (e) the period for which the warrant remains in force, which is not to be more than 28 days from the date on which the warrant is issued; and
 - (f) whether the warrant may be executed at any time or during particular hours; and
 - (g) that the warrant authorises the seizure of a thing that is referred to in paragraph (c) or any other thing, that is found on the

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land, or premises on the land, in the course of the search and that the person executing the warrant believes on reasonable grounds to be –

(i) evidential material in relation to an offence to which the warrant relates; or

(ii) evidential material in relation to another offence –

if the officer believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence.

- (5) An application for the issue of a warrant may be made either personally or by telephone.
- (6) If an application for a warrant is made by telephone –
- (a) the applicant must inform the magistrate of the applicant's name and that the applicant is an authorised officer; and
 - (b) the applicant must inform the magistrate of the grounds on which the applicant seeks the warrant; and
 - (c) if it appears to the magistrate from the information given by the applicant that there are proper grounds for the issue of a warrant, the magistrate –

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- (i) must inform the applicant of the facts on which the magistrate relies for the issue of a warrant; and
 - (ii) must not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts; and
 - (d) if the applicant gives the undertaking referred to in paragraph (c), the magistrate may then make out and sign a warrant, noting on the warrant the facts on which the magistrate relies as grounds for issue of the warrant; and
 - (e) the warrant will be taken to have been issued, and will come into force, when signed by the magistrate; and
 - (f) the magistrate must inform the applicant of the terms of the warrant; and
 - (g) the applicant must, as soon as practicable after the issue of the warrant, forward to the magistrate an affidavit verifying the facts referred to in paragraph (c).
- (7) In executing a warrant –
- (a) an authorised officer specified in the warrant may obtain the assistance that is necessary and reasonable in the circumstances; and

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- (b) a police officer assisting in executing the warrant may use the force against persons and things that is necessary and reasonable in the circumstances.
- (8) A person who executes a warrant must, on or as soon as practicable after executing the warrant –
 - (a) prepare a notice containing –
 - (i) his or her name and a statement that he or she is an authorised officer; and
 - (ii) the name of the magistrate who issued the warrant and the day and time of its issue; and
 - (iii) a description of the premises to which the warrant relates and of the authority conferred by the warrant; and
 - (b) provide the notice to the occupier or person apparently in charge of the land to which the warrant relates or leave it, on a prominent place on the land, for the occupier or person.
- (9) A warrant expires if it has not been executed by the end of the period of 28 days after the day on which it was issued.

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90D. Additional requirements where persons not fluent, &c., in English

- (1) A person is entitled to be assisted by an interpreter or other representative during any questioning conducted by an authorised officer in the course of investigating an offence against this Act, if the person is not reasonably fluent in English or able to comprehend spoken English.
- (2) As soon as the authorised officer becomes aware, or ought to have become aware, that subsection (1) applies in relation to a person, the officer may not question or further question the person until the person has been informed, in a manner that the person is likely to comprehend, that the person has the right to an interpreter, or another representative, chosen by the person, who is willing and able to assist the person.
- (3) If the person requests the assistance of an interpreter or other representative, the officer must not continue with the questioning, or further questioning, until an interpreter or other representative, chosen by the person and willing and able to assist the person, is present.

90E. Obstruction, &c., of authorised officers and others

- (1) A person must not –
 - (a) assault, resist, impede or obstruct an authorised officer in the exercise of the officer's powers, or in the performance of the officer's functions, under this Act; or

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- (b) use threatening, abusive or insulting language to an authorised officer in the exercise of the officer's powers, or in the performance of the officer's functions, under this Act; or
- (c) fail to comply with a requirement imposed on the person under section 90B; or
- (d) impersonate an authorised officer.

Penalty: Fine not exceeding 40 penalty units.

- (2) If a person is convicted by a court of an offence against subsection (1)(c) of failing to comply with a requirement, the court may order the person to comply with the requirement.

91. Immunity from liability

- (1) 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 or any other Act.
- (2) A liability that would, but for subsection (1), lie against a member or person acting under a direction of the Heritage Council lies against the Crown.

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92. Annual report

- (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.

93. Evidence of Register

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.

94. Amendment of Register

- (1) The Heritage Council may amend an entry in the Heritage Register –
 - (a) to update the entry; or
 - (b) to correct an error in or relating to the entry; or
 - (c) to give effect to any decision of the Appeal Tribunal under Part 4; or
 - (d) to reflect physical events or legal or planning changes relating to the entry; or

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- (e) to accommodate changes in the form of the Heritage Register; or
 - (f) for any other reasonable cause.
- (2) On amending an entry in the Heritage Register, the Heritage Council –
- (a) is to notify the owner of each registered place affected by the amendment; and
 - (b) may give such other notice of the amendment as it considers appropriate.
- (3) Subsection (2)(a) does not apply if the amendment is of a minor clerical or purely technical kind, not affecting the substantive entries in the Heritage Register in a material way.

95. False and misleading statements

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.

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96. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may prescribe fees and charges payable in relation to any matter under this Act.
- (3) The 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.
- (3A) The regulations may authorise any matter to be from time to time determined, applied, approved or regulated by the Minister or the Heritage Council.
- (4) The regulations 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.

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97. Listed places

- (1) By 28 February 1998, 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.

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- (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.

98.

99. Exemption from Act

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

100. Validity of certain entries in Register

No entry made in the Heritage Register before the commencement of the *Historic Cultural Heritage Amendment Act 2013* is to be taken to be invalid or defective by reason only that it does not comply or fully comply with section 15(4) as in force either before or after that commencement.

101. Administration of Act

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

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- (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 – PROVISIONS WITH RESPECT TO
MEMBERSHIP OF HERITAGE COUNCIL**

Section 6(2)

1. Term of office

(1) A member is to be appointed for a period, not exceeding 3 years, specified in the member's instrument of appointment and, if otherwise qualified, is eligible for reappointment from time to time.

(2 - 3)

2. Holding other office

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.

3. Remuneration of members

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

4. Vacation of office

- (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 –

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- (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.

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5. Filling of vacancies

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.

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**SCHEDULE 2 – PROVISIONS WITH RESPECT TO
MEETINGS OF HERITAGE COUNCIL**

Section 6(3)

1. Convening of meetings

- (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.

2. Notices of ordinary meetings

- (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.

3. Quorum at meetings

- (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.

4. Chairperson

- (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.

5. Resolutions

- (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.

5A. Resolutions outside of meetings

- (1) If 7 members sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the Heritage Council held on the day on which the document is signed or, if the

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members do not sign it on the same day, on the day on which the last of the members signs the document.

- (2) If a resolution is taken to have been passed under subclause (1), each member is to be –
 - (a) advised immediately of the matter; and
 - (b) provided with a copy of the terms of the resolution.
- (3) For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, is taken to constitute one document.

6. Disclosure of interests

- (1) A member who has an actual or perceived 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 an actual or perceived interest in the matter to which the disclosure relates must not take part in the making of the determination.
- (4) For the purposes of this clause, an *interest in a matter* includes a direct or indirect interest in a matter, whether pecuniary or otherwise.

7. Conduct at meetings

- (1) 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.
- (2) The Heritage Council may permit members to participate in a particular meeting or all meetings by –
 - (a) telephone; or
 - (b) video conference; or
 - (c) any other means of communication approved by the Heritage Council.
- (3) A member who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.

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8. Presumptions

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.

9. Validity of acts and proceedings

- (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.

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NOTES

The foregoing text of the *Historic Cultural Heritage Act 1995* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 8 October 2019 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Historic Cultural Heritage Act 1995</i>	No. 117 of 1995	28.2.1997
<i>Marine (Consequential Amendments) Act 1997</i>	No. 16 of 1997	30.7.1997
<i>Historic Cultural Heritage Amendment Act 1997</i>	No. 36 of 1997	6.11.1997
<i>Historic Cultural Heritage Amendment Act 1999</i>	No. 54 of 1999	27.10.1999
<i>State Service (Consequential and Miscellaneous Amendments) Act 2000</i>	No. 86 of 2000	1.5.2001
<i>Historic Cultural Heritage Amendment Act 2002</i>	No. 10 of 2002	30.5.2002
<i>Building (Consequential Amendments) Act 2003</i>	No. 26 of 2003	1.7.2004
<i>Audit (Consequential Amendments) Act 2008</i>	No. 50 of 2008	1.3.2009
<i>Historic Cultural Heritage Amendment Act 2013</i>	No. 70 of 2013	1.7.2010 1.3.2014
<i>Historic Cultural Heritage Amendment (Validation) Act 2015</i>	No. 2 of 2015	21.4.2015
<i>Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015</i>	No. 47 of 2015	17.12.2015
<i>Building (Consequential Amendments) Act 2016</i>	No. 12 of 2016	1.1.2017
<i>Historic Cultural Heritage Amendment Act 2019</i>	No. 36 of 2019	8.10.2019

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TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 16 of 1997, Sched. 1, No. 36 of 1997, s. 4, No. 10 of 2002, s. 4 and No. 70 of 2013, s. 4
Section 3A	Inserted by No. 70 of 2013, s. 5
Section 4A	Inserted by No. 70 of 2013, s. 6
Section 5	Amended by No. 12 of 2016, Sched. 1
Section 6	Amended by No. 70 of 2013, s. 7
Section 8	Amended by No. 36 of 1997, s. 5, No. 10 of 2002, s. 5 and No. 36 of 2019, s. 4
Section 9	Substituted by No. 70 of 2013, s. 8
Section 10A	Substituted by No. 70 of 2013, s. 8
Section 10B	Inserted by No. 70 of 2013, s. 9
Section 11	Inserted by No. 70 of 2013, s. 9
Section 14A	Amended by No. 86 of 2000, Sched. 1
Section 14B	Inserted by No. 36 of 1997, s. 6
Section 14C	Inserted by No. 36 of 1997, s. 6
Section 14D	Amended by No. 50 of 2008, Sched. 2
Section 15	Inserted by No. 36 of 1997, s. 6
Section 16	Amended by No. 50 of 2008, Sched. 2
Section 17	Inserted by No. 36 of 1997, s. 6
Section 18	Amended by No. 50 of 2008, Sched. 1
Section 19	Repealed by No. 50 of 2008, Sched. 2
Section 20	Inserted by No. 36 of 1997, s. 6
Section 22	Amended by No. 50 of 2008, Sched. 2
Section 24	Amended by No. 70 of 2013, s. 10
Section 26	Substituted by No. 70 of 2013, s. 11
Section 27	Amended by No. 70 of 2013, s. 12
Section 29	Amended by No. 70 of 2013, s. 13
Section 30	Amended by No. 70 of 2013, s. 14
Part 6	Amended by No. 70 of 2013, s. 15
Section 32	Amended by No. 70 of 2013, s. 16
Section 33	Amended by No. 70 of 2013, s. 17
Section 34	Amended by No. 10 of 2002, s. 6 and No. 70 of 2013, s. 18
Section 35	Amended by No. 70 of 2013, s. 19
Section 36	Amended by No. 70 of 2013, s. 20
	Amended by No. 70 of 2013, s. 21
	Substituted by No. 70 of 2013, s. 22
	Subsection (5) omitted by No. 54 of 1999, s. 4
	Substituted by No. 70 of 2013, s. 22
	Amended by No. 36 of 2019, s. 5
	Substituted by No. 70 of 2013, s. 22
	Subsection (3) omitted by No. 54 of 1999, s. 5
	Substituted by No. 70 of 2013, s. 22
	Substituted by No. 70 of 2013, s. 22
	Amended by No. 36 of 2019, s. 6
	Amended by No. 54 of 1999, s. 6
	Substituted by No. 70 of 2013, s. 22
	Amended by No. 36 of 2019, s. 7

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Provision affected	How affected
Section 37	Subsection (1) substituted by No. 54 of 1999, s. 7 Amended by No. 54 of 1999, s. 7 Substituted by No. 70 of 2013, s. 22 Amended by No. 36 of 2019, s. 8
Section 38	Substituted by No. 54 of 1999, s. 8, No. 70 of 2013, s. 22 Amended by No. 47 of 2015, s. 58 and No. 36 of 2019, s. 9
Section 39	Amended by No. 54 of 1999, s. 9 Substituted by No. 70 of 2013, s. 22 Amended by No. 36 of 2019, s. 10
Section 39A	Inserted by No. 36 of 2019, s. 11
Section 39B	Inserted by No. 36 of 2019, s. 11
Section 39C	Inserted by No. 36 of 2019, s. 11
Section 40	Amended by No. 54 of 1999, s. 10 Substituted by No. 70 of 2013, s. 22
Section 41	Substituted by No. 70 of 2013, s. 22 Amended by No. 36 of 2019, s. 12
Section 42	Substituted by No. 70 of 2013, s. 22
Section 43	Subsection (1) substituted by No. 54 of 1999, s. 11 Amended by No. 54 of 1999, s. 11 Substituted by No. 70 of 2013, s. 22
Section 44	Substituted by No. 70 of 2013, s. 22 Amended by No. 36 of 2019, s. 13
Section 45	Substituted by No. 70 of 2013, s. 22
Section 46	Repealed by No. 70 of 2013, s. 22 Inserted by No. 2 of 2015, s. 4
Section 46A	Inserted by No. 36 of 2019, s. 14
Section 47	Amended by No. 70 of 2013, s. 23
Section 49	Amended by No. 70 of 2013, s. 24
Section 50	Amended by No. 70 of 2013, s. 25
Section 53	Amended by No. 70 of 2013, s. 26
Section 56	Amended by No. 70 of 2013, s. 27
Section 57	Amended by No. 70 of 2013, s. 28
Section 61	Amended by No. 70 of 2013, s. 29
Section 69	Amended by No. 70 of 2013, s. 30
Section 74	Amended by No. 70 of 2013, s. 31
Section 75	Amended by No. 70 of 2013, s. 32
Section 78	Amended by No. 70 of 2013, s. 33
Section 80	Amended by No. 70 of 2013, s. 34
Section 82	Amended by No. 70 of 2013, s. 35
Section 86	Amended by No. 70 of 2013, s. 36
Section 87	Amended by No. 70 of 2013, s. 37
Section 90	Amended by No. 26 of 2003, Sched. 1 Repealed by No. 70 of 2013, s. 38
Section 90A	Inserted by No. 70 of 2013, s. 39
Section 90B	Inserted by No. 36 of 2019, s. 15
Section 90C	Inserted by No. 36 of 2019, s. 15
Section 90D	Inserted by No. 36 of 2019, s. 15
Section 90E	Inserted by No. 36 of 2019, s. 15

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Provision affected	How affected
Section 91	Substituted by No. 70 of 2013, s. 40
Section 94	Substituted by No. 70 of 2013, s. 41
Section 96	Amended by No. 70 of 2013, s. 42
Section 97	Amended by No. 36 of 1997, s. 7
Section 98	Repealed by No. 70 of 2013, s. 43
Section 100	Substituted by No. 70 of 2013, s. 44
Schedule 1	Amended by No. 10 of 2002, s. 7
Schedule 2	Amended by No. 36 of 2019,-+ s. 16