

## TASMANIA

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# **HISTORIC CULTURAL HERITAGE AMENDMENT BILL 2019**

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# **HISTORIC CULTURAL HERITAGE AMENDMENT BILL 2019**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*  
3 September 2019

*(Brought in by the Minister for Heritage, the Honourable  
William Edward Felix Hodgman)*

## **A BILL FOR**

### **An Act to amend the *Historic Cultural Heritage Act 1995***

Be it enacted by Her 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:

#### **1. Short title**

This Act may be cited as the *Historic Cultural Heritage Amendment Act 2019*.

#### **2. Commencement**

This Act commences on the day on which this Act receives the Royal Assent.

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**3. Principal Act**

In this Act, the *Historic Cultural Heritage Act 1995\** is referred to as the Principal Act.

**4. Section 6 amended (Constitution of Heritage Council)**

Section 6 of the Principal Act is amended by inserting after subsection (1E) the following subsections:

- (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.

**5. Section 32 amended (Interpretation of Part)**

Section 32(1) of the Principal Act is amended as follows:

- (a) by omitting “application for a discretionary permit” from the definition of *application day* and substituting “permit application”;
- (b) by inserting the following definition after the definition of *application day*:

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***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 periods applicable to the amendment of that planning scheme under sections 33(3) and

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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;

(c) by inserting the following definitions  
after the definition of *certificate of*  
*exemption*:

***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;

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- (d) by omitting “under” from the definition of *discretionary permit* and substituting “to which”;
- (e) by inserting “applies” after “Act” in the definition of *discretionary permit*;
- (f) by inserting the following definition after the definition of *exemption certificate application*:

***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*;

- (g) by inserting the following definition after the definition of *heritage works*:

***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;

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**6. Section 35 amended (Heritage works require heritage approval)**

Section 35(2)(b) of the Principal Act is amended by inserting “or a combined permit” after “permit”.

**7. Section 36 amended (Permit applications to be sent to and considered by Heritage Council)**

Section 36 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “discretionary”;
- (b) by omitting from subsection (2) “discretionary”;
- (c) by omitting from subsection (3) “discretionary” first occurring;
- (d) by omitting from subsection (3) “discretionary” second occurring;
- (e) by omitting from subsection (3)(a) “discretionary”;
- (f) by omitting from subsection (3)(b) “discretionary”;
- (g) by omitting from subsection (4) “discretionary” twice occurring;
- (h) by inserting the following subsection after subsection (4):



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- (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.

**8. Section 37 amended (Procedure if Heritage Council requires additional information to consider permit application)**

Section 37 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “discretionary”;
- (b) by inserting in subsection (2) “(and in any event within 5 days)” after “(1)”;
- (c) by omitting from subsection (2) “, as if it were exercising its power under section 54 of the Planning Act,”;
- (d) by inserting in subsection (3) “(and in any event within 5 days)” after “information”;
- (e) by omitting from subsection (4) “the period specified in section 54(3) of the Planning Act” and substituting “14 days”;

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(f) by omitting subsection (5) and substituting the following subsection:

(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).

**9. Section 38 amended (Procedure if Heritage Council has no interest in permit application)**

Section 38 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “discretionary”;
- (b) by omitting from subsection (2) “discretionary”;
- (c) by omitting from subsection (3)(a) “discretionary”;
- (d) by omitting from subsection (3)(b) “discretionary”;
- (e) by omitting from subsection (4) “discretionary” second occurring;
- (f) by omitting from subsection (5) “discretionary” first occurring;

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- (g) by omitting from subsection (5)(a) “discretionary”;
- (h) by omitting from subsection (5)(b) “discretionary”;
- (i) by omitting from subsection (6)(a) “discretionary” first occurring;
- (j) by omitting from subsection (6)(a) “discretionary” second occurring;
- (k) by omitting from subsection (6)(b) “discretionary”.

**10. Section 39 amended (Procedure if Heritage Council wishes to be involved in determining discretionary permit application)**

Section 39 of the Principal Act is amended as follows:

- (a) by omitting subsection (5) and substituting the following subsection:
  - (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.

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- (b) by omitting from subsection (6) “Before the prescribed period” and substituting “At least 7 days before the assessment period for the discretionary permit application”;
- (c) by omitting from subsection (8) “prescribed period” and substituting “assessment period for the discretionary permit application, then, subject to section 39C(4)”;
- (d) by omitting subsection (12).

**11. Sections 39A, 39B and 39C inserted**

After section 39 of the Principal Act, the following sections are inserted in Part 6:

**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

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- heritage significance of the  
relevant registered place or  
heritage area; and
- (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

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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 –
  - (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

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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 time that subsection requires, then, subject to section 39C(5) –
  - (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 (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

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- (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
  - (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 –



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- (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.
- (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 –

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***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:
  - (a) give a new notification under section 36(3) in substitution for the original notification;
  - (b) confirm the original notification.

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- (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, reconsider that application

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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.

**12. Section 41 amended (Correction and minor amendment of permits)**

Section 41 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “section 55 or 56” and substituting “section 42D, 43, 55 or 56”;
- (b) by inserting in subsection (1) “or section 43J or 43K of the former Planning Act” after “Act”;
- (c) by omitting from subsection (1) “a planning” and substituting “an”;
- (d) by inserting in subsection (1) “section 39A(6)(a) or (b)” after “(b)”;

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- (e) by omitting from subsection (2) “planning”;
- (f) by omitting from subsection (3) “planning”;
- (g) by inserting in subsection (3)(b) “or 39A(6)(b)” after “section 39(6)(b)”;
- (h) by inserting the following subsection after subsection (3):

(4) In this section –

*authority* means the  
Commission or a planning  
authority.

**13. Section 44 amended (Contravention of heritage works conditions)**

Section 44 of the Principal Act is amended by inserting “, or a combined permit,” after “permit”.

**14. Section 46A inserted**

After section 46 of the Principal Act, the following section is inserted in Part 6:

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

The amendments to this Act made by the  
*Historic Cultural Heritage Amendment*

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*Act 2019* do not apply in relation to a permit application that is made before the commencement of that Act.

**15. Sections 90B, 90C, 90D and 90E inserted**

After section 90A of the Principal Act, the following sections are inserted in Part 12:

**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

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administration or enforcement of this Act –

- (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.



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- (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 –
  - (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.

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**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, 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

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- (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 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 –

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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 –
    - (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

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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.

**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.

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**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
  - (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.



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**16. Schedule 2 amended (Provisions with respect to meetings of Heritage Council)**

Schedule 2 to the Principal Act is amended as follows:

- (a) by inserting the following clause after clause 5:

**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 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

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containing a statement in identical terms, each of which is signed by one or more members, is taken to constitute one document.

- (b) by omitting from clause 6(1) “a direct or indirect pecuniary” and substituting “an actual or perceived”;
- (c) by omitting from clause 6(3) “a direct or indirect pecuniary” and substituting “an actual or perceived”;
- (d) by inserting the following subclause after subclause (3) in clause 6:
  - (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.
- (e) by omitting clause 7 and substituting the following clause:

**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

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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.

**17. Repeal of Act**

This Act is repealed on the first anniversary of the day on which it commenced.