

TASMANIA

HISTORIC CULTURAL HERITAGE AMENDMENT BILL 2012

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HISTORIC CULTURAL HERITAGE AMENDMENT BILL 2012

*(Brought in by the Minister for Environment, Parks and
Heritage, the Honourable Brian Neal Wightman)*

A BILL FOR

An Act to amend the *Historic Cultural Heritage Act 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:

1. Short title

This Act may be cited as the *Historic Cultural
Heritage Amendment Act 2012*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Principal Act

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

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as
follows:

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- (a) by inserting the following definitions after the definition of *Fund*:

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;

- (b) by omitting the definition of *historic cultural heritage significance* and substituting the following definition:

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

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- (c) by inserting the following definition after the definition of *law*:

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
- (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;
- (d) by omitting “*National Trust of Australia (Tasmania) Act 1975*,” from the definition of *National Trust* and substituting “*National Trust Act 2006*,”;
- (e) by inserting the following definition after the definition of *National Trust*:

notify means give notice in writing;
- (f) by inserting the following definition after the definition of *place*:

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

- (g) by inserting the following definition after the definition of *protected zone*:

registered means entered in the Heritage Register;

- (h) by omitting the definitions of *registered place* and *registered shipwreck*;

- (i) by omitting the definition of *required criteria* and substituting the following definitions:

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

responsibilities means powers, functions and duties;

- (j) by inserting the following definition after the definition of *shipwreck*:

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

- (k) by omitting the definition of *use* and substituting the following definition:

use has the same meaning as in the Planning Act;

- (l) by omitting paragraph (d) from the definition of *works*;

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- (m) by omitting the definition of *works application* and substituting the following definition:

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

5. Section 3A inserted

After section 3 of the Principal Act, the following section is inserted in Part 1:

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.

6. Section 5 amended (Establishment of Heritage Council)

Section 5(2) of the Principal Act is amended by omitting “Schedule 1 to the *Land Use Planning and Approvals Act 1993*.” and substituting “Schedule 1 to the Planning Act.”.

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7. Sections 8 and 9 substituted

Sections 8 and 9 of the Principal Act are repealed and the following sections are substituted:

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.

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.

8. Sections 10A and 10B inserted

After section 10 of the Principal Act, the following sections are inserted in Part 2:

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
 - (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.

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- (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 –
 - (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

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

9. Section 15 amended (Heritage Register)

Section 15 of the Principal Act is amended as follows:

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- (a) by inserting the following subsections after subsection (1):

(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.

- (b) by omitting paragraphs (a) and (b) from subsection (4) and substituting the following paragraphs:

- (a) identify the place by reference to any, or any combination of, the following:
 - (i) its address;

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- (ii) its title particulars;
 - (iii) its GDA coordinates; and
- (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) by omitting paragraph (d) from subsection (4) and substituting the following paragraph:
 - (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.
- (d) by omitting subsection (6).

10. Section 16 substituted

Section 16 of the Principal Act is repealed and the following section is substituted:

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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:
 - (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;

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- (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.

11. Section 17 amended (Provisional entry in Register)

Section 17(1) of the Principal Act is amended by omitting "required criteria." and substituting "registration criteria."

12. Section 18 amended (Procedure relating to provisional entry in Register)

Section 18 of the Principal Act is amended as follows:

- (a) by omitting from subsection (3)(a)(ii) "reasons and the required criteria" and substituting "registration criteria";
- (b) by omitting from subsection (3)(b) "in a daily newspaper circulating in the area in which the place is situated a notice" and substituting "a local public notice";

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(c) by omitting from subsection (4)(b) “notice” and substituting “local public notice”;

(d) by inserting the following subsection after subsection (4):

(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.

13. Section 19 amended (Objection to permanent entry in Register)

Section 19 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

(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.

14. Section 20 amended (Submission relating to permanent entry in Register)

Section 20(2)(a) of the Principal Act is amended by omitting “a notice was” and substituting “the relevant local public notice is”.

15. Section 22 amended (Removal of place from Register)

Section 22 of the Principal Act is amended as follows:

- (a) by omitting subsection (2) and substituting the following subsections:

(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
- (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.

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- (b) by omitting from subsection (4) “required criteria” and substituting “registration criteria”;
- (c) by omitting from subsection (5)(b) “publish in a daily newspaper circulating in the area in which the place is situated a notice –” and substituting “unless subsection (1A)(a), (c) or (d) applies, publish a local public notice –”;
- (d) by omitting from subsection (6)(b) “a notice” and substituting “the relevant local public notice”;
- (e) by inserting the following subsection after subsection (6):
 - (7) The Heritage Council may give such other notice of a prospective removal of a place from the Heritage Register as it considers appropriate.

16. Section 24 amended (Submission relating to removal from Register)

Section 24(2)(a) of the Principal Act is amended by omitting “a notice was” and substituting “the relevant local public notice is”.

17. Section 26 amended (Notice of entry in or removal from Register)

Section 26 of the Principal Act is amended as follows:

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- (a) by omitting from paragraph (b) “by notice published in a daily newspaper circulating in the area in which the place is situated; and” and substituting “by a local public notice.”;
- (b) by omitting paragraph (c).

18. Section 27 amended (Appeal against Heritage Council’s decision)

Section 27 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “must” and substituting “is to”;
- (b) by omitting from subsection (3) “required criteria” and substituting “registration criteria”.

19. Section 29 amended (Declaration of heritage areas)

Section 29 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(b) “daily newspaper circulating in the area” and substituting “local public notice (other than in the *Gazette*)”;
- (b) by omitting subsection (5) and substituting the following subsection:
 - (5) An order under this section is not a statutory rule but section 47 of

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the *Acts Interpretation Act 1931*
applies to such an order as if it
were a regulation.

20. Section 30 amended (Effect of order)

Section 30(2) of the Principal Act is amended by omitting “Part 3 of the *Land Use Planning and Approvals Act 1993*” and substituting “Part 3 of the Planning Act”.

21. Part 6 substituted

Part 6 of the Principal Act is repealed and the following Part is substituted:

PART 6 – HERITAGE WORKS

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 application for a discretionary permit to carry out the heritage works;

certificate of exemption means a certificate under section 42;

discretionary permit means a permit under section 57 of the Planning Act;

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);

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

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 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,

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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

- (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 –

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- (i) that certificate of exemption; and
 - (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.
- (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.
- (4) Subsection (1) does not apply to –
 - (a) heritage works that solely involve forest practices, as defined in the

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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 discretionary permit application.
- (2) The relevant planning authority must give a copy of the discretionary permit

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application to the Heritage Council 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 discretionary permit application, the Heritage Council is to consider the discretionary permit application and notify the relevant planning authority that –
 - (a) the Heritage Council has no interest in the discretionary permit application; or
 - (b) the Heritage Council wishes to be involved in determining the discretionary permit application.
- (4) If the Heritage Council notifies the relevant planning authority that it wishes to be involved in determining a discretionary permit application, it may state in the notification that, to further consider the discretionary permit application under section 39, it requires additional information as specified in the notification.

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

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

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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), the relevant planning authority must, as if it were exercising its power under section 54 of the Planning Act, require the applicant to provide it with the additional information required by the notification.
- (3) As soon as practicable after receiving the additional information, 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 the period specified in section 54(3) of the Planning Act), 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) For the purposes of section 54 of the Planning Act, the relevant planning authority is satisfied that the additional information answers the requirement in the notification referred to in subsection (1) when, and only when,

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notified by the Heritage Council that it is so satisfied.

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

- (1) This section applies if, in respect of a discretionary 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) The relevant planning authority may determine the discretionary permit application without further reference to the Heritage Council.
- (3) The Heritage Council is not entitled to –
 - (a) make representations under the Planning Act in relation to the discretionary permit application; or
 - (b) take any other action in relation to the discretionary permit application or the relevant works.

- (4) Once it has determined the discretionary permit application, the relevant planning authority is to notify the Heritage Council of its determination.

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).
- (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

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- (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.
- (5) As soon as practicable after an extension of the period within which the relevant planning authority must grant or refuse to grant the discretionary permit application is agreed under section 57(6)(b)(i) or (ii) or section 57(6A) of the Planning Act, the relevant planning authority must notify the Heritage Council of the extension.
- (6) Before the prescribed period expires, the Heritage Council is to notify the relevant planning authority that –

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- (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
 - (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.

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- (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 prescribed period –
 - (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 –
 - (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.

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- (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) In this section –

prescribed period means –

- (a) in a case where the Heritage Council has not given the relevant planning authority notification under subsection (3) that it requires an extra 14 days to consider the discretionary permit application, the period of 35 days after the application day; or
- (b) in a case where the Heritage Council has given the relevant planning authority notification under subsection (3) that it requires an extra 14 days to consider the discretionary permit application, the period of

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49 days after the
application day.

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 55 or 56 of the Planning Act, a planning 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 Heritage Council under section 39(6)(a) or (b).
- (2) Before making the correction or minor amendment, the planning 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 planning 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).

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
 - (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 –

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- (a) approve the exemption certificate application; or
 - (b) refuse the exemption certificate application.
- (4) Without limiting its discretion, the Heritage Council may 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

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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 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

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61(4) or (5) of the Planning Act in respect of the discretionary permit.

- (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.

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46. Limitation on power of Heritage Council to agree to heritage works

- (1) Under this Part, the Heritage Council may only agree to heritage works which are likely to destroy or reduce the historic cultural heritage significance of a registered place, heritage area or place within a heritage area if satisfied that there is no prudent and feasible alternative to those works.
- (2) For the purposes of subsection (1), the Heritage Council agrees to heritage works if, in relation to those works, it –
 - (a) notifies the relevant planning authority under section 36(3)(a) that it has no interest in the relevant discretionary permit application; or
 - (b) notifies the relevant planning authority under section 39(6)(a) that it consents to a discretionary permit being granted; or
 - (c) notifies the relevant planning authority under section 39(6)(b) that it consents to a discretionary permit being granted subject to conditions specified in the notification; or
 - (d) issues a certificate of exemption.

22. Section 47 amended (Heritage agreement)

Section 47 of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) from subsection (1);
- (b) by omitting from subsection (2) “or the National Trust”.

23. Section 49 amended (Variation or termination of heritage agreement)

Section 49 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “the National Trust with the Minister’s approval”;
- (b) by omitting from subsection (2) “, the National Trust”.

24. Section 50 amended (Notification to Recorder of Titles)

Section 50(1) of the Principal Act is amended by omitting “, the National Trust”.

25. Section 53 amended (Enforcement order)

Section 53 of the Principal Act is amended as follows:

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- (a) by omitting from subsection (2) “section 64 of the *Land Use Planning and Approvals Act 1993*” and substituting “section 64 of the Planning Act”;
- (b) by omitting from subsection (3)(a) “as soon as practicable”.

26. Section 56 amended (Non-application of other laws)

Section 56 of the Principal Act is amended by inserting after subsection (2) the following subsection:

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

27. Section 57 amended (Stopwork order)

Section 57(5)(a) of the Principal Act is amended by omitting “as soon as practicable”.

28. Section 61 amended (Appeal against notice)

Section 61(2) of the Principal Act is amended by omitting “must” and substituting “is to”.

29. Section 69 amended (Protected zone)

Section 69 of the Principal Act is amended by inserting after subsection (4) the following subsection:

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

30. Section 74 amended (Order prohibiting works)

Section 74 of the Principal Act is amended by inserting after subsection (4) the following subsection:

(5) An order is not a statutory rule.

31. Section 75 amended (Lodgment of orders with Recorder of Titles)

Section 75(2)(a) of the Principal Act is amended by omitting “as soon as practicable”.

32. Section 78 amended (Application for certificate for unregistered place)

Section 78(2)(c) of the Principal Act is amended by inserting “, if any” after “fee”.

33. Section 80 amended (Issue of certificate for unregistered place)

Section 80 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(b) “required criteria” and substituting “registration criteria”;
- (b) by inserting in subsection (2)(a) “relevant” after “give the”;
- (c) by omitting from subsection (2)(b) “in a daily newspaper circulating in the area in

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which the place is situated a notice” and substituting “a local public notice”;

(d) by inserting the following subsection after subsection (2):

(2A) The Heritage Council may give such other notices for the purposes of this section as it considers appropriate.

(e) by omitting from subsection (3)(b) “advise the applicant, by notice in writing” and substituting “notify the applicant”.

34. Section 82 amended (Submission relating to certificate for unregistered place)

Section 82(2)(a) of the Principal Act is amended by omitting “a notice was” and substituting “the relevant local public notice is”.

35. Section 86 amended (Application for certificate for affected place)

Section 86(2)(c) of the Principal Act is amended by inserting “, if any” after “fee”.

36. Section 87 amended (Issue of certificate for affected place)

Section 87(2)(b) of the Principal Act is amended by omitting “advise the applicant, by notice in writing,” and substituting “notify the applicant”.

37. Section 90 amended (Matters to take into account)

Section 90(b) of the Principal Act is amended by omitting “Schedule 1 to the *Land Use Planning and Approvals Act 1993*” and substituting “Schedule 1 to the Planning Act”.

38. Section 90A inserted

After section 90 of the Principal Act, the following section is inserted in Part 12:

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

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- (b) may be made so as to apply differently according to such factors as are specified in them; and
 - (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 –

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- (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 –
 - (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.

39. Section 91 substituted

Section 91 of the Principal Act is repealed and the following section is substituted:

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

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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.

40. Section 94 substituted

Section 94 of the Principal Act is repealed and
the following section is substituted:

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
 - (e) to accommodate changes in the form of the Heritage Register; or
 - (f) for any other reasonable cause.

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- (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.

41. Section 96 amended (Regulations)

Section 96 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “Regulations made under this section” and substituting “The regulations”;
- (b) by omitting from subsection (3) “Regulations” and substituting “The regulations”;
- (c) by inserting the following subsection after subsection (3):
 - (3A) The regulations may authorise any matter to be from time to time determined, applied,

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approved or regulated by the
Minister or the Heritage Council.

- (d) by omitting from subsection (4)
“Regulations made under this section”
and substituting “The regulations”.

42. Section 98 repealed

Section 98 of the Principal Act is repealed.

43. Section 100 substituted

Section 100 of the Principal Act is repealed and
the following section is substituted:

100. Validity of certain entries in Register

No entry made in the Heritage Register
before the commencement of the *Historic
Cultural Heritage Amendment Act 2012*
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.

44. Repeal of Act

This Act is repealed on the three hundred and
sixty fifth day from the day on which it
commences.