



Queensland Heritage Act 1992

Current as at 3 July 2017

5 Act binds all persons

- (1) This Act binds all persons including the State, and to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the State liable to be prosecuted for an offence.

Part 2 Queensland Heritage Council

Division 1 Establishment and functions

6 Establishment of council

- (1) The Queensland Heritage Council, formerly established under this Act, is continued in existence under the name Queensland Heritage Council.
- (2) The council—
 - (a) is a body corporate; and
 - (b) may sue and be sued in its corporate name.

7 Council's relationship with the State

The council does not represent the State.

8 Functions of council

- (1) The council has the following functions—
 - (a) to provide strategic advice to the Minister about matters relating to Queensland's cultural heritage, including, for example, measures necessary to conserve Queensland's cultural heritage;
 - (b) to encourage interest in, and understanding of, Queensland's cultural heritage, including, for example, by—

- (i) providing information to the community; and
 - (ii) promoting or supporting events relating to Queensland's cultural heritage;
 - (c) to advise entities about conserving Queensland's cultural heritage, including, for example, government entities and community organisations;
 - (d) to encourage the appropriate management of places of cultural heritage significance;
 - (e) to give advice to the planning chief executive about the effect that development proposed under a development application or change application may have on the cultural heritage significance of a State heritage place;
- Note—*
See also the Planning Act, section 277.
- Editor's note—*
The note refers to a provision proposed to be inserted by an amendment in consideration in detail of the Planning Bill 2015.
- (f) to perform other functions given to the council under this Act or by the Minister.
- (2) In performing its functions, the council must act independently, impartially and in the public interest.

8A Council's powers

The council has the powers—

- (a) necessary or convenient to perform its functions; or
- (b) given to it under another provision of this Act or under another Act.

9 Delegation by council

The council may delegate its functions under this Act to—

- (a) a member; or

- (b) a committee of the council consisting of appropriately qualified persons, 1 of whom must be a member; or
- (c) an appropriately qualified public service officer.

Division 2 Membership

10 Membership of council

The council consists of the following members—

- (a) a representative, appointed by the Governor in Council, of each of the following entities—
 - (i) National Trust of Australia (Queensland) Limited;
 - (ii) the Local Government Association of Queensland (Incorporated);
 - (iii) the Queensland Council of Unions;
 - (iv) an organisation representing the interests of property owners and managers in Queensland;
 - (v) an organisation representing the interests of rural industries in Queensland;
- (b) 7 persons, appointed by the Governor in Council, with appropriate knowledge, expertise and interest in heritage conservation.

11 Chairperson and deputy chairperson of council

- (1) The Governor in Council must appoint a member to be the chairperson, and another member to be the deputy chairperson, of the council.
- (2) A person may be appointed the chairperson or deputy chairperson at the same time the person is appointed a member.
- (3) The chairperson or deputy chairperson holds office as chairperson or deputy chairperson for the term, of not more than 3 years, decided by the Governor in Council.

- (4) Despite subsection (3), a person stops holding office as chairperson or deputy chairperson if the person stops being a member.
- (5) The office of chairperson or deputy chairperson becomes vacant if the person holding the office resigns the office by signed notice of resignation given to the Minister.
- (6) However, a member resigning the office of chairperson or deputy chairperson may continue to be a member.
- (7) The deputy chairperson must act as chairperson—
 - (a) during a vacancy in the office of chairperson; and
 - (b) during all periods when the chairperson is absent from duty or, for another reason, can not perform the functions of the office.

12 Term of appointment

A member must be appointed for a term of not more than 3 years.

13 Eligibility for membership

- (1) A person can not be appointed as a member if the person—
 - (a) has a conviction, other than a spent conviction, for an indictable offence or an offence against this Act; or
 - (b) has been a member for at least 6 consecutive years and the proposed appointment would happen less than 1 year after the day the person was last a member.
- (2) A person who is a member can not be reappointed as a member if the reappointment would result in the person continuing as a member for more than 6 consecutive years.

13A Minister's power to obtain criminal history

- (1) The Minister may ask the commissioner of the police service for—

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- (a) a written report about the criminal history of a person who is being considered for appointment as a member; and
 - (b) a brief description of the circumstances of a conviction mentioned in the report.
- (2) However, the Minister may make the request only if the person has given the Minister written consent for the request.
 - (3) The commissioner of the police service must comply with the request.
 - (4) However, subsection (3) applies only in relation to information in the commissioner's possession or to which the commissioner has access.
 - (5) The Minister must ensure the report is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

13B Criminal history is confidential

- (1) A person must not, directly or indirectly, disclose to anyone else a report about a person's criminal history or information contained in the report given under section 13A, unless the disclosure is permitted under subsection (2).

Maximum penalty—50 penalty units.

- (2) The person may make the disclosure to someone else—
 - (a) to the extent necessary to perform the person's functions under this Act; or
 - (b) for the purpose of the other person performing a function under this Act; or
 - (c) if the disclosure is authorised under an Act; or
 - (d) if the disclosure is otherwise required or permitted by law; or
 - (e) if the person to whom the information relates consents to the disclosure.

14 Vacation of office

- (1) A member is taken to have vacated office if the member—
- (a) resigns his or her position on the council by signed notice of resignation given to the Minister; or
 - (b) is convicted of an indictable offence or an offence against this Act; or
 - (c) is absent without—
 - (i) the council's permission from 3 consecutive council meetings of which due notice has been given; or
 - (ii) the Minister's approval under section 16.
- (2) In this section—
- meeting* means a meeting with a quorum present.

15 When notice of resignation takes effect

A notice of resignation under section 11(5) or 14(1)(a) takes effect when the notice is given to the Minister or, if a later time is stated in the notice, at the later time.

16 Leave of absence for a member

- (1) The Minister may approve a leave of absence for a member of more than 3 months.
- (2) The Minister may appoint another person to act in the office of the member while the member is absent on the approved leave.
- (3) If the member is the deputy chairperson, the Minister may appoint another member to act in the deputy chairperson's office while the deputy chairperson is absent on the approved leave.

17 Effect of vacancy in membership of council

- (1) Subsection (2) applies despite section 10.

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- (2) The performance of a function by the council is not affected merely because of a vacancy in the council membership.

18 Remuneration of members

A member is entitled to be paid the fees and allowances decided by the Governor in Council.

Division 3 Council business

19 Conduct of business

Subject to this division, the council may conduct its business, including its meetings, in the way it considers appropriate.

20 Times and places of meetings

- (1) The council must meet at least 6 times a year.
- (2) Council meetings are to be held when and where the chairperson decides.
- (3) However, the chairperson must call a council meeting if asked, in writing, to do so by the Minister or at least 6 members.
- (4) Notice of when and where a council meeting must be held, and of the business for the meeting, must be given to each member at least 5 business days before the day for the meeting.
- (5) Subsection (1) does not limit the number of meetings the council may hold in a year.

21 Quorum

A quorum for the council is 6 members.

22 Presiding at meetings

- (1) The chairperson must preside at all council meetings at which the chairperson is present.
- (2) If the chairperson is absent from a council meeting, but the deputy chairperson is present, the deputy chairperson must preside.
- (3) If the chairperson and deputy chairperson are both absent from a council meeting or the offices are vacant, a member chosen by the members present must preside.

23 Conduct of meetings

- (1) A question at a council meeting is decided by a majority of the votes of the members present.
- (2) Each member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.
- (3) A member present at the meeting who abstains from voting is taken to have voted in the negative.
- (4) The council may hold meetings, or allow members to take part in its meetings, by using any technology that reasonably allows members to hear and take part in discussions as they happen.

Example—

teleconferencing

- (5) A member who takes part in a council meeting under subsection (4) is taken to be present at the meeting.
- (6) A resolution is validly made by the council, even if it is not passed at a council meeting, if—
 - (a) a majority of the council members gives written agreement to the resolution; and
 - (b) notice of the resolution is given under procedures approved by the council.

24 Minutes

- (1) The council must keep—
 - (a) minutes of its meetings; and
 - (b) a record of any resolutions made under section 23(6).
- (2) Subsection (3) applies if a resolution is passed at a council meeting.
- (3) If asked by a member who voted against the passing of the resolution, the council must record in the minutes of the meeting that the member voted against the resolution.

Division 4 Council committees

25 Committees

- (1) The council may establish committees of the council for effectively and efficiently performing its functions.
- (2) A committee may include a person who is not a member.
- (3) The council must decide the terms of reference of a committee.
- (4) The functions of a committee are to—
 - (a) advise and make recommendations to the council about matters, within the scope of the council's functions, referred by the council to the committee; and
 - (b) exercise powers delegated to it by the council.

Note—

See section 9 for the council's power of delegation.

- (5) A committee must keep a record of the decisions it makes when exercising a power delegated to it by the council.
- (6) The council may decide matters about a committee that are not provided for under this Act, including, for example, the way a committee must conduct meetings.

26 Remuneration of committee members

- (1) A committee member is entitled to be paid the fees and allowances decided by the chief executive.
- (2) The fees and allowances paid under subsection (1) must not be more than the fees and allowances payable to a member.

Division 5 Disclosure of interests by members and committee members

27 Disclosure of interests of members

- (1) This section applies to a member (the *interested person*) if—
 - (a) the interested person has a direct or indirect interest in a matter being considered, or about to be considered, by the council; and
 - (b) the interest could conflict with the proper performance of the person's duties about the consideration of the matter.
- (2) As soon as practicable after the relevant facts come to the interested person's knowledge, the person must disclose the nature of the interest to a council meeting.
- (3) Unless the council otherwise directs, the interested person must not—
 - (a) be present when the council considers the matter; or
 - (b) take part in a decision of the council about the matter; or
 - (c) if the matter is a heritage recommendation—make an oral representation to the council under part 4, division 5, subdivision 2 about the recommendation.
- (4) The interested person must not be present when the council is considering whether to give a direction under subsection (3).
- (5) If there is another member who must, under subsection (2), also disclose an interest in the matter, the other member must not—

- (a) be present when the council is considering whether to give a direction under subsection (3) about the interested person; or
 - (b) take part in making the decision about giving the direction.
- (6) Subsection (7) applies if—
- (a) because of this section, a member is not present at a meeting for considering or deciding a matter, or for considering or deciding whether to give a direction under subsection (3); and
 - (b) there would be a quorum if the member were present.
- (7) The remaining members present are a quorum for considering or deciding the matter, or for considering or deciding whether to give the direction, at the meeting.
- (8) A disclosure under subsection (2) must be recorded in the council's minutes.

28 Disclosure of interests of committee members

- (1) This section applies to a committee member (the *interested person*) if—
- (a) the interested person has a direct or indirect interest in a matter being considered, or about to be considered, by the committee; and
 - (b) the interest could conflict with the proper performance of the person's duties about the consideration of the matter.
- (2) As soon as practicable after the relevant facts come to the interested person's knowledge, the person must disclose the nature of the interest to a committee meeting.
- (3) Unless the committee otherwise directs, the interested person must not—
- (a) be present when the committee considers the matter; or

- (b) take part in a decision of the committee about the matter; or
 - (c) if the matter is a heritage recommendation—make an oral representation to the council under part 4, division 5, subdivision 2 about the recommendation.
- (4) The interested person must not be present when the committee is considering whether to give a direction under subsection (3).
- (5) If there is another member who must, under subsection (2), also disclose an interest in the matter, the other member must not—
 - (a) be present when the committee is considering whether to give a direction under subsection (3) about the interested person; or
 - (b) take part in making the decision about giving the direction.
- (6) Subsection (7) applies if—
 - (a) because of this section, a committee member is not present at a meeting for considering or deciding a matter, or for considering or deciding whether to give a direction under subsection (3); and
 - (b) there would be a quorum if the committee member were present.
- (7) The remaining committee members present are a quorum for considering or deciding the matter, or for considering or deciding whether to give the direction, at the committee meeting.
- (8) A disclosure under subsection (2) must be recorded in the committee's minutes.

Division 6 Other provisions about the council

29 Annual report

- (1) The council must, by 31 October in each year, give the Minister a written report on the administration of this Act during the financial year that ended on 30 June in the year.
- (2) The report must include—
 - (a) information, required by the Minister, relating to the performance of the council's functions under this Act; and
 - (b) information about the timeliness of the council's dealings with applications under part 4, division 5; and
 - (c) a statement about the measures the council considers necessary to conserve Queensland's cultural heritage.
- (3) As soon as practicable, but within 14 sitting days after receiving the report, the Minister must table the report in the Legislative Assembly.

30 Excluded matter for Corporations legislation

The council is declared to be an excluded matter for the Corporations Act, section 5F, in relation to the following provisions of the Corporations Act—

- (a) parts 2D.1 and 2D.6;
- (b) chapters 2K and 2L;
- (c) parts 5.7, 5.7B, 5.9 and 5B.2.