

Queensland



**ABORIGINAL CULTURAL HERITAGE
BILL 2002**

TABLE OF PROVISIONS

Section	Page
PART 1—PRELIMINARY	
<i>Division 1—Introduction</i>	
1 Short title	10
2 Commencement	10
3 Act binds all persons	10
<i>Division 2—Purpose of Act</i>	
4 Purpose of Act	10
5 Principles underlying Act’s purpose	10
6 How purpose of Act is to be achieved	11
<i>Division 3—Interpretation</i>	
7 Definitions	12
8 Meaning of “Aboriginal cultural heritage”	12
9 Meaning of “significant Aboriginal area”	12
10 Meaning of “significant Aboriginal object”	12
11 Extension of evidence of occupation to surroundings	13
12 Identifying significant Aboriginal areas	13
13 Interpretation to support existing rights and interests	13
PART 2—OWNERSHIP, CUSTODIANSHIP AND POSSESSION OF ABORIGINAL CULTURAL HERITAGE	
<i>Division 1—Preliminary</i>	
14 Object and intent	14
<i>Division 2—Aboriginal human remains</i>	
15 Ownership of Aboriginal human remains	15
16 Aboriginal human remains in custody of State	15

17	Possession of Aboriginal human remains	16
18	Knowledge of Aboriginal human remains.	16
	<i>Division 3—Secret and sacred objects</i>	
19	Ownership and custody of secret or sacred object	17
	<i>Division 4—Other Aboriginal cultural heritage</i>	
20	Ownership of Aboriginal cultural heritage	18
21	Continued use of surface	18
	<i>Division 5—Role of Queensland Museum</i>	
22	Care of Aboriginal cultural heritage	19
	PART 3—PROTECTION OF ABORIGINAL CULTURAL HERITAGE	
	<i>Division 1—Key cultural heritage protection provisions</i>	
23	Cultural heritage duty of care	19
24	Unlawful harm to Aboriginal cultural heritage	21
25	Prohibited excavation, relocation and taking away	21
26	Unlawful possession of Aboriginal cultural heritage	22
27	Court may order costs of rehabilitation or restoration	23
	<i>Division 2—Duty of care guidelines</i>	
28	Cultural heritage duty of care guidelines	23
	<i>Division 3—Information about cultural heritage</i>	
29	Protection of secret or sacred information	24
30	Putting cultural heritage management plan into effect	24
31	Other activities.	25
	<i>Division 4—Protection of cultural heritage under action of Minister</i>	
32	Stop orders.	25
33	Particular steps to preserve cultural heritage.	26
	PART 4—ABORIGINAL PARTIES AND ABORIGINAL CULTURAL HERITAGE BODIES	
34	Claimants and bodies corporate as Aboriginal parties	26
35	Aboriginal party if no claimant or body corporate	27
36	Registration as Aboriginal cultural heritage body	28
37	Function of Aboriginal cultural heritage body	29

PART 5—COLLECTION AND MANAGEMENT OF ABORIGINAL CULTURAL HERITAGE INFORMATION

Division 1—Aboriginal Cultural Heritage Database

38	Establishment of database	29
39	Purpose of establishing database	29
40	Placing information on database	30
41	Taking information off database	30
42	Availability of database to public generally	30
43	Availability of database to Aboriginal party	30
44	Availability of database to land user	31
45	Availability of database to researcher	31

Division 2—Aboriginal Cultural Heritage Register

46	Establishment of register	31
47	Purpose of establishing register	31
48	Recording information from cultural heritage study	32
49	Information about cultural heritage management plans	33
50	Keeping register up-to-date	33
51	Availability of register to public generally	33

PART 6—CULTURAL HERITAGE STUDIES

Division 1—Introduction

52	Definitions for pt 6	34
53	Carrying out cultural heritage study and recording findings	34
54	Cultural heritage study guidelines	35

Division 2—Preparing to carry out cultural heritage study

55	Giving of written notice (proposed study)	35
56	Requirements for written notice (proposed study)	36
57	Additional requirements for notice to cultural heritage body	36
58	Additional requirements for notice to Aboriginal party	37
59	Additional requirements for notice to representative body	37
60	Giving of public notice (proposed study)	37
61	Cultural heritage body response to written notice	39
62	Aboriginal party response to written notice	39
63	Aboriginal party response to public notice	39

64	Endorsement for study	39
	<i>Division 3—Carrying out cultural heritage study</i>	
65	Role of endorsed party	40
66	Role of sponsor	40
67	Engagement of cultural heritage assessors	40
68	Role of cultural heritage assessors	41
69	Consultation supporting cultural heritage study	42
	<i>Division 4—Recording by chief executive</i>	
70	Giving of cultural heritage study to chief executive for recording	42
71	Consideration of cultural heritage study before recording	43
72	Requirements for recording cultural heritage study	43
73	Recording or refusing to record findings of cultural heritage study	44
	<i>Division 5—Objections, hearing and recommendation</i>	
74	Definitions for div 5	45
75	Objection to refusal to record findings	46
76	Tribunal’s hearing	46
77	Tribunal’s recommendation to Minister	47
	<i>Division 6—Recording by Minister</i>	
78	Recording or refusing to record findings of cultural heritage study	48
	PART 7—CULTURAL HERITAGE MANAGEMENT PLANS	
	<i>Division 1—Introduction</i>	
79	Definitions	49
80	Development and approval of cultural heritage management plan	49
81	Voluntary development of cultural heritage management plan	50
82	Approved cultural heritage management plan may not require particular action	50
83	Cultural heritage management plan guidelines	50
	<i>Division 2—Protection of cultural heritage under cultural heritage management plans</i>	
84	Application of div 2	50
85	Cultural heritage management plan needed if EIS needed	51
86	Cultural heritage management plan may be needed if other environmental authority needed	51

87	Cultural heritage management plan needed under IPA	52
	<i>Division 3—Preparing to develop cultural heritage management plan</i>	
88	Giving of written notice (proposed plan)	53
89	Requirements for written notice (proposed plan)	53
90	Additional requirements for notice to cultural heritage body	54
91	Additional requirements for notice to Aboriginal party	54
92	Additional requirements for notice to representative body	55
93	Giving of public notice (proposed plan)	55
94	Cultural heritage body response to written notice	56
95	Aboriginal party response to written notice	57
96	Aboriginal party response to public notice	57
97	Becoming Aboriginal party after written notice (proposed plan) is given . .	57
98	Endorsement for plan development	58
	<i>Division 4—Development of cultural heritage management plan</i>	
99	Role of endorsed party	59
100	Role of sponsor	59
101	Consultation	60
102	Reaching agreement	60
103	Mediation	61
	<i>Division 5—Approval by chief executive</i>	
104	Chief executive approval of agreed plan	62
105	Consideration of agreed plan before approval	62
106	Approving or refusing to approve agreed plan	62
	<i>Division 6—Objection or referral, hearing and recommendation</i>	
107	Definitions for div 6	63
108	Objection to tribunal to refusal to approve agreed plan	63
109	Sponsor may refer plan to tribunal after unsuccessful mediation	64
110	Sponsor may refer plan to tribunal after failure to agree	64
111	Administrative details for objection or referral	64
112	Substantive requirements for objection or referral	65
113	Tribunal’s hearing	65
114	General time requirement for making recommendation	66

115	Tribunal’s recommendation to Minister	66
116	Reaching the recommendation	67
	<i>Division 7—Approval by Minister</i>	
117	Approving or refusing to approve plan	68
	PART 8—INVESTIGATION AND ENFORCEMENT	
	<i>Division 1—Authorised officers</i>	
118	Appointment and qualifications.	68
119	Appointment conditions and limit on powers	68
120	Issue of identity card	69
121	Production or display of identity card	69
122	When authorised officer ceases to hold office	70
123	Resignation	70
124	Return of identity card.	70
	<i>Division 2—Powers of authorised officers</i>	
	<i>Subdivision 1—Entry of places</i>	
125	Power to enter places.	71
	<i>Subdivision 2—Procedure for entry</i>	
126	Entry with consent.	71
127	Application for warrant	72
128	Issue of warrant	72
129	Special warrants	73
130	Warrants—procedure before entry	74
	<i>Subdivision 3—Powers after entry</i>	
131	General powers after entering places	75
132	Failure to help authorised officer.	76
133	Failure to give information	76
	<i>Subdivision 4—Power to seize evidence</i>	
134	Seizing evidence at a place that may be entered without consent or warrant	76
135	Seizing evidence at a place that may only be entered with consent or warrant	77
136	Securing seized things.	77
137	Tampering with seized things	78
138	Power to support seizure	78

139	Receipts for seized things	79
140	Return of seized things	79
141	Access to seized things	79
	<i>Subdivision 5—Power to obtain information</i>	
142	Power to require name and address	80
143	Failure to give name or address	80
	<i>Division 3—General enforcement matters</i>	
144	Notice of damage.	81
145	Compensation	81
146	False or misleading information	82
147	False or misleading documents	82
148	Obstructing authorised officers	82
	PART 9—MISCELLANEOUS PROVISIONS	
149	Delegations	83
150	Access to land	83
151	Advisory committees.	84
152	Purchase or compulsory acquisition to protect cultural heritage	84
153	Proceedings for an offence	85
154	Review of Act	86
155	Approval of forms	86
156	Regulation-making power	86
	PART 10—REPEAL AND TRANSITIONAL PROVISIONS	
	<i>Division 1—Repeal of Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987</i>	
157	Act repealed.	87
	<i>Division 2—Transitional provisions</i>	
158	Confirmation of ownership of Aboriginal cultural heritage before commencement	87
159	Recording information about designated landscape areas	87
160	Foundation material for database	88
161	Existing agreement for carrying out activity	88
162	Permit under repealed Act	89
163	Authority obtained before commencement	89

164	Cultural heritage arrangements for existing projects.	90
165	References to repealed Act	90
	PART 11—AMENDMENT OF ACTS	
166	Acts amended	90
	SCHEDULE 1	91
	AMENDMENT OF ACTS	
	FORESTRY ACT 1959	91
	FREEDOM OF INFORMATION ACT 1992	91
	LAND AND RESOURCES TRIBUNAL ACT 1999	91
	QUEENSLAND HERITAGE ACT 1992	93
	WHISTLEBLOWERS PROTECTION ACT 1994	104
	SCHEDULE 2	106
	DICTIONARY	

CONSULTATION DRAFT

2002

A BILL

FOR

**An Act to make provision for Aboriginal cultural heritage and for
other purposes**

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Division 1—Introduction

1 Short title

This Act may be cited as the *Aboriginal Cultural Heritage Act 2002*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Act binds all persons

(1) This Act binds all persons, including the State.

(2) Nothing in this Act makes the State liable to be prosecuted for an offence.

Division 2—Purpose of Act

4 Purpose of Act

The purpose of this Act is to provide effective recognition, protection and conservation of Aboriginal cultural heritage.

5 Principles underlying Act's purpose

The following fundamental principles underlie this Act's purpose—

- (a) the recognition, protection and conservation of Aboriginal cultural heritage should be based on respect for Aboriginal knowledge, culture and traditional practices;

- (b) Aboriginal people should be recognised as the primary guardians, keepers and interpreters of Aboriginal cultural heritage;
- (c) it is important to respect, preserve and maintain knowledge, innovations and practices of Aboriginal communities and to promote understanding of Aboriginal cultural heritage;
- (d) activities involved in recognition, protection and conservation of Aboriginal cultural heritage are important because they allow Aboriginal people to reaffirm their obligations to ‘law and country’.

6 How purpose of Act is to be achieved

For achieving effective recognition, protection and conservation of Aboriginal cultural heritage, this Act provides for the following—

- (a) recognising Aboriginal ownership of Aboriginal human remains wherever held;
- (b) recognising Aboriginal ownership of Aboriginal cultural heritage of a secret or sacred nature held in State collections;
- (c) recognising Aboriginal ownership of Aboriginal cultural heritage taken away under the provisions of cultural heritage management plans;
- (d) establishing a duty of care for activities that may harm Aboriginal cultural heritage;
- (e) establishing powers of protection, investigation and enforcement;
- (f) establishing a database and a register for recording Aboriginal cultural heritage;
- (g) ensuring Aboriginal people are involved in processes for managing the recognition, protection and conservation of Aboriginal cultural heritage;
- (h) establishing a process for the comprehensive study of Aboriginal cultural heritage;
- (i) establishing a process for the management of activities to avoid or minimise harm to Aboriginal cultural heritage.

*Division 3—Interpretation***7 Definitions**

The dictionary in schedule 2 defines particular words used in this Act.

8 Meaning of “Aboriginal cultural heritage”

“Aboriginal cultural heritage” is anything that is—

- (a) a significant Aboriginal area in Queensland; or
- (b) a significant Aboriginal object; or
- (c) evidence, of archaeological or historic significance, of Aboriginal occupation of an area of Queensland.

9 Meaning of “significant Aboriginal area”

A “significant Aboriginal area” is an area of particular significance to Aboriginal people because of either or both of the following—

- (a) Aboriginal tradition;¹
- (b) the history, including contemporary history, of Aboriginal people.

10 Meaning of “significant Aboriginal object”

A “significant Aboriginal object” is an object of particular significance to Aboriginal people because of either or both of the following—

- (a) Aboriginal tradition;
- (b) the history, including contemporary history, of Aboriginal people.

¹ Under the *Acts Interpretation Act 1954*, section 36 (Meaning of commonly used words and expressions), “**Aboriginal tradition**” means the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people, and includes any such traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships.

11 Extension of evidence of occupation to surroundings

If a particular object or structure is evidence of Aboriginal occupation, the area immediately surrounding the object or structure is also evidence of Aboriginal occupation to the extent the area can not be separated from the object or structure without destroying or diminishing the object or structure's significance or value as evidence of Aboriginal occupation.

12 Identifying significant Aboriginal areas

(1) This section gives more information about identifying significant Aboriginal areas.

(2) For an area to be a significant Aboriginal area, it is not necessary for the area to contain markings or other physical evidence indicating Aboriginal occupation or otherwise denoting the area's significance.

(3) For example, the area might be a ceremonial place, a birthing place, a burial place or the site of a massacre.

(4) Also, if significant Aboriginal objects exist in an area and the significance of the objects is intrinsically linked with their location in the area—

- (a) the existence of the objects in the area is enough on its own to make the area a significant Aboriginal area; and
- (b) if it is reasonably appropriate under this Act, the area and the objects in it may be taken to be, collectively, a significant Aboriginal area.

(5) For identifying a significant Aboriginal area, regard may be had to authoritative anthropological, biogeographical, historical and archeological information.

13 Interpretation to support existing rights and interests

A provision of this Act must not be interpreted in a way that would allow the provision to operate in a way that prejudices—

- (a) a right of ownership of a traditional group of Aboriginal people, or of a member of a group of Aboriginal people, in Aboriginal cultural heritage used or held for traditional purposes under Aboriginal tradition; or

- (b) a person's enjoyment or use of, or free access to, Aboriginal cultural heritage, if—
 - (i) the person usually lives according to Aboriginal tradition as it relates to a particular group of Aboriginal people; and
 - (ii) the access, enjoyment or use is sanctioned by the Aboriginal tradition; or
- (c) native title rights and interests.

PART 2—OWNERSHIP, CUSTODIANSHIP AND POSSESSION OF ABORIGINAL CULTURAL HERITAGE

Division 1—Preliminary

14 Object and intent

(1) The object of this part is to make rules about ownership, custodianship and possession of Aboriginal cultural heritage.

(2) The basic intent underlying the rules stated in this part is that Aboriginal cultural heritage should be protected.

(3) A supporting intent is that, as far as practicable, Aboriginal cultural heritage should be owned and protected by Aboriginal people with traditional or familial links to the cultural heritage if it is comprised of any of the following—

- (a) Aboriginal human remains;
- (b) secret or sacred objects;
- (c) Aboriginal cultural heritage taken away under a cultural heritage management plan.

(4) Another supporting intent is that Aboriginal cultural heritage of the type mentioned in subsection (3)(a) or (b) that is in the custody of the State, including the Queensland Museum, should continue to be protected by the State until it can be transferred into the protection of its Aboriginal owners.

*Division 2—Aboriginal human remains***15 Ownership of Aboriginal human remains**

(1) Aboriginal human remains are owned by the Aboriginal people who have a traditional or familial link with the human remains.

(2) Subsection (1) applies regardless of who may have owned the human remains before the commencement of this section.

16 Aboriginal human remains in custody of State

(1) This section applies to Aboriginal human remains if the human remains are in the custody of the Queensland Museum or otherwise in the custody of the State.

(2) The persons who own the human remains may at any time ask the chief executive—

- (a) to allow the Queensland Museum, or another entity, to be the custodian of the human remains; or
- (b) to have the human remains returned to them.

(3) If the chief executive is satisfied the persons making the request under subsection (2) are the owners of the human remains, the chief executive—

- (a) must comply with the request to the greatest practicable extent; and
- (b) to ensure compliance with the request, may give directions, including directions to the Queensland Museum or other entity, the chief executive considers necessary.

(4) The Queensland Museum or other entity must comply with a direction of the chief executive given for the purpose of ensuring a request under subsection (2) is complied with.

(5) The persons who own the human remains are not limited to making only 1 request under subsection (2).

Example—

The owners could ask for the Queensland Museum to continue its custody of the human remains while they make suitable arrangements for dealing with the human remains, at which time they could ask for the human remains to be returned to them.

17 Possession of Aboriginal human remains

(1) This section applies to a person if the person has in the person's possession Aboriginal human remains and the person does not have the necessary traditional or familial links with the human remains to be the owner of the human remains.

(2) The person must take all reasonable steps to ensure that the human remains are taken into the custody of the chief executive as soon as possible.

Maximum penalty for subsection (2)—200 penalty units.

18 Knowledge of Aboriginal human remains

(1) This section applies to a person if the person—

- (a) knows of the existence and location of human remains, but does not own the human remains or have possession of them; and
- (b) knows, or ought reasonably to know, the human remains are, or are reasonably likely to be, Aboriginal human remains; and
- (c) knows or suspects—
 - (i) that the chief executive does not know of the existence of the human remains; or
 - (ii) that the chief executive knows of the existence of the human remains, but does not know the human remains are, or are reasonably likely to be, Aboriginal human remains.

(2) The person must—

- (a) as soon as practicable, advise the chief executive of the existence and location of the human remains; and
- (b) give the chief executive all details about the nature and location of the human remains the chief executive reasonably requires.

Maximum penalty for subsection (2)—100 penalty units.

Division 3—Secret and sacred objects**19 Ownership and custody of secret or sacred object**

(1) This section applies to an object that is Aboriginal cultural heritage if—

- (a) the object is of a secret or sacred nature; and

Example of object of secret or sacred nature—

A ceremonial item.

- (b) the object is in the custody of the Queensland Museum or otherwise in the custody of the State.

(2) The object is owned by the Aboriginal people who have a traditional or familial link with the object.

(3) The persons who own the object may at any time ask the chief executive—

- (a) to allow the Queensland Museum, or another entity, to be the custodian of the object; or
(b) to have the object returned to them.

(4) If the chief executive is satisfied the persons making the request under subsection (3) are the owners of the object, the chief executive—

- (a) must comply with the request to the greatest practicable extent; and
(b) to ensure compliance with the request, may give any directions, including directions to the Queensland Museum or other entity, the chief executive considers necessary.

(5) The Queensland Museum or other entity must comply with a direction of the chief executive given for ensuring a request under subsection (3) is complied with.

(6) The persons who own the object are not limited to making only 1 request under subsection (3).

Example—

The owners could ask for the Queensland Museum to continue its custody of an object while they make suitable arrangements for dealing with the object, at which time they could ask for the object to be returned to them.

*Division 4—Other Aboriginal cultural heritage***20 Ownership of Aboriginal cultural heritage**

(1) Other than for the following Aboriginal cultural heritage—

- (a) human remains and secret or sacred objects owned by Aboriginal people under division 2 or 3;
- (b) Aboriginal cultural heritage passing into the ownership of an Aboriginal party under an approved cultural heritage management plan;
- (c) Aboriginal cultural heritage owned by a person whose ownership is confirmed under a provision of this Act;
- (d) Aboriginal cultural heritage owned by a person to whom ownership is transferred;

the State owns Aboriginal cultural heritage.

(2) Subsection (1) applies to Aboriginal cultural heritage even if the cultural heritage—

- (a) forms, or has previously formed, part of relevant land; or
- (b) is located, or has previously been located, in, on or under relevant land.

(3) In this section—

“**relevant land**” means land that is or has been owned or occupied by a person, whether or not the land is or has been private land.

21 Continued use of surface

(1) This section applies if Aboriginal cultural heritage is located on the surface of land, and—

- (a) under the tenure on which the land is held, the owner or occupier of the land is entitled to the use and enjoyment of the surface of the land; or
- (b) a person is otherwise entitled to the use and enjoyment of the surface of the land.

(2) Despite the existence of the Aboriginal cultural heritage, the owner or occupier or other person is entitled to the use and enjoyment of the land to the extent the use and enjoyment does not harm the cultural heritage.

Division 5—Role of Queensland Museum

22 Care of Aboriginal cultural heritage

(1) The Queensland Museum may act under the *Queensland Museum Act 1970* in relation to all Aboriginal cultural heritage in its custody.

(2) Subsection (1) applies subject to the particular requirements of this Act about the ownership, custody or protection of Aboriginal cultural heritage.

(3) Despite anything in subsections (1) and (2), the Queensland Museum must obtain the agreement of the Minister before it disposes of, or allows to be disposed of, an item of Aboriginal cultural heritage in its custody.

(4) The Queensland Museum may at any time accept custody of Aboriginal cultural heritage.

PART 3—PROTECTION OF ABORIGINAL CULTURAL HERITAGE

Division 1—Key cultural heritage protection provisions

23 Cultural heritage duty of care

(1) A person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage (the “**cultural heritage duty of care**”).

Maximum penalty—

- (a) for an individual—1 000 penalty units;
- (b) for a corporation—10 000 penalty units.

(2) Without limiting the matters that may be considered by a court required to decide whether a person has complied with the cultural heritage

duty of care in carrying out an activity, the court may consider the following—

- (a) the nature of the activity, and the likelihood of its causing harm to Aboriginal cultural heritage;
- (b) the nature of the Aboriginal cultural heritage likely to be harmed by the activity;
- (c) the extent to which the person consulted with Aboriginal parties about the carrying out of the activity, and the results of the consultation;
- (d) whether the person carried out a study or survey, of any type, of the area affected by the activity to find out the location and extent of Aboriginal cultural heritage, and the extent of the study or survey;
- (e) whether the person searched the database and register for information about the area affected by the activity;
- (f) the extent to which the person has complied with cultural heritage duty of care guidelines.

(3) In considering the extent to which Aboriginal parties were consulted about the carrying out of the activity, the court may take the procedures in parts 6 and 7 as a guide to an appropriate level of consultation.

(4) A person who carries out an activity is taken to have complied with the cultural heritage duty of care if—

- (a) the person is acting—
 - (i) under the authority of another provision of this Act; or
 - (ii) under an approved cultural heritage management plan; or
 - (iii) under a native title agreement or another agreement with an Aboriginal party, unless Aboriginal cultural heritage is expressly excluded from being subject to the agreement; or
 - (iv) in compliance with cultural heritage duty of care guidelines; or
- (b) the person owns the Aboriginal cultural heritage affected by the activity, or is acting with the owner's agreement.

24 Unlawful harm to Aboriginal cultural heritage

(1) A person must not harm something that is Aboriginal cultural heritage if the person knows or ought reasonably to know it is Aboriginal cultural heritage.

Maximum penalty—

- (a) for an individual—
 - (i) if the Aboriginal cultural heritage is a registered significant area or object—1 000 penalty units or imprisonment for 2 years; or
 - (i) otherwise—1 000 penalty units;
- (b) for a corporation—10 000 penalty units.

(2) A person who harms Aboriginal cultural heritage does not commit an offence under subsection (1) if—

- (a) the person is acting—
 - (i) under the authority of another provision of this Act; or
 - (ii) under an approved cultural heritage management plan; or
 - (iii) under a native title agreement or another agreement with an Aboriginal party, unless Aboriginal cultural heritage is expressly excluded from being subject to the agreement; or
 - (iv) in compliance with cultural heritage duty of care guidelines; or
 - (v) in compliance with the cultural heritage duty of care; or
- (b) the person owns the cultural heritage, or is acting with the owner's agreement; or
- (c) the act is necessary because of an emergency, including for example, a bushfire or other natural disaster.

25 Prohibited excavation, relocation and taking away

(1) If a person knows or ought reasonably to know that something is Aboriginal cultural heritage, the person must not excavate it, relocate it or take it away.

Maximum penalty—

- (a) for an individual—1 000 penalty units;

(b) for a corporation—10 000 penalty units.

(2) A person who excavates, relocates or takes away Aboriginal cultural heritage does not commit an offence under subsection (1) if—

(a) the person is acting—

(i) under the authority of another provision of this Act; or

(ii) under an approved cultural heritage management plan; or

(iii) under a native title agreement or another agreement with an Aboriginal party, unless Aboriginal cultural heritage is expressly excluded from being subject to the agreement; or

(iv) in compliance with cultural heritage duty of care guidelines; or

(v) in compliance with the cultural heritage duty of care; or

(b) the person owns the cultural heritage, or is acting with the owner's agreement; or

(c) the act is necessary because of an emergency, including for example, a bushfire or other natural disaster.

26 Unlawful possession of Aboriginal cultural heritage

(1) A person must not have in the person's possession an object that is Aboriginal cultural heritage if the person knows or ought reasonably to know that the object is Aboriginal cultural heritage.

Maximum penalty—

(a) for an individual—1 000 penalty units;

(b) for a corporation—10 000 penalty units.

(2) A person who has in the person's possession an object that is Aboriginal cultural heritage does not commit an offence under subsection (1) if—

(a) the person is acting—

(i) under the authority of another provision of this Act; or

(ii) under an approved cultural heritage management plan; or

(iii) under a native title agreement or another agreement with an Aboriginal party, unless Aboriginal cultural heritage is expressly excluded from being subject to the agreement; or

- (iv) in compliance with cultural heritage duty of care guidelines; or
 - (v) in compliance with the cultural heritage duty of care; or
 - (b) the person owns the cultural heritage, or is acting with the owner's agreement; or
 - (c) the person's possession of the object is necessary because of an emergency, including for example, a bushfire or other natural disaster.
- (3) This section does not apply to Aboriginal human remains.

27 Court may order costs of rehabilitation or restoration

(1) On a conviction of a person for an offence under this division involving the unlawful harming or possessing of Aboriginal cultural heritage, the court may, if considered appropriate, order the person to pay to the State or another appropriate entity an amount for or towards—

- (a) the cost of any repair or restoration of the Aboriginal cultural heritage needing to be carried out; and
- (b) the cost of any repair or restoration of anything else that is not itself the Aboriginal cultural heritage, but that is associated with the Aboriginal cultural heritage and also needs to be repaired or restored because of the offence.

(2) In this section—

“**conviction**” includes a plea of guilty or a finding of guilt by a court, even though a conviction is not recorded.

Division 2—Duty of care guidelines

28 Cultural heritage duty of care guidelines

(1) The Minister may by gazette notice notify guidelines (“**cultural heritage duty of care guidelines**”) identifying reasonable and practicable measures for ensuring particular stated activities do not harm Aboriginal cultural heritage.

(2) In formulating cultural heritage duty of care guidelines, the Minister may consult with the following—

- (a) Aboriginal groups;
- (b) industry groups;
- (c) local governments;
- (d) other persons the Minister considers appropriate.

Division 3—Information about cultural heritage

29 Protection of secret or sacred information

(1) This section applies to a person who, under this Act, submits to the chief executive or the Minister a report or other document about Aboriginal cultural heritage matters.

(2) The person must not include in the report or other document knowledge or information given to or otherwise acquired by the person if—

- (a) the person knows the knowledge or information is of a secret or sacred nature; and
- (b) the Aboriginal people in whose understanding the knowledge or information is secret or sacred have not agreed to its inclusion in the report or other document.

Maximum penalty—

- (a) for an individual—100 penalty units;
- (b) for a corporation—1 000 penalty units.

30 Putting cultural heritage management plan into effect

(1) A person who is involved in putting an approved cultural heritage management plan into effect must take all reasonable steps to ensure the chief executive is advised about all Aboriginal cultural heritage revealed to exist because of any activity carried out under the plan.

Maximum penalty—

- (a) for an individual—100 penalty units;
- (b) for a corporation—1 000 penalty units.

(2) Subsection (1) does not require the giving of advice to the chief executive if giving the advice would be a contravention of section 29.

31 Other activities

(1) A person who is involved in carrying out an activity, other than an activity under an approved cultural heritage management plan, may advise the chief executive of Aboriginal cultural heritage revealed to exist because of the activity.

(2) Subsection (1) does not authorise the giving of advice to the chief executive if giving the advice would be a contravention of section 29.

*Division 4—Protection of cultural heritage under action of Minister***32 Stop orders**

(1) This section applies if the Minister is satisfied there are reasonable grounds for concluding—

- (a) a person is carrying out or is about to carry out an activity; and
- (b) either or both of the following apply—
 - (i) in carrying out the activity, the person is or will be harming Aboriginal cultural heritage;
 - (ii) the carrying out of the activity is having or will have a significant adverse impact on the cultural heritage value of Aboriginal cultural heritage.

(2) The Minister may give the person a stop order for the activity.

(3) The stop order must be given to the person—

- (a) by giving it to the person personally; or
- (b) if it is not reasonably practicable to give it to the person personally—by fixing it in a prominent position at the place where the activity is being carried out or is about to be carried out.

(4) The stop order—

- (a) operates from the time of service; and
- (b) unless it is revoked sooner, continues in force for 30 days from when it is given to the person, or for a shorter period stated in the order.

(5) The Minister may give 1 further stop order of not more than 30 days under this section for the person's activity.

(6) A person must not knowingly—

- (a) contravene a stop order given to the person under this section; or
- (b) help the person to whom a stop order is directed, whether as an agent or employee or in another capacity, to carry out an activity in contravention of the stop order.

Maximum penalty—17 000 penalty units.

(7) A stop order under this section is ineffective in its application to an activity if the activity is the subject of an injunction granted under the *Land and Resources Tribunal Act 1999*, section 53.²

33 Particular steps to preserve cultural heritage

The Minister may—

- (a) for the State, acquire by purchase or gift Aboriginal cultural heritage for the purpose of its preservation; and
- (b) cause structures to be erected, and other steps to be taken, that are necessary or desirable to preserve the item.

PART 4—ABORIGINAL PARTIES AND ABORIGINAL CULTURAL HERITAGE BODIES

34 Claimants and bodies corporate as Aboriginal parties

(1) Each of the following is an “**Aboriginal party**” for an area—

- (a) a registered native title claimant in relation to Aboriginal rights and interests;
- (b) a registered native title holder in relation to Aboriginal rights and interests.

² *Land and Resources Tribunal Act 1999*, section 53 (Exclusive jurisdiction for certain cultural heritage matters)

(2) A registered native title claimant is an Aboriginal party for the whole area included within the outer boundaries of the area in relation to which it has made an application under the Commonwealth Native Title Act for a determination of native title.

(3) Subsection (2) applies regardless of the nature and extent of the registered native title claimant's claims in relation to any particular part of the whole area.

(4) A registered native title holder the subject of a determination of native title under the Commonwealth Native Title Act is an Aboriginal party for the whole area included within the outer boundaries of the area in relation to which the application for the determination was made.

(5) Subsection (4) applies regardless of the extent to which native title was found to exist in relation to any particular part of the whole area.

(6) However, the registered native title holder is not an Aboriginal party for a part of the area if—

- (a) native title was not found to exist in relation to the part; and
- (b) under subsections (2) and (3), a registered native title claimant is an Aboriginal party for the part.

35 Aboriginal party if no claimant or body corporate

(1) This section applies to an area for which there is no Aboriginal party that is a registered native title claimant or registered native title holder.

(2) A person is an “**Aboriginal party**” for the area if—

- (a) the person is an Aboriginal person with particular knowledge about traditions, observances, customs or beliefs associated with the area; and
- (b) the person—
 - (i) has responsibility under Aboriginal tradition for some or all of the area, or for significant Aboriginal objects located or originating in the area; or
 - (ii) is a member of a family or clan group that is recognised as having responsibility under Aboriginal tradition for some or all of the area, or for significant Aboriginal objects located or originating in the area.

36 Registration as Aboriginal cultural heritage body

(1) The Minister may, on the application of an entity, register an entity as an Aboriginal cultural heritage body for an area.

(2) The Minister must not register an entity as an Aboriginal cultural heritage body for an area if there is currently another entity registered as an Aboriginal cultural heritage body for the area or any part of the area.

(3) However, the Minister may register an entity (the “**new entity**”) as an Aboriginal cultural heritage body for an area even though there is currently another entity (the “**registered entity**”) registered as an Aboriginal cultural heritage body for the area or any part of the area if—

- (a) the new entity’s registration is only for the purposes of a particular project; and
- (b) the registered entity has given written agreement to the new entity’s registration for the purposes of the project; and
- (c) the registration provides that the registration is effective only until the project finishes.

(4) The Minister may register an entity as an Aboriginal cultural heritage body for an area only if the Minister is satisfied that—

- (a) the entity—
 - (i) is incorporated; and
 - (ii) is an appropriate body to identify Aboriginal parties for the area; and
 - (iii) has the capacity to identify Aboriginal parties for the area; and
- (b) Aboriginal parties for the area agree the entity should be registered.

Examples of entities that may be appropriate to be registered—

A registered native title body corporate, a representative body that is incorporated, an Aboriginal body incorporated for furthering the interests of Aboriginal people in relation to land or cultural matters.

(5) In deciding whether to register an entity as the Aboriginal cultural heritage body for an area, the Minister may—

- (a) consult with Aboriginal parties for the area or parts of the area; or
- (b) advertise for submissions about the proposed registration of the entity; or

(c) do anything else the Minister considers necessary to inform himself or herself.

(6) The Minister may cancel the registration of an entity as the Aboriginal cultural heritage body for an area if the Minister is satisfied the body is no longer the appropriate body to identify Aboriginal parties for the area.

(7) In this section—

“**register**”, an entity, means record the entity in the register.

37 Function of Aboriginal cultural heritage body

(1) The function of an Aboriginal cultural heritage body for an area is to identify, for the benefit of a person who needs to know under this Act, the Aboriginal parties for the area or for a particular part of the area.

(2) The Minister may give an Aboriginal cultural heritage body for an area the financial or other help the body needs to carry out its function.

PART 5—COLLECTION AND MANAGEMENT OF ABORIGINAL CULTURAL HERITAGE INFORMATION

Division 1—Aboriginal Cultural Heritage Database

38 Establishment of database

(1) The chief executive must establish and keep the Aboriginal Cultural Heritage Database.

(2) The chief executive may keep the database in the form or forms the chief executive considers to be the most appropriate in the circumstances for achieving the purpose of establishing the database.

39 Purpose of establishing database

(1) The purpose of establishing the database is to assemble, in a central and accessible location, information about Aboriginal cultural heritage.

(2) The database is intended to be a research and planning tool to help Aboriginal parties, researchers and other persons in their consideration of the Aboriginal cultural heritage values of particular areas.

(3) The placing of information on the database is not intended to be conclusive about whether the information is up-to-date, comprehensive or otherwise accurate.

40 Placing information on database

(1) The chief executive may place information on the database to the extent the chief executive considers appropriate, having regard especially to the consistency of the information with existing anthropological, biogeographical, historical and archeological information.

(2) Information the chief executive places on the database may be either information another person asks the chief executive to place on the database or information the chief executive already holds.

41 Taking information off database

(1) The chief executive may take information off the database if the chief executive is satisfied the information has been recorded in error.

(2) However, before acting under subsection (1) to take information about Aboriginal cultural heritage for a particular area off the database, the chief executive must, to the extent it is reasonably practicable to do so, consult with any Aboriginal party for the area.

42 Availability of database to public generally

The chief executive must not give access to the database generally.

43 Availability of database to Aboriginal party

The chief executive must give an Aboriginal party for an area information from the database to the extent that, in the chief executive's opinion, the information on the database relates to the area.

44 Availability of database to land user

(1) The chief executive must give a person, including, for example, a land user, information from the database if, in the chief executive's opinion, the person has a particular need to be aware of the information for satisfying the person's cultural heritage duty of care.

(2) However, a person does not comply with the person's cultural heritage duty of care only because the person has consulted the database.

45 Availability of database to researcher

The chief executive may give a researcher into Aboriginal cultural heritage information from the database to the extent that, in the chief executive's opinion, the information on the database relates to the research.

*Division 2—Aboriginal Cultural Heritage Register***46 Establishment of register**

(1) The chief executive must establish and keep the Aboriginal Cultural Heritage Register.

(2) The chief executive may keep the register in the form or forms the chief executive considers to be the most appropriate in the circumstances for—

- (a) achieving the purpose of establishing the register; and
- (b) ensuring the register otherwise complies with the requirements of this division.

47 Purpose of establishing register

(1) The purpose of establishing the register is to assemble in a central and accessible location—

- (a) information contained in cultural heritage studies; and
- (b) information about whether particular areas have been the subject of cultural heritage management plans; and
- (c) information about cultural heritage bodies.

(2) The register is intended to be—

- (a) a depository for information for consideration for land use and land use planning, including, for example, for local government planning schemes and for regional planning strategies; and
- (b) a research and planning tool to help people in their consideration of the Aboriginal cultural heritage values of particular objects and areas.

48 Recording information from cultural heritage study

(1) This section applies if, under part 6, the chief executive or Minister records in the register the findings of a cultural heritage study.

(2) The chief executive or Minister must record—

- (a) a description of the cultural heritage study adequate to distinguish it from other cultural heritage studies; and
- (b) a description of the study area, including, if necessary for accurately locating the study area, a plan of the area and a detailed description of its boundaries; and
- (c) a description of all Aboriginal cultural heritage that has been identified in the study area and a description of its location; and
- (d) in general terms, the reasons anything identified as Aboriginal cultural heritage has been so identified, including, if appropriate, whether it relates to men's or women's business; and
- (e) if the study makes recommendations for the management of Aboriginal cultural heritage identified in the study—the recommendations; and
- (f) for each area or object assessed as a significant Aboriginal area or object—the name of each Aboriginal party that assessed the area or object as a significant Aboriginal area or object; and
- (g) the name and contact details of each endorsed party for the study; and
- (h) the name of each endorsed party who did not take part in the carrying out of the study; and
- (i) the name and contact details of each Aboriginal cultural heritage body for the study area; and
- (j) the name and contact details of each cultural heritage assessor for the study; and

- (k) when the study was completed.

49 Information about cultural heritage management plans

(1) The chief executive must record in the register the status of, and identifying details for, each cultural heritage management plan approved, or in the process of being developed, under this Act.

(2) The chief executive must arrange the register in a way giving the persons searching the register reasonable access to information about—

- (a) whether any particular area of the State is the subject of—
 - (i) an approved cultural heritage management plan; or
 - (ii) a cultural heritage management plan in the process of being developed under this Act; and
- (b) the contact details for the sponsor and endorsed parties for each approved plan and plan being developed.

50 Keeping register up-to-date

(1) The Minister may add information to, or take information off, the register if the Minister is satisfied the adding or taking off is a necessary adjustment for keeping the register up-to-date.

(2) However, before acting under subsection (1) to take information off the register, the Minister must, to the extent it is reasonably practicable to do so, consult with any Aboriginal party for the area to which the information relates.

(3) Information added to the register under subsection (1) is taken to be information recorded in the register.

(4) Information taken off the register under subsection (1) is taken to be information no longer recorded in the register.

51 Availability of register to public generally

(1) The chief executive must give access to the register generally.

(2) The chief executive may require a person seeking to obtain information from the register to pay the fee prescribed under a regulation.

PART 6—CULTURAL HERITAGE STUDIES*Division 1—Introduction***52 Definitions for pt 6**

In this part—

“notice day (proposed study)”, for a cultural heritage study, means the day nominated by the sponsor for the study as the day that may reasonably be assumed to be the day by which—

- (a) the written notice (proposed study) for the study will have been received by each person to whom it is required to be given; and
- (b) each public notice (proposed study) required to be given will have come to the attention of the persons to whom it is directed.

“public notice (proposed study)” means a public notice published under section 60(2).

“written notice (proposed study)” means a written notice given under section 55(1).

53 Carrying out cultural heritage study and recording findings

(1) Any person, including the Minister, may be the sponsor for a cultural heritage study.

(2) However—

- (a) Aboriginal parties are responsible for assessing the level of significance of areas and objects included in the study area that are or appear to be significant Aboriginal areas and objects; and
- (b) if the findings of a cultural heritage study are to be included in the register, the study must be carried out, and its findings put in written form, in the way this part requires.

(3) Divisions 2 to 6 state the requirements for carrying out a cultural heritage study and for having its findings recorded in the register.

54 Cultural heritage study guidelines

(1) The Minister may by gazette notice notify guidelines to help people in choosing suitable methodologies for carrying out cultural heritage studies.

(2) However, a failure to conform to the guidelines is not a ground for refusing to record a cultural heritage study's findings in the register.

(3) Before notifying the guidelines, the Minister may consult with the following—

- (a) Aboriginal groups;
- (b) industry groups;
- (c) local governments;
- (d) other persons the Minister considers appropriate.

*Division 2—Preparing to carry out cultural heritage study***55 Giving of written notice (proposed study)**

(1) The sponsor for the cultural heritage study must give a written notice to—

- (a) the chief executive; and
- (b) each person who is an owner or occupier of a part of the study area; and
- (c) if, for a part of the study area, there is no Aboriginal cultural heritage body—each Aboriginal party that is a registered native title claimant or registered native title holder for the part of the study area; and
- (d) each entity that is an Aboriginal cultural heritage body for a part of the study area; and
- (e) if, for a part of the study area, there is no Aboriginal cultural heritage body and there is also no Aboriginal party that is a registered native title claimant or registered native title holder—each entity that is a representative body for the part of the study area.

(2) The written notice (proposed study) must, to the greatest practicable extent, be given at the one time to each person to whom it is required to be given.

56 Requirements for written notice (proposed study)

The written notice (proposed study) must—

- (a) advise the sponsor's name and contact details, including the sponsor's address for service; and
- (b) advise that the sponsor intends to carry out the cultural heritage study; and
- (c) describe the study area for the study and identify its location, including, to the extent appropriate and practicable in the circumstances, by describing the study area's location in relation to the nearest town, using bearings and approximate distances.

57 Additional requirements for notice to cultural heritage body

(1) If the written notice (proposed study) is given to an Aboriginal cultural heritage body, the notice must, as well as complying with section 56—

- (a) advise the body that if it wishes to identify an Aboriginal party to take part in the cultural heritage study, it must give a written notice to the sponsor identifying the party and giving the party's contact details; and
- (b) state the notice day (proposed study) for the study, and advise the body of the time by which the sponsor must be given the written notice identifying an Aboriginal party to take part in the cultural heritage study; and
- (c) advise the body that an Aboriginal party identified by the body might not be endorsed to take part in the study if the body does not give the sponsor the written notice within the required time.

(2) For subsection (1)(b), the time the sponsor advises as being the time by which the sponsor must be given the written notice identifying an Aboriginal party to take part in the cultural heritage study must be—

- (a) the end of 30 days after the notice day (proposed study) for the study; or

- (b) a later time decided by the sponsor.

58 Additional requirements for notice to Aboriginal party

(1) If the written notice (proposed study) is given to an Aboriginal party, the notice must, as well as complying with section 56—

- (a) advise the party that if it wishes to take part in the cultural heritage study, it must give a written notice to the sponsor that the party wishes to take part in the study; and
- (b) state the notice day (proposed study) for the study, and advise the party of the time by which the sponsor must be given the written notice that the party wishes to take part in the study; and
- (c) advise the party that it might not be endorsed to take part in the study if it does not give the sponsor the written notice within the required time.

(2) For subsection (1)(b), the time the sponsor advises as being the time by which the sponsor must be given the written notice that the party wishes to take part in the study must be—

- (a) the end of 30 days after the notice day (proposed study) for the study; or
- (b) a later time decided by the sponsor.

59 Additional requirements for notice to representative body

If the written notice (proposed study) is given to a representative body, the notice must, as well as complying with section 56, draw the attention of the representative body to the public notice (proposed study) published or to be published under this division.

60 Giving of public notice (proposed study)

(1) This section applies if, for a part of the study area (the “**relevant part**”)—

- (a) there is no Aboriginal cultural heritage body; and
- (b) there is no Aboriginal party that is a registered native title claimant or registered native title holder.

(2) The sponsor must ensure that a public notice is published in a newspaper circulating generally in the relevant part.

(3) If there is an approved form for the public notice (proposed study), the notice must be in the approved form.

(4) The public notice (proposed study) must be published as close as practicable to the time the written notice (proposed study) is given.

(5) The public notice (proposed study) must—

- (a) be directed to Aboriginal parties for the relevant part; and
- (b) advise the sponsor's name and contact details, including the sponsor's address for service; and
- (c) advise that the sponsor intends to carry out the cultural heritage study; and
- (d) describe the study area for the study and identify its location, including, to the extent appropriate and practicable in the circumstances, by describing the study area's location in relation to the nearest town, using bearings and approximate distances; and
- (e) describe the relevant part, if it is less extensive than the study area; and
- (f) advise that if an Aboriginal party for the relevant part wishes to take part in the study, it must give a written notice to the sponsor that the party wishes to take part in the study; and
- (g) state the notice day (proposed study) for the study, and advise the time by which the sponsor must be given the written notice that the party wishes to take part in the study; and
- (h) advise that an Aboriginal party might not be endorsed to take part in the study if it does not give the sponsor the written notice within the required time.

(6) For subsection (5)(g), the time the sponsor advises as being the time by which the sponsor must be given the written notice that the party wishes to take part in the study must be—

- (a) the end of 30 days after the notice day (proposed study) for the study; or
- (b) a later time decided by the sponsor.

61 Cultural heritage body response to written notice

An Aboriginal cultural heritage body given the written notice (proposed study) in relation to a part of the study area may respond by giving a written notice to the sponsor, within the time required under the written notice (proposed study), advising the sponsor of the name and contact details of each Aboriginal party for the part of the area, including the party's address for service.

62 Aboriginal party response to written notice

An Aboriginal party given the written notice (proposed study) in relation to a part of the study area may respond by giving a written notice to the sponsor, within the time required under the written notice (proposed study), that the Aboriginal party wishes to take part in the cultural heritage study.

63 Aboriginal party response to public notice

An Aboriginal party to which a public notice (proposed study) is directed may respond by giving a written notice to the sponsor, within the time required under the public notice (proposed study), that the Aboriginal party wishes to take part in the cultural heritage study.

64 Endorsement for study

(1) If the sponsor receives a notice from an Aboriginal cultural heritage body under section 61 within the time required under the written notice (proposed study), the sponsor must endorse each Aboriginal party identified in the notice to take part in the cultural heritage study.

(2) If the sponsor receives a notice from an Aboriginal party under section 62 within the time required under the written notice (proposed study), the sponsor must endorse the Aboriginal party to take part in the cultural heritage study.

(3) If the sponsor receives a notice from an Aboriginal party under section 63 within the time required under the public notice (proposed study), the sponsor must endorse the Aboriginal party to take part in the cultural heritage study.

(4) The sponsor is not required to endorse an Aboriginal party for the study area to take part in the cultural heritage study if a notice provided for

under this part has not been given to the sponsor, or has not been given to the sponsor within the required time.

(5) However, the sponsor may endorse an Aboriginal party for the study area to take part in the cultural heritage study even though the sponsor is not required to endorse the party.

Division 3—Carrying out cultural heritage study

65 Role of endorsed party

- (1) An endorsed party for the cultural heritage study has the role of—
- (a) in particular, assessing the level of significance of areas and objects included in the study area that are or appear to be significant Aboriginal areas and objects; and
 - (b) generally, consulting with the sponsor about the carrying out of the cultural heritage study, and giving help and advice directed at maximising the quality and authority of the study.
- (2) The endorsed party's role under subsection (1)(b) may be performed on the party's behalf by a nominee.

66 Role of sponsor

The role of the sponsor for the cultural heritage study is to carry out the study—

- (a) in consultation with the endorsed parties for the study; and
- (b) in a way directed at maximising the quality and authority of the study.

67 Engagement of cultural heritage assessors

- (1) The sponsor may engage persons as cultural heritage assessors for the cultural heritage study.
- (2) An endorsed party for the cultural heritage study may ask the sponsor to engage a cultural heritage assessor for the study for a particular purpose.
- (3) The sponsor must comply with any reasonable request of an endorsed party under subsection (2).

(4) However, the sponsor may engage a person as a cultural heritage assessor for the cultural heritage study only if the sponsor is satisfied the person is—

- (a) an Aboriginal person for the study area; or
- (b) an appropriately qualified person in a discipline directly relevant to the study; or

Examples of disciplines that would ordinarily be expected to be directly relevant—

Anthropology, archaeology, history.

- (c) another person who has particular knowledge or experience making the person suitable for engagement as a cultural heritage assessor.

(5) In this section—

“Aboriginal person for the study area” means an Aboriginal person who has particular knowledge about traditions, observances, customs or beliefs associated with the study area, and who—

- (a) has responsibility under Aboriginal tradition for some or all of the study area, or for significant Aboriginal objects located or originating in the study area; or
- (b) is a member of a family or clan group recognised as having responsibility under Aboriginal tradition for some or all of the study area, or for significant Aboriginal objects located or originating in the study area.

68 Role of cultural heritage assessors

(1) A cultural heritage assessor for the cultural heritage study has the role of—

- (a) in particular, helping in the assessment of the Aboriginal cultural heritage values of the study area, other than in relation to significant Aboriginal areas and objects; and
- (b) generally, giving help and advice directed at maximising the quality and authority of the cultural heritage study.

(2) The cultural heritage assessor may give help mentioned in subsection (1)(b) to the extent agreed to by the sponsor.

69 Consultation supporting cultural heritage study

(1) The sponsor and each endorsed party for the cultural heritage study must take reasonable steps to consult with each other about carrying out the study.

(2) Without limiting subsection (1), the sponsor and an endorsed party must consult with each other on any of the following if the sponsor or endorsed party asks for the consultation—

- (a) timing of the cultural heritage study generally and of particular stages of the study;
- (b) access to particular areas;
- (c) particular methods of assessment activity;
- (d) choosing persons to be engaged as cultural heritage assessors;
- (e) the reasonable requirements the sponsor may have of the endorsed party, or the endorsed party may have of the sponsor, for the carrying out of the study.

(3) The sponsor must also consult with the owner or occupier of land about obtaining access to the land if the access is reasonably required for carrying out the study.

Division 4—Recording by chief executive**70 Giving of cultural heritage study to chief executive for recording**

(1) The sponsor may give the cultural heritage study to the chief executive to record its findings in the register when the sponsor is satisfied that—

- (a) the study has been completed to the extent that is reasonably practicable in the circumstances; and
- (b) the study's findings are in order for recording in the register.

(2) The chief executive may, under this part—

- (a) record the findings of the study in the register; or
- (b) refuse to record the findings of the study in the register.

(3) Subsection (2) does not authorise the chief executive to assume the role of an endorsed party for the study for assessing the level of

significance of areas and objects included in the study area that are or appear to be significant Aboriginal areas and objects.

71 Consideration of cultural heritage study before recording

(1) In considering whether to record the findings of the cultural heritage study, the chief executive—

- (a) must have regard to the results and nature of consultation that has happened for the purposes of the study between the sponsor and endorsed parties; and
- (b) may seek expert advice about the study from any appropriate source about any aspect of the study; and
- (c) may consult with any of the following about the study—
 - (i) endorsed parties for the study;
 - (ii) cultural heritage assessors for the study;
 - (iii) owners and occupiers of land included in the study area;
 - (iv) land users of land included in the study area.

(2) Without limiting subsection (1)(b) and (c), expert advice and consultation may be about the soundness and viability of recommendations included in the cultural heritage study.

72 Requirements for recording cultural heritage study

(1) To record the findings of the cultural heritage study in the register, the chief executive must be satisfied that—

- (a) the sponsor has complied with the procedures and other requirements stated in this part for the carrying out of the cultural heritage study; and
- (b) the findings and other information included in the cultural heritage study, including the study's recommendations, are consistent with authoritative anthropological, biogeographical, historical and archeological information about the study area; and
- (c) the cultural heritage study includes the information and other material needed for recording the study's findings under part 5, division 2; and

- (d) the cultural heritage study also includes the following—
- (i) an explanation of how lawful access to the study area was achieved for carrying out the study, including details of any law, or of any oral or written authority given by an owner or occupier of land in the study area, authorising access to the land;
 - (ii) a summarising statement about the existence of Aboriginal cultural heritage in the study area;
 - (iii) documented evidence about whether recommendations included in the study for future management of Aboriginal cultural heritage have been agreed with affected land owners and occupiers;
 - (iv) a description of assessment activities carried out for the study;
 - (v) the signature of each endorsed party for the study, or the party's nominee, who is stated in the study to be in support of information and other matters in the study, and of the recording of some or all of the study's findings in the register;
 - (vi) the extent to which any endorsed party for the study does not agree with the recording of the study's findings in the register;
 - (vii) details of each endorsed party for the study who did not in fact take part in the study.

(2) If the chief executive is satisfied under subsection (1), the chief executive must record the findings of the cultural heritage study in the register.

73 Recording or refusing to record findings of cultural heritage study

(1) When the chief executive records, or refuses to record, the findings of the cultural heritage study in the register, the chief executive must give written notice of the recording, or refusal to record, to—

- (a) the sponsor; and
- (b) each person who is an owner or occupier of a part of the study area; and

- (c) each local government whose local government area includes a part of the study area; and
 - (d) each endorsed party for the study; and
 - (e) each Aboriginal cultural heritage body for a part of the study area.
- (2) The recording of findings in the register is not ineffective only because—
- (a) it is open to a person under division 5 to object to the recording of the findings; or
 - (b) a person entitled to a written notice under subsection (1) does not receive the notice.
- (3) If the chief executive refuses to record the findings of the cultural heritage study in the register, the chief executive must include in each written notice given under subsection (1) a statement of the chief executive's reasons for refusing to record the findings.

Division 5—Objections, hearing and recommendation

74 Definitions for div 5

In this division—

- “appeal period”**, for a recording of the findings of the cultural heritage study in the register, or for a refusal to record the findings of the cultural heritage study in the register, means the 30 days immediately after the day the chief executive gives the written notice notifying the recording or the refusal to record.
- “party”**, to an objection to a recording of the findings of the cultural heritage study in the register, or a refusal to record the findings of the cultural heritage study in the register, means the following—
- (a) the objector;
 - (b) each other person entitled to file an objection to the recording, or the refusal to record, within the appeal period for the recording or the refusal;
 - (c) the chief executive.

75 Objection to refusal to record findings

- (1) A person may object to the tribunal to—
 - (a) the chief executive's recording in the register of the findings of the cultural heritage study; or
 - (b) the chief executive's refusal to record in the register the findings of the cultural heritage study.
- (2) To object to a recording or a refusal to record, the objector must be—
 - (a) the sponsor; or
 - (b) an endorsed party for the study; or
 - (c) a person who is an owner or occupier of a part of the study area.
- (3) The objector must file the objection with the tribunal within the appeal period.
- (4) The objector must, in filing the objection with the tribunal, identify for the tribunal the names and contact details of all other persons who the objector understands to be parties to the objection.
- (5) As soon as practicable after receiving an objection from an objector, the tribunal must—
 - (a) take all reasonable steps to identify all other parties to the objection; and
 - (b) advise them of the objection.
- (6) The chief executive must give the tribunal all the help it can reasonably give to identify the parties to the objection.
- (7) The tribunal must take all reasonable steps to keep all parties to the objection informed about when the hearing of the objection is to be held.

76 Tribunal's hearing

- (1) The tribunal must hold a hearing of the objection.
- (2) Despite anything in the *Land and Resources Tribunal Act 1999*, the tribunal must be constituted for the hearing, as directed by the president of the tribunal, by—
 - (a) a presiding member of the tribunal; or
 - (b) a presiding member of the tribunal assisted by a single non-presiding member of the tribunal; or

- (c) a referee non-presiding member of the tribunal who has been appointed as an indigenous issues referee.
- (3) All parties to the objection have the right to be heard at the hearing.

77 Tribunal's recommendation to Minister

(1) After the hearing has been completed, the tribunal must recommend to the Minister—

- (a) if the objection was to a recording of the findings of the cultural heritage study in the register—
 - (i) that the Minister confirm the recording of the findings of the study in the register; or
 - (ii) that the Minister take the findings of the study out of the register; or
 - (iii) that the Minister amend the findings recorded in the register in accordance with details included in the recommendation; or
- (b) if the objection was to a refusal to record the findings of the cultural heritage study in the register—
 - (i) that the Minister confirm the refusal to record the findings of the study in the register; or
 - (ii) that the Minister record the findings of the study in the register; or
 - (iii) that the Minister record the findings of the study in the register after amendment of the findings in accordance with details included in the recommendation.

(2) Subsection (1) does not stop the tribunal, before making its recommendation to the Minister, from helping the parties to negotiate changes to the cultural heritage study.

(3) For making a recommendation to the Minister about the cultural heritage study, the tribunal—

- (a) must have regard to the matters about which the chief executive was required to be satisfied before recording the findings of the study; and
- (b) may include in its considerations the nature and extent of consultation held in carrying out the study.

(4) Subsection (1) does not authorise the tribunal to assume the role of an endorsed party for the study for assessing the level of significance of areas and objects included in the study area that are or appear to be significant Aboriginal areas and objects.

Division 6—Recording by Minister

78 Recording or refusing to record findings of cultural heritage study

(1) On receiving a recommendation from the tribunal under division 5, the Minister may—

- (a) if the objection was to a recording of the findings of the cultural heritage study in the register—
 - (i) confirm the recording of the findings; or
 - (ii) take the findings of the study out of the register; or
 - (iii) amend the findings recorded in the register in the way the Minister considers appropriate; or
- (b) if the objection was to a refusal to record the findings of the cultural heritage study in the register—
 - (i) confirm the refusal to record the findings; or
 - (ii) record the findings; or
 - (iii) record the findings after amendment in the way the Minister considers appropriate.

(2) However, in deciding what action to take, the Minister must have regard to—

- (a) the tribunal's recommendation; and
- (b) the matters about which the chief executive was required to be satisfied before recording the findings of the study.

(3) Subsection (1) does not authorise the Minister to assume the role of an endorsed party for the study for assessing the level of significance of areas and objects included in the study area that are or appear to be significant Aboriginal areas and objects.

PART 7—CULTURAL HERITAGE MANAGEMENT PLANS

Division 1—Introduction

79 Definitions

In this part—

“consultation party”, for a cultural heritage management plan, means—

- (a) the sponsor for the plan; or
- (b) an endorsed party for the plan.

“consultation period”, for a cultural heritage management plan, means the period of 84 days starting immediately after the period of 30 days after the notice day (proposed plan).

“notice day (proposed plan)”, for a cultural heritage management plan, means the day nominated by the sponsor for the plan as the day that may reasonably be assumed to be the day by which—

- (a) the written notice (proposed plan) for the plan will have been received by each person to whom it is required to be given; and
- (b) each public notice (proposed plan) required to be given will have come to the attention of the persons to whom it is directed.

“public notice (proposed plan)” means a public notice published under section 93(2).

“written notice (proposed plan)” means a written notice given under section 88(1).

80 Development and approval of cultural heritage management plan

(1) Division 2 provides for when a cultural heritage management plan is or may be required to be developed and approved for a project.

(2) Divisions 3 to 7 state the requirements for developing a cultural heritage management plan for a project and for having the plan approved for the project.

81 Voluntary development of cultural heritage management plan

A person may, under this Act, develop and gain approval of a cultural heritage management plan even though there is no legal requirement for the plan.

Example—

A person may seek to have an approved cultural heritage management plan in place to help the person avoid breaching the cultural heritage duty of care.

82 Approved cultural heritage management plan may not require particular action

In appropriate circumstances, a cultural heritage management plan developed and approved under this Act for a project may be to the effect that there are, for the project, no particular requirements for managing the impact of activities on Aboriginal cultural heritage.

83 Cultural heritage management plan guidelines

(1) The Minister may by gazette notice notify guidelines to help people in choosing suitable methodologies for developing cultural heritage management plans.

(2) However, a failure to conform to the guidelines is not a ground for refusing to approve a cultural heritage management plan.

(3) Before notifying the guidelines, the Minister may consult with the following—

- (a) Aboriginal groups;
- (b) industry groups;
- (c) local governments;
- (d) other persons the Minister considers appropriate.

Division 2—Protection of cultural heritage under cultural heritage management plans**84 Application of div 2**

This division does not apply to a project to the extent the project is the subject of—

- (a) an existing agreement; or
- (b) a native title agreement, whenever entered into, unless Aboriginal cultural heritage is expressly excluded from being subject to the agreement.

85 Cultural heritage management plan needed if EIS needed

(1) This section applies to a project if—

- (a) under an Act other than this Act, a lease, licence, permit, approval or other authority is required for the project; and
- (b) under the operation of the Act under which the authority is required, or under the operation of another Act, an EIS is required for the project.

(2) The entity authorised to give the authority must not give it unless—

- (a) a cultural heritage management plan for the project has been developed and approved under this Act; or
- (b) the authority is given subject to conditions to ensure that no excavation, construction or other activity that may cause harm to Aboriginal cultural heritage takes place for the project without the development and approval of a cultural heritage management plan for the project.

(3) The plan area for a cultural heritage management plan developed and approved for subsection (2) may be limited to the part of the project area that is the subject of the EIS.

86 Cultural heritage management plan may be needed if other environmental authority needed

(1) This section applies to a project if—

- (a) under an Act other than this Act—
 - (i) a lease, licence, permit, approval or other authority is required for the project; and
 - (ii) under the operation of the Act under which the authority is required, or under the operation of another Act, an environmental assessment is required for the project; and

(b) the project is a project, or a project of a type, prescribed under a regulation for this section.

(2) The entity authorised to give the authority must not give the authority unless—

(a) a cultural heritage management plan for the project has been developed and approved under this Act; or

(b) the authority is given subject to conditions to ensure that no excavation or construction takes place for the project without the development and approval of a cultural heritage management plan for the project.

(3) The plan area for a cultural heritage management plan approved for subsection (2) may be limited to the part of the project area that is the subject of the environmental assessment.

(4) A regulation prescribing a project or type of project for subsection (1)(b) may be made only on the recommendation of the Minister.

(5) The Minister may recommend the making of a regulation under subsection (1)(b) only if the Minister is satisfied the project or type of project will have a significant impact on Aboriginal cultural heritage.

(6) In this section—

“environmental assessment” means a form of environmental assessment or planning, not including an EIS but including, for example, an EMP submission under the *Environmental Protection Act 1994*.

87 Cultural heritage management plan needed under IPA

(1) This section applies to a project if, under IPA—

(a) a development application is made in relation to the project; and

(b) the chief executive is a concurrence agency for the application.³

(2) Without limiting IPA, the chief executive may—

³ It is proposed that a regulation under IPA will prescribe the chief executive as a concurrence agency in relation to a development consisting of a material change of use over Aboriginal cultural heritage that has been entered on the register. [This footnote is for consultation purposes only.]

- (a) require, as part of an information request under IPA, that the applicant ensure a cultural heritage management plan for the project is developed and approved under this Act; or
- (b) require to be imposed, as a condition of approval of the development application, a condition that a cultural heritage management plan for the project be developed and approved under this Act.

Division 3—Preparing to develop cultural heritage management plan

88 Giving of written notice (proposed plan)

(1) The sponsor for a cultural heritage management plan must give a written notice to—

- (a) the chief executive; and
- (b) each person who is an owner or occupier of a part of the plan area; and
- (c) each Aboriginal party that is a registered native title claimant or registered native title holder for a part of the plan area; and
- (d) if, for a part of the plan area, there is no Aboriginal party that is a registered native title claimant or registered native title holder—each Aboriginal cultural heritage body for the part of the plan area; and
- (e) if, for a part of the plan area, there is no Aboriginal party that is a registered native title claimant or registered native title holder, and there is also no Aboriginal cultural heritage body—each entity that is a representative body for the part of the plan area.

(2) The written notice (proposed plan) must, to the greatest practicable extent, be given at the one time to each person to whom it is required to be given.

89 Requirements for written notice (proposed plan)

The written notice (proposed plan) must—

- (a) advise the sponsor's name and contact details, including the sponsor's address for service; and

- (b) identify the project; and
- (c) advise that the sponsor intends to develop the cultural heritage management plan for the project; and
- (d) describe the plan area for the plan and identify its location, including, to the extent appropriate and practicable in the circumstances, by describing the plan area's location in relation to the nearest town, using bearings and approximate distances.

90 Additional requirements for notice to cultural heritage body

(1) If the written notice (proposed plan) is given to an Aboriginal cultural heritage body, the notice must, as well as complying with section 89—

- (a) advise the body that if it wishes to identify an Aboriginal party to take part in developing the cultural heritage management plan, it must give a written notice to the sponsor identifying the party and giving the party's contact details; and
- (b) state the notice day (proposed plan) for the plan, and advise the body of the time by which the sponsor must be given the written notice identifying an Aboriginal party to take part in developing the plan; and
- (c) advise the body that an Aboriginal party identified by the body might not be endorsed to take part in developing the plan if the body does not give the sponsor the written notice within the required time.

(2) For subsection (1)(b), the time the sponsor advises as being the time by which the sponsor must be given the written notice identifying an Aboriginal party to take part in developing the plan must be—

- (a) the end of 30 days after the notice day (proposed plan) for the plan; or
- (b) a later time decided by the sponsor.

91 Additional requirements for notice to Aboriginal party

(1) If the written notice (proposed plan) is given to an Aboriginal party, the notice must, as well as complying with section 89—

- (a) advise the party that if it wishes to take part in developing the cultural heritage management plan, it must give a written notice

to the sponsor that the party wishes to take part in developing the plan; and

- (b) state the notice day (proposed plan) for the plan, and advise the party of the time by which the sponsor must be given the written notice that the party wishes to take part in developing the plan; and
- (c) advise the party that it might not be endorsed to take part in developing the plan if it does not give the sponsor the written notice within the required time.

(2) For subsection (1)(b), the time the sponsor advises as being the time by which the sponsor must be given the written notice that the party wishes to take part in developing the plan must be—

- (a) the end of 30 days after the notice day (proposed plan) for the plan; or
- (b) a later time decided by the sponsor.

92 Additional requirements for notice to representative body

If the written notice (proposed plan) is given to a representative body, the notice must, as well as complying with section 89, draw the attention of the representative body to the public notice (proposed plan) published or to be published under this division.

93 Giving of public notice (proposed plan)

(1) This section applies if, for a part of the plan area (the “**relevant part**”)—

- (a) there is no Aboriginal cultural heritage body; and
- (b) there is no Aboriginal party that is a registered native title claimant or registered native title holder.

(2) The sponsor must ensure that a public notice is published in a newspaper circulating generally in the relevant part.

(3) If there is an approved form for the public notice (proposed plan), the notice must be in the approved form.

(4) The public notice (proposed plan) must be published as close as practicable to the time the written notice (proposed plan) is given.

- (5) The public notice (proposed plan) must—
- (a) be directed to Aboriginal parties for the relevant part; and
 - (b) advise the sponsor's name and contact details, including the sponsor's address for service; and
 - (c) identify the project; and
 - (d) advise that the sponsor intends to develop the cultural heritage management plan for the project; and
 - (e) describe the plan area for the plan and identify its location, including, to the extent appropriate and practicable in the circumstances, by describing the plan area's location in relation to the nearest town, using bearings and approximate distances; and
 - (f) describe the relevant part, if it is less extensive than the plan area; and
 - (g) advise that if an Aboriginal party for the relevant part wishes to take part in developing the plan, it must give a written notice to the sponsor that the party wishes to take part in developing the plan; and
 - (h) state the notice day (proposed plan) for the plan, and advise the time by which the sponsor must be given the written notice that the party wishes to take part in developing the plan; and
 - (i) advise that an Aboriginal party might not be endorsed to take part in developing the plan if it does not give the sponsor the written notice within the required time.
- (6) For subsection (5)(h), the time the sponsor advises as being the time by which the sponsor must be given the written notice that the party wishes to take part in developing the plan must be—
- (a) the end of 30 days after the notice day (proposed plan) for the plan; or
 - (b) a later time decided by the sponsor.

94 Cultural heritage body response to written notice

An Aboriginal cultural heritage body given the written notice (proposed plan) in relation to a part of the plan area may respond by giving a written notice to the sponsor, within the time required under the written notice

(proposed plan), advising the sponsor of the name and contact details of each Aboriginal party for the part, including the party's address for service.

95 Aboriginal party response to written notice

An Aboriginal party given the written notice (proposed plan) in relation to a part of the plan area may respond by giving a written notice to the sponsor, within the time required under the written notice (proposed plan), that the Aboriginal party wishes to take part in developing the cultural heritage management plan.

96 Aboriginal party response to public notice

An Aboriginal party to which a public notice (proposed plan) is directed may respond by giving a written notice to the sponsor, within the time required under the public notice (proposed plan), that the Aboriginal party wishes to take part in developing the cultural heritage management plan.

97 Becoming Aboriginal party after written notice (proposed plan) is given

(1) This section applies if, after the giving of the written notice (proposed plan), but before the notice day (proposed plan) for the cultural heritage management plan, an entity becomes an Aboriginal party for a part of the plan area because it becomes a registered native title claimant or registered native title holder for the part of the plan area.

(2) The sponsor must give the Aboriginal party a written notice that—

- (a) includes a copy of the written notice (proposed plan) it would have been given if it had been an Aboriginal party when the notice was given under section 88; and
- (b) advises the time by which, despite anything in the written notice (proposed plan), the sponsor must be given the written notice that the party wishes to take part in developing the plan.

(3) For subsection (2)(b), the time the sponsor advises as being the time by which the sponsor must be given the written notice that the party wishes to take part in developing the plan must be—

- (a) the end of 37 days after the notice day (proposed plan) for the plan; or

(b) a later time decided by the sponsor.

(4) An Aboriginal party given the written notice (proposed plan) in relation to a part of the plan area may respond by giving a written notice to the sponsor, within the time advised under subsection (2)(b), that the party wishes to take part in developing the plan.

(5) This section applies whether or not a public notice (proposed plan) was published.

98 Endorsement for plan development

(1) If the sponsor receives a notice under section 94 within the time required under the written notice (proposed plan), the sponsor must endorse each Aboriginal party identified in the notice to take part in developing the cultural heritage management plan.

(2) If the sponsor receives a notice from an Aboriginal party under section 95 within the time required under the written notice (proposed plan), the sponsor must endorse the Aboriginal party to take part in developing the plan.

(3) If the sponsor receives a notice from an Aboriginal party under section 96 within the time required under the public notice (proposed plan), the sponsor must endorse the Aboriginal party to take part in developing the plan.

(4) If the sponsor receives a notice from an Aboriginal party under section 97(4) within the time required under section 97(2)(b), the sponsor must endorse the Aboriginal party to take part in developing the plan.

(5) The sponsor is not required to endorse an Aboriginal party for the plan area to take part in developing the cultural heritage management plan if a notice provided for under this part has not been given to the sponsor, or has not been given to the sponsor within the required time.

(6) The sponsor may endorse an Aboriginal party for the plan area to take part in developing the plan even though the sponsor is not required to endorse the party.

*Division 4—Development of cultural heritage management plan***99 Role of endorsed party**

(1) An endorsed party for the cultural heritage management plan has the role of—

- (a) seeking agreement with the sponsor for the plan about how the project is to be managed—
 - (i) to avoid harm to Aboriginal cultural heritage; and
 - (ii) to the extent that harm can not be reasonably be avoided, to minimise harm to Aboriginal cultural heritage; and
- (b) consulting and negotiating with the sponsor, and with other endorsed parties for the plan, about issues needing to be addressed in the development of the plan, and about the final content of the plan; and
- (c) generally, giving help and advice in a way directed at maximising the suitability of the plan for the effective protection and conservation of Aboriginal cultural heritage.

(2) The endorsed party's role may be performed on the party's behalf by a nominee.

100 Role of sponsor

The sponsor for the cultural heritage management plan has the role of—

- (a) seeking agreement with the endorsed parties for the plan about how the project is to be managed—
 - (i) to avoid harm to Aboriginal cultural heritage; and
 - (ii) to the extent that harm can not be reasonably be avoided, to minimise harm to Aboriginal cultural heritage; and
- (b) developing the plan—
 - (i) in consultation and negotiation with the endorsed parties for the plan; and
 - (ii) in a way directed at maximising the suitability of the plan for the effective protection and conservation of Aboriginal cultural heritage.

101 Consultation

(1) Subjects for consultation may include, but are not limited to, the following—

- (a) the nature and extent of known Aboriginal cultural heritage in the plan area;
- (b) the carrying out of a site survey of Aboriginal cultural heritage in the plan area, and the results of the survey if it is carried out;
- (c) reasonable travel and accommodation requirements for endorsed parties;
- (d) workplace health and safety issues arising out of any site survey or investigation carried out in developing the plan.

(2) Consultation may include reasonable use of any of the following ways of consulting—

- (a) face to face meetings;
- (b) telephone conferences;
- (c) use of the internet;
- (d) exchanges of correspondence.

(3) This division does not require a survey of Aboriginal cultural heritage carried out for the purposes of consultation to be carried out as a cultural heritage study under part 6.

102 Reaching agreement

(1) The sponsor and each endorsed party for the cultural heritage management plan must negotiate, and make every reasonable effort to reach agreement, about the provisions of the plan.

(2) Without limiting how the plan may provide for the managing of project activities for their impact on Aboriginal cultural heritage, the plan may provide for the following—

- (a) when particular project activities are to happen;
- (b) when particular activities under the plan are to happen;
- (c) arrangements for access to land for carrying out activities under the plan, including details of arrangements entered into with owners or occupiers of land;

- (d) identification of known Aboriginal cultural heritage, noting, if appropriate, any reference to the cultural heritage in the database or register;
- (e) the way Aboriginal cultural heritage is to be assessed;
- (f) whether Aboriginal cultural heritage is to be damaged, relocated or taken away, and how this is to be managed;
- (g) contingency planning for disputes, unforeseen delays and other foreseeable and unforeseeable obstacles to carrying out activities under the plan;
- (h) other matters reasonably necessary for successfully carrying out activities under the plan.

103 Mediation

(1) This section applies if at least 28 days of the consultation period for the cultural heritage management plan have elapsed, and it appears to a consultation party for the plan that—

- (a) a dispute has arisen between 2 or more consultation parties for the plan; and
- (b) the dispute is substantially delaying the development of the plan.

(2) The consultation party may ask the tribunal to provide mediation of the dispute.

(3) If in the opinion of a presiding member of the tribunal the dispute is suitable for mediation—

- (a) the tribunal may provide the mediation; and
- (b) the mediation may be provided by a referee non-presiding member of the tribunal who has been appointed as an indigenous issues referee or mediation referee.

(4) Referral of the dispute to mediation may extend the consultation period only to the extent agreed to in writing by all the consultation parties.

*Division 5—Approval by chief executive***104 Chief executive approval of agreed plan**

(1) Whether or not the consultation period for the cultural heritage management plan has ended, the sponsor may give the plan, as developed under this part, to the chief executive for the chief executive's approval if—

- (a) there is no endorsed party for the plan; or
- (b) otherwise—all consultation parties for the plan agree that the chief executive may approve the plan.

(2) The chief executive may, under this part—

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

105 Consideration of agreed plan before approval

(1) To approve the agreed cultural heritage management plan, the chief executive must be satisfied the plan makes enough provision for how the project is to be managed—

- (a) to avoid harm to Aboriginal cultural heritage; and
- (b) to the extent that harm can not be reasonably be avoided, to minimise harm to Aboriginal cultural heritage.

(2) The chief executive must also be satisfied that, for any Aboriginal cultural heritage that is to be or may be taken away when the plan is put into effect, the plan makes enough provision about—

- (a) who is to become the owner of it; and
- (b) who is to have the custody of it.

(3) If the plan is not a cultural heritage management plan developed voluntarily, the chief executive must also be satisfied the plan includes agreement for effective alternate dispute resolution arrangements to deal with issues that may arise in the operation of the plan.

106 Approving or refusing to approve agreed plan

(1) When the chief executive approves, or refuses to approve, the agreed cultural heritage management plan, the chief executive must give written

notice of the approval, or refusal to approve, to all consultation parties for the plan.

(2) The approval or refusal to approve is not ineffective only because a person entitled to a written notice under subsection (1) does not receive the notice.

(3) If the chief executive refuses to approve the agreed plan, the chief executive must include in each written notice given under subsection (1) a written statement of the chief executive's reasons for refusing to approve the plan.

(4) The chief executive is not required to accept, but may accept, for the chief executive's further consideration, the plan in a form amended to take account of the matters mentioned in the chief executive's statement of reasons.

Division 6—Objection or referral, hearing and recommendation

107 Definitions for div 6

In this division—

“**appeal period**”, for a refusal to approve the cultural heritage management plan as agreed between the consultation parties for the plan, means the 30 days immediately after the chief executive gives the sponsor the written notice notifying the refusal.

“**party**”, to an objection to a refusal to approve the cultural heritage management plan as agreed between the consultation parties for the plan, or to a referral of the developed cultural heritage management plan to the tribunal for approval, means the following—

- (a) each consultation party;
- (b) the chief executive.

108 Objection to tribunal to refusal to approve agreed plan

(1) The sponsor for the cultural heritage management plan may object, to the tribunal, to the chief executive's refusal to approve the cultural heritage management plan as agreed between the consultation parties for the plan.

(2) The sponsor must file the objection with the tribunal within the appeal period for the refusal.

109 Sponsor may refer plan to tribunal after unsuccessful mediation

(1) This section applies if—

- (a) under section 103, a consultation party asks the tribunal to provide mediation of a dispute; and
- (b) the mediation is not successful in resolving the dispute; and
- (c) the mediator considers that resolution is unlikely before the end of the consultation period.

(2) The mediator may authorise the sponsor to refer the plan to the tribunal and ask the tribunal to approve the plan, even though the consultation period has not ended.

(3) If the sponsor does not refer the plan on the mediator's authority, the sponsor is not prevented from referring the plan to the tribunal under section 110.

110 Sponsor may refer plan to tribunal after failure to agree

(1) This section applies if—

- (a) the consultation period for the cultural heritage management plan has ended; and
- (b) all consultation parties have not agreed that the chief executive may approve the plan.

(2) The sponsor for the plan may refer the plan to the tribunal and ask the tribunal to approve the plan.

(3) The sponsor must ensure that a referral of the plan to the tribunal happens within a reasonable time after the end of the consultation period for the plan.

111 Administrative details for objection or referral

(1) The sponsor must, in filing an objection or referral with the tribunal, identify for the tribunal the names and contact details of all parties to the objection or referral.

(2) As soon as practicable after receiving the objection or referral from the sponsor, the tribunal must advise all other parties of the objection or referral.

(3) The tribunal must take all reasonable steps to keep all parties to the objection or referral informed about when any hearing of the objection or referral is to be held.

112 Substantive requirements for objection or referral

(1) The sponsor must, in filing an objection or referral with the tribunal, give the tribunal a document that—

- (a) outlines the nature and extent of the consultation that happened in the consultation period for the cultural heritage management plan; and
- (b) states why the sponsor believes the plan makes enough provision for how the project is to be managed—
 - (i) to avoid harm to Aboriginal cultural heritage; and
 - (ii) to the extent that harm can not be reasonably be avoided, to minimise harm to Aboriginal cultural heritage.

(2) The tribunal must—

- (a) give each other party to the objection or referral a copy of the document given to the tribunal under subsection (1); and
- (b) for a referral—invite each other party to the referral to make a written submission to the tribunal about the plan and the sponsor's submission on the plan.

(3) The tribunal is required to take account of a party's written submission given on an invitation under subsection (2)(b) only if the tribunal receives the submission within 30 days after the tribunal gives the copy of the document to the party under subsection (2)(a).

113 Tribunal's hearing

(1) The tribunal may hold, but is not required to hold, a hearing of an objection or referral.

(2) If, for the hearing, the tribunal is constituted by a referee non-presiding member of the tribunal who has been appointed as an indigenous issues referee, the referee must not be a referee who provided mediation under section 103.

(3) All parties to the objection or referral have the right to be heard at the hearing.

114 General time requirement for making recommendation

(1) The tribunal must take all reasonable steps to make sure that its recommendation about the cultural heritage management plan is given to the Minister within 6 months after the objection or referral is filed with the tribunal.

(2) If the recommendation is not made within the 6 months, the tribunal must, as soon as practicable after the 6 months ends, give a written notice to the Minister—

- (a) advising why the recommendation has not yet been made; and
- (b) giving an estimate of when the recommendation is likely to be made.

115 Tribunal's recommendation to Minister

(1) After the hearing has been completed, or, if no hearing is held, after the tribunal has considered the sponsor's document and any submission received by the tribunal under section 112, the tribunal must give its recommendation about the cultural heritage management plan to the Minister.

(2) The tribunal's recommendation must be—

- (a) that the Minister—
 - (i) for an objection—confirm the chief executive's refusal to approve the plan; or
 - (ii) for a referral—refuse to approve the plan; or
- (b) that the Minister approve the plan; or
- (c) that the Minister approve the plan after amendment of the plan in accordance with details included in the recommendation.

(3) Subsection (2) does not stop the tribunal, before making its recommendation to the Minister, from helping the parties to negotiate changes to the plan.

(4) If, before the tribunal makes a recommendation to the Minister, all the consultation parties agree that the plan should be approved, the sponsor may give the plan, as agreed to, to the chief executive.

(5) The giving of the plan to the chief executive under subsection (4) is taken to be a giving of the plan to the chief executive under section 104.

116 Reaching the recommendation

(1) To recommend that the Minister approve the cultural heritage management plan, or that the Minister approve the plan after amendment, the tribunal must be satisfied the plan makes, or after suitable amendment will make, enough provision for how the project is to be managed—

- (a) to avoid damage to Aboriginal cultural heritage; and
- (b) to the extent that damage can not be reasonably be avoided, to minimise damage to Aboriginal cultural heritage.

(2) If the plan is not a cultural heritage management plan developed voluntarily, the tribunal must also be satisfied the plan provides for effective alternate dispute resolution arrangements to deal with issues that may arise in the operation of the plan.

(3) The tribunal must also be satisfied that, for Aboriginal cultural heritage that is to be or may be taken away when the plan is put into effect, the plan makes enough provision about—

- (a) who is to become the owner of it; and
- (b) who is to have the custody of it.

(4) For making its recommendation to the Minister about the plan, the tribunal—

- (a) must include the following in its considerations—
 - (i) the availability and quality of documented information about the cultural heritage significance of the plan area;
 - (ii) the nature of the impacts of the project;
 - (iii) submissions made by the parties to the objection or referral, including, if a hearing is held, oral submissions made at the hearing;
 - (iv) the nature and extent of past uses of the project area; and
- (b) may include in its considerations the extent, nature and results of consultation held in developing the plan; and
- (c) for a referral—may include in its consideration an assessment of the reasonableness of requests made by a consultation party if this is relevant to the failure of the consultation parties to reach agreement on the plan.

*Division 7—Approval by Minister***117 Approving or refusing to approve plan**

(1) On receiving a recommendation from the tribunal under division 6, the Minister may—

- (a) for an objection—confirm the chief executive’s refusal to approve the cultural heritage management plan; or
- (b) for a referral—refuse to approve the plan; or
- (c) approve the plan; or
- (d) approve the plan after amendment of the plan in accordance with the Minister’s direction.

(2) However, in deciding what action to take, the Minister must have regard to—

- (a) the tribunal’s recommendation; and
- (b) the matters about which the chief executive was or would have been required to be satisfied before approving the plan.

PART 8—INVESTIGATION AND ENFORCEMENT*Division 1—Authorised officers***118 Appointment and qualifications**

(1) The chief executive may appoint a public service employee as an authorised officer.

(2) However, the chief executive may appoint a person as an authorised officer only if the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

119 Appointment conditions and limit on powers

(1) An authorised officer holds office on any conditions stated in—

- (a) the authorised officer's instrument of appointment; or
- (b) a signed notice given to the authorised officer; or
- (c) a regulation.

(2) The instrument of appointment, a signed notice given to the authorised officer or a regulation may limit the authorised officer's powers under this Act.

(3) In this section—

“**signed notice**” means a notice signed by the chief executive.

120 Issue of identity card

(1) The chief executive must issue an identity card to each authorised officer.

(2) The identity card must—

- (a) contain a recent photo of the authorised officer; and
- (b) contain a copy of the authorised officer's signature; and
- (c) identify the person as an authorised officer under this Act; and
- (d) state an expiry date for the card.

(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

121 Production or display of identity card

(1) In exercising a power under this Act in relation to a person, an authorised officer must—

- (a) produce the authorised officer's identity card for the person's inspection before exercising the power; or
- (b) have the identity card displayed so it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the person's inspection at the first reasonable opportunity.

(3) For subsection (1), an authorised officer does not exercise a power in relation to a person only because the authorised officer, as authorised under this Act, enters—

- (a) a public place when it is open to the public; or
- (b) a place for the purpose of asking the occupier of the place for consent to enter.

122 When authorised officer ceases to hold office

(1) An authorised officer ceases to hold office if any of the following happens—

- (a) the term of office stated in a condition of office ends;
- (b) under another condition of office, the authorised officer ceases to hold office;
- (c) the authorised officer’s resignation takes effect.

(2) Subsection (1) does not limit the ways an authorised officer may cease to hold office.

(3) In this section—

“**condition of office**” means a condition on which the authorised officer holds office.

123 Resignation

(1) An authorised officer may resign by signed notice given to the chief executive.

(2) However, if holding office as an authorised officer is a condition of the authorised officer holding another office, the authorised officer may not resign as an authorised officer without resigning from the other office.

124 Return of identity card

A person who ceases to be an authorised officer must return the person’s identity card to the chief executive within 21 days after ceasing to be an authorised officer unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

*Division 2—Powers of authorised officers**Subdivision 1—Entry of places***125 Power to enter places**

- (1) An authorised officer may enter a place if—
 - (a) its occupier consents to the entry; or
 - (b) it is a public place and the entry is made when the place is open to the public; or
 - (c) the entry is authorised by a warrant.
- (2) For the purpose of asking the occupier of a place for consent to enter, an authorised officer may, without the occupier's consent or a warrant—
 - (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
 - (b) enter part of the place the authorised officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

*Subdivision 2—Procedure for entry***126 Entry with consent**

- (1) This section applies if an authorised officer intends to ask an occupier of a place to consent to the authorised officer or another authorised officer entering the place.
- (2) Before asking for the consent, the authorised officer must tell the occupier—
 - (a) the purpose of the entry; and
 - (b) that the occupier is not required to consent.
- (3) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgment of the consent.
- (4) The acknowledgment must state—
 - (a) the occupier has been told—

- (i) the purpose of the entry; and
- (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the authorised officer consent to enter the place and exercise powers under this Act; and
- (d) the time and date the consent was given.

(5) If the occupier signs the acknowledgment, the authorised officer must immediately give a copy to the occupier.

(6) If—

- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
- (b) an acknowledgement complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

127 Application for warrant

(1) An authorised officer may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

128 Issue of warrant

(1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and

- (b) the evidence is at the place, or may be at the place within the next 7 days.

(2) The warrant must state—

- (a) that a stated authorised officer may, with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for entry; and
 - (ii) exercise the authorised officer's powers under this Act; and
- (b) the offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 14 days after the warrant's issue, the warrant ends.

129 Special warrants

(1) An authorised officer may apply for a warrant (a “**special warrant**”) by phone, fax, radio or another form of communication if the authorised officer considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the authorised officer's remote location.

(2) Before applying for the special warrant, the authorised officer must prepare an application stating the grounds on which the warrant is sought.

(3) The authorised officer may apply for the special warrant before the application is sworn.

(4) After issuing the special warrant, the magistrate must immediately fax a copy (the “**facsimile warrant**”) to the authorised officer if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy to the authorised officer—

- (a) the magistrate must tell the authorised officer—
 - (i) what the terms of the special warrant are; and
 - (ii) the date and time the special warrant was issued; and

- (b) the authorised officer must complete a form of warrant (a “**warrant form**”) and write on it—
 - (i) the magistrate’s name; and
 - (ii) the date and time the magistrate issued the special warrant; and
 - (iii) the terms of the special warrant.

(6) The facsimile warrant, or the warrant form properly completed by the authorised officer, authorises the entry and the exercise of the other powers stated in the special warrant issued.

(7) The authorised officer must, at the first reasonable opportunity, send to the magistrate—

- (a) the sworn application; and
- (b) if the authorised officer completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the special warrant.

(9) If—

- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a special warrant; and
- (b) the warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a special warrant authorised the exercise of the power.

130 Warrants—procedure before entry

(1) This section applies if an authorised officer named in a warrant issued under this Act for a place is intending to enter the place under the warrant.

(2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—

- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the authorised officer’s identity card or other document evidencing the authorised officer’s appointment;

- (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form, a copy of the facsimile warrant or warrant form;
- (c) tell the person the authorised officer is permitted by the warrant to enter the place;
- (d) give the person an opportunity to allow the authorised officer immediate entry to the place without using force.

(3) However, the authorised officer need not comply with subsection (2) if the authorised officer believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

Subdivision 3—Powers after entry

131 General powers after entering places

(1) This section applies to an authorised officer who enters a place.

(2) However, if an authorised officer enters a place to get the occupier's consent to enter premises, this section applies to the authorised officer only if the consent is given or the entry is otherwise authorised.

(3) For enforcing compliance with this Act, the authorised officer may—

- (a) search any part of the place; or
- (b) inspect, measure, test, photograph or film any part of the place or anything at the place; or
- (c) take a thing, or a sample of or from a thing, for analysis or testing; or
- (d) take an extract from, or copy, a document at the place; or
- (e) take into or onto the place any person, including an Aboriginal party or representative of an Aboriginal party, the authorised officer reasonably requires for exercising a power under this Act; or
- (f) take into or onto the place any equipment and materials the authorised officer reasonably requires for exercising a power under this Act; or

- (g) require the occupier of the place, or a person at the place, to give the authorised officer reasonable help to exercise the authorised officer's powers under paragraphs (a) to (f); or
- (h) require the occupier of the place, or a person at the place, to give the authorised officer information to help the authorised officer ascertain whether this Act is being complied with.

(4) When making a requirement mentioned in subsection (3)(g) or (h), the authorised officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

132 Failure to help authorised officer

(1) A person required to give reasonable help under section 131(3)(g) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) If an individual is required under section 131(3)(g) to give information, or produce a document, it is a reasonable excuse for the individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.

133 Failure to give information

(1) A person of whom a requirement is made under section 131(3)(h) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) It is a reasonable excuse for an individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.

Subdivision 4—Power to seize evidence

134 Seizing evidence at a place that may be entered without consent or warrant

An authorised officer who enters a place that may be entered under section 125 without the consent of the occupier and without a warrant, may

seize a thing at the place if the authorised officer reasonably believes the thing is evidence of an offence against this Act.

135 Seizing evidence at a place that may only be entered with consent or warrant

(1) This section applies if—

- (a) an authorised officer is authorised to enter a place under section 125 only with the consent of the occupier of the place or a warrant; and
- (b) the authorised officer enters the place after obtaining the necessary consent or warrant.

(2) If the authorised officer enters the place with the occupier's consent, the authorised officer may seize a thing at the place if—

- (a) the authorised officer reasonably believes the thing is evidence of an offence against this Act; and
- (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

(3) If the authorised officer enters the place with a warrant, the authorised officer may seize the evidence for which the warrant was issued.

(4) The authorised officer also may seize anything else at the place if the authorised officer reasonably believes—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being—
 - (i) hidden, lost or destroyed; or
 - (ii) used to continue, or repeat, the offence.

(5) Also, the authorised officer may seize a thing at the place if the authorised officer reasonably believes it has just been used in committing an offence against this Act.

136 Securing seized things

Having seized a thing, an authorised officer may—

- (a) move the thing from the place where it was seized (the “**place of seizure**”); or

- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it.

Examples of restricting access to a thing—

1. Sealing a thing and marking it to show access to it is restricted.
2. Sealing the entrance to a room where the seized thing is situated and marking the entrance to show access to the room is restricted.

137 Tampering with seized things

If an authorised officer restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without an authorised officer's approval.

Maximum penalty—50 penalty units.

138 Power to support seizure

(1) To enable a thing to be seized, an authorised officer may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and
- (b) if necessary, to remain in control of it at the stated place for a reasonable time.

(2) The requirement—

- (a) must be made by notice in the approved form; or
- (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice in the approved form as soon as practicable.

(3) A further requirement may be made under this section about the same thing if it is necessary and reasonable to make the further requirement.

(4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—50 penalty units.

139 Receipts for seized things

(1) As soon as practicable after an authorised officer seizes a thing, the authorised officer must give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the authorised officer must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

(3) The receipt must describe generally each thing seized and its condition.

(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing's nature, condition and value.

140 Return of seized things

(1) If a seized thing has not been forfeited, the authorised officer must return it to its owner—

- (a) at the end of 6 months; or
- (b) if a proceeding for an offence involving the thing is started within 6 months—at the end of the proceeding and any appeal from the proceeding.

(2) Despite subsection (1), unless the thing has been forfeited, the authorised officer must immediately return a thing seized as evidence to its owner if the authorised officer stops being satisfied its continued retention as evidence is necessary.

141 Access to seized things

(1) Until a seized thing is forfeited or returned, an authorised officer must allow its owner to inspect it and, if it is a document, to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

*Subdivision 5—Power to obtain information***142 Power to require name and address**

(1) This section applies if—

- (a) an authorised officer finds a person committing an offence against this Act; or
- (b) an authorised officer finds a person in circumstances that lead, or has information that leads, the authorised officer to reasonably suspect the person has just committed an offence against this Act.

(2) The authorised officer may require the person to state the person's name and residential address.

(3) When making the requirement, the authorised officer must warn the person it is an offence to fail to state the person's name or residential address unless the person has a reasonable excuse.

(4) The authorised officer may require the person to give evidence of the correctness of the stated name or residential address if the authorised officer reasonably suspects the stated name or address is false.

(5) A requirement under subsection (2) or (4) is called a “**personal details requirement**”.

143 Failure to give name or address

(1) A person of whom a personal details requirement is made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(2) A person does not commit an offence against subsection (1) if—

- (a) the person was required to state the person's name and residential address by an authorised officer who suspected the person had committed an offence against this Act; and
- (b) the person is not proved to have committed the offence.

*Division 3—General enforcement matters***144 Notice of damage**

(1) This section applies if—

- (a) an authorised officer damages property when exercising or purporting to exercise a power; or
- (b) a person (the “**other person**”) acting under the direction of an authorised officer damages property.

(2) The authorised officer must immediately give notice of particulars of the damage to the person who appears to the authorised officer to be the owner of the property.

(3) If the authorised officer believes the damage was caused by a latent defect in the property or circumstances beyond the authorised officer’s or other person’s control, the authorised officer may state the belief in the notice.

(4) If, for any reason, it is impracticable to comply with subsection (2), the authorised officer must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

(5) This section does not apply to damage the authorised officer reasonably believes is trivial.

(6) In this section—

“**owner**”, of property, includes the person in possession or control of it.

145 Compensation

(1) A person may claim from the chief executive the cost of repairing or replacing property damaged because of the exercise or purported exercise of a power under any of the following provisions (“**declared provisions**”)—

- section 126
- section 131
- sections 134 to 136
- section 138.

(2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under the declared provisions.

(3) Compensation may be claimed and ordered to be paid in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
- (b) for an offence against this Act brought against the person claiming compensation.

(4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

146 False or misleading information

A person must not give information to an authorised officer the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

147 False or misleading documents

(1) A person must not give an authorised officer a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the authorised officer, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

148 Obstructing authorised officers

(1) A person must not obstruct an authorised officer in the exercise of a power unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) If a person has obstructed an authorised officer and the authorised officer decides to proceed with the exercise of the power, the authorised officer must warn the person that—

- (a) it is an offence to obstruct the authorised officer unless the person has a reasonable excuse; and
- (b) the authorised officer considers the person’s conduct is an obstruction.

(3) In this section—

“**obstruct**” includes hinder and attempt to obstruct.

PART 9—MISCELLANEOUS PROVISIONS

149 Delegations

(1) The Minister may delegate the Minister’s powers under this Act to—

- (a) another Minister; or
- (b) an appropriately qualified public service officer.

(2) The chief executive may delegate the chief executive’s powers under this Act to an appropriately qualified public service officer.

(3) In this section—

“**appropriately qualified**” includes having the qualifications, experience or standing appropriate to the exercise of the power.

Example of ‘standing’—

A person’s classification level in the public service.

150 Access to land

(1) A person who wishes to enter land to perform an activity (the “**cultural heritage activity**”) under this Act must consult with the owner or occupier of the land about obtaining the necessary access.

Example—

The sponsor for a cultural heritage management plan would need to consult with the owner or occupier of land to obtain access required to properly assess Aboriginal cultural heritage values for developing the plan.

(2) However, if the person is authorised under another Act to enter the land to carry out activities for a project, and the cultural heritage activity is a necessary complementary or ancillary activity to the project—

- (a) the person is also authorised to enter the land to perform the cultural heritage activity; and
- (b) unless otherwise agreed between the person and the owner or occupier, the conditions of access that apply are the same conditions of access that apply under the other Act.

(3) The authority given to the person under subsection (2) extends to agents and employees of the person acting under the authority of the person.

(4) If the person is the sponsor for a cultural heritage management plan, the authority also extends to endorsed parties for the plan and their representatives, if their access to the land is—

- (a) reasonably required to properly assess Aboriginal cultural heritage values for developing the plan; and
- (b) approved by the sponsor.

151 Advisory committees

(1) The Minister may establish advisory committees as the Minister considers appropriate.

(2) An advisory committee has the function of advising the Minister in relation to the particular issues the Minister refers to it.

(3) A member of an advisory committee holds the member's appointment on the conditions decided by the Minister.

(4) The Minister may at any time end the appointment of a member of an advisory committee for any reason or none.

152 Purchase or compulsory acquisition to protect cultural heritage

(1) The Minister may issue a certificate (an “**acquisition certificate**”) for land if the Minister is satisfied that the State's purchase or compulsory acquisition of the land is necessary to manage, preserve or protect Aboriginal cultural heritage.

(2) If the acquisition certificate relates to a lease or easement under the *Land Act 1994*, the lease or easement may be resumed under that Act.

(3) If the acquisition certificate relates to private land, the management, preservation or protection of Aboriginal cultural heritage is a purpose for which the land may be taken under the *Acquisition of Land Act 1967*.

153 Proceedings for an offence

(1) A proceeding for an offence against this Act, other than an indictable offence, must be taken in a summary way under the *Justices Act 1886* within the later of the following—

- (a) 1 year after the offence is committed;
- (b) 6 months after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

(2) A proceeding for an offence against this Act that is an indictable offence may be taken, at the prosecution's election—

- (a) by way of summary proceedings under the *Justices Act 1886*; or
- (b) on indictment.

(3) A proceeding against a person for an indictable offence must be before a magistrate if it is a proceeding—

- (a) for the summary conviction of the person; or
- (b) for an examination of witnesses in relation to the charge.

(4) If a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

(5) If—

- (a) a person charged with an indictable offence asks at the start of a summary proceeding for the offence that the charge be prosecuted on indictment; or
- (b) the magistrate hearing a charge of an indictable offence considers the charge should be prosecuted on indictment;

the magistrate—

- (c) must not decide the charge as a summary offence; and
- (d) must proceed by way of a committal proceeding.

(6) If a magistrate acts under subsection (5)—

- (a) any plea of the person charged, made at the start of the proceeding, must be disregarded; and
- (b) any evidence brought in the proceeding before the magistrate decided to act under subsection (5) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
- (c) before committing the person for trial or sentence, the magistrate must make a statement to the person under the *Justices Act 1886*, section 104(2)(b).

(7) The maximum penalty that may be imposed on a summary conviction of an individual of an indictable offence is as follows—

- (a) to the extent the penalty imposed is a number of penalty units—200 penalty units;
- (b) to the extent the penalty imposed is imprisonment—1 year's imprisonment.

(8) The maximum penalty that may be imposed on a summary conviction of a corporation of an indictable offence is 2 000 penalty units.

(9) In this section—

“indictable offence” means an offence against this Act for which the maximum penalty for an individual is—

- (a) 1 000 penalty units; or
- (b) 1 000 penalty units or imprisonment for 2 years.

154 Review of Act

The Minister must review the efficacy and efficiency of this Act within 5 years of its commencement.

155 Approval of forms

The chief executive may approve forms for use under this Act.

156 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made about fees payable under this Act.

(3) A regulation may provide for a maximum penalty of not more than 20 penalty units for a contravention of a regulation.

PART 10—REPEAL AND TRANSITIONAL PROVISIONS

Division 1—Repeal of Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987

157 Act repealed

The *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987* is repealed.

Division 2—Transitional provisions

158 Confirmation of ownership of Aboriginal cultural heritage before commencement

(1) This Act is not generally intended to interfere with ownership of Aboriginal cultural heritage established before the Act's commencement.

(2) A person's ownership of Aboriginal cultural heritage is confirmed under this Act if, immediately before the commencement of this section, the person was the owner of the cultural heritage.

(3) Subsection (2) does not apply to Aboriginal cultural heritage if, under part 2, division 2 or 3, it is owned by Aboriginal people who have a traditional or familial link with it.

159 Recording information about designated landscape areas

(1) The chief executive must, as soon as practicable after the commencement of this section, record on the register the following information about each area that, immediately before the commencement of this section, was a designated landscape area under the repealed Act—

- (a) a description of the area, including, if necessary for accurately locating the area, a plan of the area and a detailed description of its boundaries;
- (b) in general terms, a description of the Aboriginal cultural heritage in the area;
- (c) information the chief executive has about the cultural heritage values of the area.

(2) The information recorded under subsection (1) about any part of an area (the “**relevant part**”) must be taken off the register if—

- (a) the findings of a cultural heritage study are recorded in the register; and
- (b) the study area for the study includes the relevant part.

(3) Information recorded in the register under subsection (1) and not taken off under subsection (2) must be taken off the register at the end of 5 years after the commencement of this section.

160 Foundation material for database

(1) As soon as practicable after the commencement of this section, the chief executive must take all reasonable steps to place on the database, as its foundation information, all information about Aboriginal cultural heritage accumulated by the State before the commencement of this section.

(2) The information required to be placed on the database under subsection (1) includes information held about designated landscape areas under the repealed Act, even if the information is also required to be recorded in the register.

161 Existing agreement for carrying out activity

A person who carries out an activity in accordance with the requirements for carrying out the activity that are included in an existing agreement to which the person is a party does not commit an offence against section 23,

24, 25 or 26⁴ in relation to Aboriginal cultural heritage expressly or impliedly the subject of the agreement.

162 Permit under repealed Act

A permit issued under section 28 of the repealed Act⁵ and in force immediately before the commencement of this section, to the extent it relates to Aboriginal cultural heritage—

- (a) continues in force according to its terms; and
- (b) may be dealt with under the provisions of the repealed Act relating to it, other than section 29⁶ of the repealed Act, as if the provisions had not been repealed.

163 Authority obtained before commencement

(1) This section applies if—

- (a) under an Act other than this Act, an authority is required for an activity; and
- (b) the authority was obtained before the commencement of this section.

(2) The holder of the authority may apply to the Minister for the Minister's approval of guidelines ("**transitional guidelines**") identifying reasonable and practicable measures for ensuring the activity under the authority does not harm Aboriginal cultural heritage.

(3) The transitional guidelines have effect, in relation to the carrying out of the activity under the authority, as cultural heritage duty of care guidelines.

(4) In this section—

"authority" includes a lease, licence, permit or approval.

4 Section 23 (Cultural heritage duty of care), 24 (Unlawful harm to Aboriginal cultural heritage), 25 (Prohibited excavation, relocation and taking away) or 26 (Unlawful possession of Aboriginal cultural heritage)

5 Section 28 (Permit to explore etc. Landscapes Queensland and Queensland Estate) of the repealed Act

6 Section 29 (Renewal of permit) of the repealed Act

164 Cultural heritage arrangements for existing projects

(1) This section applies to a project if—

- (a) under an Act other than this Act, an authority is required for the project; and
- (b) the authority was obtained before the commencement of this section; and
- (c) for the purposes of obtaining the authority, arrangements were put in place, whether by placing conditions on the authority or in some other way, directed at ensuring that the project would not harm Aboriginal cultural heritage.

(2) Until the completion of the project, a person who, under the authority, carries out an activity for the project in accordance with the arrangements does not commit an offence against section 23, 24, 25 or 26⁷ in relation to Aboriginal cultural heritage expressly or impliedly the subject of the arrangements.

(3) In this section—

“**authority**” includes a lease, licence, permit or approval.

165 References to repealed Act

In an Act or document, a reference to the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987* may, if the context permits, be taken to be a reference to this Act.

PART 11—AMENDMENT OF ACTS**166 Acts amended**

Schedule 1 amends the Acts mentioned in it.

⁷ Section 23 (Cultural heritage duty of care), 24 (Unlawful harm to Aboriginal cultural heritage), 25 (Prohibited excavation, relocation and taking away) or 26 (Unlawful possession of Aboriginal cultural heritage)

SCHEDULE 1

AMENDMENT OF ACTS

section 166

FORESTRY ACT 1959

1 Section 61A—

omit.

FREEDOM OF INFORMATION ACT 1992

2 Schedule 1, ‘*Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987, section 31(1)*’—

omit.

3 Schedule 1—

insert—

‘Aboriginal Cultural Heritage Act 2002, section 29(2)

Torres Strait Islander Cultural Heritage Act 2002, section 29(2)’.

LAND AND RESOURCES TRIBUNAL ACT 1999

4 Section 53(3)(a) and (b)—

omit, insert—

- ‘(a) if the relevant act is a contravention of an Aboriginal cultural heritage protection provision—the Aboriginal cultural heritage to which the contravention relates; or
- (b) if the relevant act is a contravention of a Torres Strait Islander cultural heritage protection provision—the Torres Strait Islander cultural heritage to which the contravention relates; or
- (c) if neither paragraph (a) nor paragraph (b) applies—an item, place or area of cultural significance that may be adversely affected by the doing of the act the subject of the application.’

5 Section 53(5)—

omit, insert—

‘(5) In this section—

“**Aboriginal cultural heritage protection provision**” means the *Aboriginal Cultural Heritage Act 2002*, section 24(1), 25(1) or 26(1).⁸

“**group**” means a group of Aboriginal people or Torres Strait Islanders.

“**relevant act**” means an act that is a contravention of—

- (a) an Aboriginal cultural heritage protection provision; or
- (b) a Torres Strait Islander cultural heritage protection provision; or
- (c) a provision of another Act providing for the protection, preservation of, or access to items, places or areas of cultural significance to Aboriginal people or Torres Strait Islanders.

“**Torres Strait Islander cultural heritage protection provision**” means the *Torres Strait Islander Cultural Heritage Act 2002*, section 24(1), 25(1) or 26(1).⁹’

⁸ *Aboriginal Cultural Heritage Act 2002*, section 24 (Unlawful harm to Aboriginal cultural heritage), 25 (Prohibited excavation, relocation and taking away) or 26 (Unlawful possession of Aboriginal cultural heritage)

⁹ *Torres Strait Islander Cultural Heritage Act 2002*, section 24 (Unlawful harm to Torres Strait Islander cultural heritage), 25 (Prohibited excavation, relocation and taking away) or 26 (Unlawful possession of Torres Strait Islander cultural heritage)

QUEENSLAND HERITAGE ACT 1992**6 Section 4—**

insert—

‘**“harm”**, to heritage evidence, means damage or injury to, or desecration or destruction of, the heritage evidence.

“heritage evidence” means a structure, object or something else—

(a) that is—

- (i) evidence of human occupation of any part of Queensland;
and
- (ii) of historic significance; and

(b) that is not—

- (i) Aboriginal cultural heritage under the *Aboriginal Cultural Heritage Act 2002*; or
- (iii) Torres Strait Islander cultural heritage under the *Torres Strait Islander Cultural Heritage Act 2002*.

“heritage evidence permit” see section 53H.

“Queensland Museum” means the Board of the Queensland Museum under the under the *Queensland Museum Act 1970*.’.

7 Section 4, definition “place”—

insert—

‘(c) heritage evidence and its immediate surrounds to the extent necessary for the conservation of the heritage evidence.’.

8 After section 53—

insert—

‘PART 7A—HERITAGE EVIDENCE*‘Division 1—Interpretation***‘53A Interpretation to support existing rights and interests**

‘A provision of this part must not be interpreted in a way that would allow the provision to operate in a way that prejudices—

- (a) any right of ownership of a traditional group of Aboriginal people or Torres Strait Islanders, or of a member of a group of Aboriginal people or Torres Strait Islanders, in heritage evidence used or held for traditional purposes under Aboriginal tradition or Island custom; or
- (b) a person’s enjoyment or use of, or free access to, heritage evidence, if—
 - (i) the person usually lives according to Aboriginal tradition as it relates to a particular group of Aboriginal people, or Island custom as it relates to a particular group of Torres Strait Islanders; and
 - (ii) the access, enjoyment or use is sanctioned by the Aboriginal tradition or Island custom; or
- (c) native title rights and interests.

*‘Division 2—Ownership, custodianship and possession of heritage evidence***‘53B Ownership of heritage evidence**

‘(1) The State owns heritage evidence for which no-one else is the identifiable legal owner.

‘(2) An object that is heritage evidence does not have an identifiable legal owner only because it is located, or has previously been located, in, on or under relevant land.

‘(3) The State becomes the owner of heritage evidence if its owner abandons it or allows it to be abandoned.

‘(4) In this section—

“relevant land” means land that is or has been owned or occupied by a person, whether or not the land is or has been freehold land.

‘53C Continued use of surface

‘(1) This section applies if heritage evidence is located on the surface of land, and—

- (a) under the tenure on which the land is held, the owner or occupier of the land is entitled to the use and enjoyment of the surface of the land; or
- (b) a person is otherwise entitled to the use and enjoyment of the surface of the land.

‘(2) Despite the existence of the heritage evidence, the owner or occupier or other person is entitled to the use and enjoyment of the land to the extent the use and enjoyment does not harm or hide the heritage evidence.

‘Division 3—Role of Queensland Museum

‘53D Care of heritage evidence

‘(1) The Queensland Museum may act under the *Queensland Museum Act 1970* in relation to all heritage evidence in its custody.

‘(2) Subsection (1) applies subject to the particular requirements of this Act about the ownership, custody or protection of heritage evidence.

‘(3) Despite anything in subsections (1) and (2), the Queensland Museum must obtain the agreement of the chief executive before it destroys, or allows to be destroyed, an item of heritage evidence in its custody.

‘(4) The Queensland Museum may at any time accept custody of heritage evidence.

‘Division 4—Protection and conservation of heritage evidence**‘53E Unlawful harm to heritage evidence**

‘(1) A person must not harm something that is heritage evidence if the person knows or ought reasonably to know that the thing is heritage evidence.

Maximum penalty—100 penalty units.

‘(2) A person who harms heritage evidence does not commit an offence under subsection (1) if—

- (a) the person is acting under the authority of another provision of this Act or under a heritage evidence permit; or
- (b) the person owns the heritage evidence or is acting with the owner’s agreement; or
- (c) the act is necessary because of an emergency, including, for example, a natural disaster.

‘53F Unlawful possession of heritage evidence

‘(1) A person must not have in the person’s possession an object that is heritage evidence if the person knows or ought reasonably to know the object is heritage evidence.

Maximum penalty—100 penalty units.

‘(2) A person who has in the person’s possession an object that is heritage evidence does not commit an offence under subsection (1) if—

- (a) the person has possession of the heritage evidence under the authority of another provision of this Act or under a heritage evidence permit; or
- (b) the person owns the heritage evidence or has possession of it with the owner’s agreement; or
- (c) the person’s possession of the heritage evidence is necessary because of an emergency, including, for example, a natural disaster.

‘53G Particular steps to preserve heritage evidence

‘The Minister may—

- (a) on behalf of the State, acquire by purchase or gift an item of heritage evidence for the purpose of its preservation; and
- (b) cause structures to be erected, and other steps to be taken, that are necessary or desirable to preserve the item.

Division 5—Heritage evidence permits

‘53H Applying for heritage evidence permit

‘(1) A person may apply for a permit (“**heritage evidence permit**”) to perform some or all of the following work—

- (a) carrying out a systematic field exploration to establish the existence of heritage evidence;
- (b) carrying out a systematic survey of heritage evidence;
- (c) excavating, examining or researching heritage evidence.

‘(2) The application must be—

- (a) made to the chief executive; and
- (b) state the purpose for which the heritage evidence permit is sought; and
- (b) supported by enough information to enable the chief executive to decide the application; and
- (c) if a fee is prescribed under a regulation for the application—accompanied by the fee prescribed.

‘53I Additional information may be required

‘The chief executive may require—

- (a) the applicant to give additional information about the application; or
- (b) information included in the application, or additional information required under paragraph (a), to be verified by statutory declaration.

‘53J Criteria for deciding application for heritage evidence permit

‘In deciding whether to grant or refuse the application or the conditions for the heritage evidence permit, the chief executive must consider the following—

- (a) the qualifications of the applicant for effectively achieving the purpose for which the permit is sought;
- (b) the financial resources available to the applicant for use in achieving the purpose for which the permit is sought and the applicant’s ability to effectively achieve the purpose;
- (c) the desirability of performing the work the subject of the application;
- (d) whether enough consultation has been carried out with all persons who might be affected by the performance of the work the subject of the application;
- (e) whether the applicant has the necessary consents from owners or occupiers of land where work is to be performed under the permit;
- (f) anything else appearing to the chief executive to be relevant to the application.

‘53K Deciding application for heritage evidence permit

‘(1) If the chief executive is satisfied the application should be granted, the chief executive must approve the application, with or without stated conditions.

‘(2) If the chief executive is not satisfied the application should be granted, the chief executive must—

- (a) refuse the application; and
- (b) give the applicant written notice of the decision to refuse the application.

‘(3) If the chief executive grants the application, with or without conditions, the chief executive must, as soon as practicable after it is granted, give the applicant the heritage evidence permit.

‘53L Content of heritage evidence permit

‘(1) A heritage evidence permit—

- (a) relates to the location or locations stated in the permit; and
- (b) can not be transferred, renewed or suspended; and
- (c) can not be amended, other than for a minor amendment provided for under this part; and
- (d) must be for stated work; and
- (e) must be for a stated period of 1 year or less; and
- (f) is subject to any conditions stated in it.

‘(2) A heritage evidence permit authorises the holder of the permit, and persons the holder reasonably needs to help the holder perform work under the permit—

- (a) to enter and be on land where work under the permit is to be performed (the “**work land**”); and
- (b) to take on to the work land the vehicles and equipment reasonably needed for the work; and
- (c) with or without the vehicles and equipment mentioned in paragraph (b), to pass through land other than the work land to reach the work land, but only—
 - (i) at reasonable times; and
 - (ii) in a reasonable way; and
 - (iii) to the extent reasonably necessary; and
- (d) to perform the work under the permit in an appropriate way, and for the purpose for which the permit was sought; and
- (e) to interfere with heritage evidence, or take heritage evidence away, but only—
 - (i) in accordance with the permit; and
 - (ii) to the extent necessary to achieve the purpose for which the permit was sought.

‘(3) A heritage evidence permit does not authorise the holder of the permit to wilfully or negligently destroy or damage any property, other than destruction or damage necessarily incidental to the work authorised under the permit.

‘(4) A heritage evidence permit does not—

- (a) authorise entry to land without owner or occupier agreement; or
- (b) affect the operation of the provisions of any Act regulating entry to land.

‘(5) Despite subsection (1)(b), the holder of a heritage evidence permit that is in force may apply for a new permit to replace the existing permit before the existing permit expires.

‘53M Duties of holder of heritage evidence permit

‘(1) The holder of a heritage evidence permit must give the chief executive, within the time or times stated in the permit, progress reports of the work performed under the permit in the form and detail—

- (a) stated in the permit; or
- (b) if the permit does not state the required form and detail—in the form and detail the chief executive reasonably requires.

Maximum penalty—100 penalty units.

‘(2) The holder of a heritage evidence permit must ensure, when work has been completed under the permit, that the area of the work is restored to a condition the chief executive reasonably requires, within the time the chief executive reasonably requires.

Maximum penalty—100 penalty units.

‘(3) The holder of a heritage evidence permit who performs work under the permit and who publishes anything about the work, must, as soon as practicable after the publication, give the chief executive, free of charge, a copy of what was published.

Maximum penalty—100 penalty units.

‘(4) A person who collects heritage evidence under a heritage evidence permit must submit it to the Queensland Museum at a place and in a way the chief executive reasonably requires.

Maximum penalty for subsection (4)—100 penalty units.

‘53N Surrendering heritage evidence permit

‘(1) The holder of a heritage evidence permit may surrender the permit by giving the chief executive a notice of surrender.

‘(2) The surrender—

- (a) takes effect from the day the chief executive receives the surrender notice; and
- (b) does not affect in any way a duty under this Act imposed on the holder before the surrender.

‘530 Cancelling heritage evidence permit

‘(1) The chief executive may cancel a heritage evidence permit if the chief executive is satisfied the permit should be cancelled.

‘(2) Before the chief executive acts under subsection (1), the chief executive must give the permit holder a show cause notice about the proposed cancellation.

‘(3) In deciding whether to cancel the permit, the chief executive must consider any properly made submission about the proposed cancellation.

‘(4) If the chief executive is satisfied the permit should be cancelled, the chief executive must, within 28 days after the decision, give the permit holder a notice stating the following—

- (a) the decision; and
- (b) the reasons for the decision.

‘(5) The cancellation takes effect from the day the notice is given to the permit holder under subsection (4).

‘(6) The notice under subsection (4) may, to the extent that it is reasonable to do so in the circumstances, require the person to whom the notice is directed to do 1 or more of the following—

- (a) give the cancelled permit to the chief executive or otherwise deal with the permit in the way the notice directs;
- (b) restore an area the subject of the permit to a condition stated in the notice;
- (c) replace an object the subject of the permit in a place stated in the notice.

‘(7) A person to whom a notice under subsection (4) is directed must comply with a requirement under subsection (6) that is included in the notice unless the person has a reasonable excuse.

Maximum penalty for subsection (7)—100 penalty units.

‘53P Minor amendment of heritage evidence permit

‘(1) The chief executive may amend a heritage evidence permit if the amendment is only—

- (a) to correct a minor error in the permit, or to make another change that is not a change of substance; or
- (b) if the permit states that an amendment of a stated type may be made to the permit by amendment under this section—to make an amendment of the stated type.

‘(2) If the chief executive amends a heritage evidence permit under subsection (1), the chief executive must give the permit holder a replacement permit suitably amended.’.

9 Section 56(1), after ‘in the place’—

omit, insert—

‘or for the purpose of investigating whether an offence has been or is being committed under this Act in relation to heritage evidence’.

10 Schedule, from ‘SCHEDULE’ to ‘All buildings’—

omit, insert—

‘PART 10—TRANSITIONAL PROVISIONS***‘Division 1—Transitional provisions for Queensland Heritage Act 1992*****‘69 Definition for div 1**

‘In this division—

“**the former Act**” means the *Heritage Buildings Protection Act 1990*.

‘70 Transitional provisions

‘(1) All buildings’.

11 Section 70(4), (5) and (6), as renumbered, ‘subclause’—
omit, insert—
‘subsection’.

12 After section 70, as renumbered—
insert—
‘Division 2—Transitional provisions for Aboriginal Cultural Heritage Act 2002

‘71 Definition for div 2

‘In this division—

“repealed Act” means the repealed *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*.

‘72 Confirmation of ownership of heritage evidence

‘(1) Part 7A is not intended to interfere with ownership of heritage evidence established before the part’s commencement.

‘(2) A person’s ownership of heritage evidence is confirmed under this Act if, immediately before the commencement of this section, the person was the owner of the heritage evidence.

‘73 Permit under repealed Act

‘A permit issued under section 28 of the repealed Act¹⁰ and in force immediately before the commencement of this section, to the extent it relates to heritage evidence—

- (a) continues in force according to its terms; and
- (b) may be dealt with under the provisions of the repealed Act relating to it, other than section 29¹¹ of the repealed Act, as if the provisions had not been repealed.

10 Section 28 (Permit to explore etc. Landscapes Queensland and Queensland Estate) of the repealed Act

11 Section 29 (Renewal of permit) of the repealed Act

‘74 References to repealed Act

‘In an Act or document, a reference to the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987* may, if the context permits, be taken to be a reference to this Act.’.

WHISTLEBLOWERS PROTECTION ACT 1994**13 Schedule 2, entry for *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*—**

omit.

14 Schedule 2—

insert—

‘Aboriginal Cultural Heritage Act 2002

- Section 24(1) (Unlawful harm to Aboriginal cultural heritage)
- Section 25(1) (Prohibited excavation, relocation and taking away)
- Section 26(1) (Unlawful possession of Aboriginal cultural heritage)

Queensland Heritage Act 1992

- Section 53E(1) (Unlawful harm to heritage evidence)
- Section 53F(1) (Unlawful possession of heritage evidence)

Torres Strait Islander Cultural Heritage Act 2002

- Section 24(1) (Unlawful harm to Torres Strait Islander cultural heritage)
- Section 25(1) (Prohibited excavation, relocation and taking away)

- Section 26(1) (Unlawful possession of Torres Strait Islander cultural heritage)?

SCHEDULE 2**DICTIONARY**

section 7

“Aboriginal cultural heritage” see section 8.

“Aboriginal cultural heritage body”, for an area, means an entity registered under part 4 as an Aboriginal cultural heritage body for the area.

“Aboriginal human remains”—

- (a) includes burial objects and associated material; but
- (b) does not include human remains—
 - (i) buried under the authority of the law of Queensland or another State; or
 - (ii) in or from a place recognised as a burial ground for interment of human remains buried under the authority of the law of Queensland or another State.

“Aboriginal party” see sections 34 and 35.

“alternate dispute resolution arrangements” means arrangements that, to the greatest practicable extent, provide for the handling of disputes other than before a court.

“appeal period” means—

- (a) for part 6, division 5, see section 74; or
- (b) for part 7, division 6, see section 107.

“approved cultural heritage management plan” means a cultural heritage management plan that has been approved by the chief executive or the Minister under part 7.

“approved form” means a form approved by the chief executive under section 155.

“area” means—

- (a) an area of land; or

- (b) an expanse of water; or
- (c) an area of land under water; or
- (d) any combination of 2 or more of paragraphs (a) to (c).

“authorised officer” means a person appointed as an authorised officer under section 118.

“Commonwealth Native Title Act” means the *Native Title Act 1993* (Cwlth).

“consultation party”, for part 7, see section 79.

“consultation period”, for part 7, see section 79.

“cultural heritage assessor”, for a cultural heritage study, means a person engaged under section 67 as a cultural heritage assessor for the study.

“cultural heritage duty of care” see section 23.

“cultural heritage duty of care guidelines” see section 28.

“cultural heritage management plan” means a document providing for how activities for a project are to be managed for their impact on Aboriginal cultural heritage.

“cultural heritage study” means a comprehensive study of Aboriginal cultural heritage in an area conducted under part 6 for the purpose of recording the findings of the study on the register.

“database” means the Aboriginal Cultural Heritage Database established under this Act.

“EIS” means an environmental impact statement.

“endorsed party” means—

- (a) for a cultural heritage study—an Aboriginal party endorsed to take part in the study; or
- (b) for a cultural heritage management plan—an Aboriginal party endorsed to take part in developing the plan.

“existing agreement” means an agreement—

- (a) that was entered into before the commencement of this schedule, and that is still in force, with an entity that becomes, on the commencement of this schedule, an Aboriginal party; and
- (b) that expressly or impliedly deals with Aboriginal cultural heritage.

“**facsimile warrant**” see section 129(4).

“**harm**”, to Aboriginal cultural heritage, means damage or injury to, or desecration or destruction of, the cultural heritage.

“**IPA**” means the *Integrated Planning Act 1997*.

“**land user**” means a person carrying out, or proposing to carry out, activities on land likely to materially affect the land.

Example of activities—

Farming activities, construction activities.

“**native title agreement**” means—

- (a) an indigenous land use agreement registered on the Register of Indigenous Land Use Agreements under the Commonwealth Native Title Act; or
- (b) any of the following under part 2, division 3, subdivision P of the Commonwealth Native Title Act—
 - (i) an agreement mentioned in section 31(1)(b);
 - (ii) a determination of the relevant Minister under section 36A;
 - (iii) a determination of the arbitral body under section 38; or
- (c) an access agreement or negotiated agreement under the native title mining provisions.

“**native title mining provisions**” means the *Mineral Resources Act 1989*, parts 12 to 18, and part 19, division 2.

“**native title rights and interests**” see the Commonwealth Native Title Act, section 223.

“**notice day (proposed plan)**”, for part 7, see section 79.

“**notice day (proposed study)**”, for part 6, see section 52.

“**owner**”, of an area, means the person for the time being entitled to receive the rent for the area or who would be entitled to receive the rent for it if it were let to a tenant for rent.

“**party**” means—

- (a) for part 6, division 5, see section 74; or
- (b) for part 7, division 6, see section 107.

“**plan area**”, in relation to a cultural heritage management plan, means the area the subject of the plan.

“private land” means land forming part of Queensland that is not State land.

“project” includes—

- (a) a development or proposed development; and
- (b) an action or proposed action; and
- (c) a use or proposed use of land.

“project area”, in relation to a project, means the area the subject of the project, whether in construction or operational phases.

“public notice (proposed plan)”, for part 7, see section 79.

“public notice (proposed study)”, for part 6, see section 52.

“Queensland Museum” means the Board of the Queensland Museum under the *Queensland Museum Act 1970*.

“register” means the Aboriginal Cultural Heritage Register established under this Act.

“registered native title body corporate” see the Commonwealth Native Title Act.

“registered native title claimant” see the Commonwealth Native Title Act.

“registered native title holder” means—

- (a) a registered native title body corporate; or
- (b) an entity, other than a registered native title body corporate, that is the subject of a determination of native title under the Commonwealth Native Title Act and is registered on the National Native Title Register under that Act as holding native title rights and interests.

“registered significant area” means an area recorded in the register as a significant Aboriginal area.

“registered significant object” means an object recorded in the register as a significant Aboriginal object.

“repealed Act” means the repealed *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*.

“representative body” see the Commonwealth Native Title Act.

“sacred” means sacred according to Aboriginal tradition.

“secret” means secret according to Aboriginal tradition.

“significant Aboriginal area” see section 9.

“significant Aboriginal object” see section 10.

“sponsor” means—

- (a) for a cultural heritage study—the person who accepts responsibility for the study; or
- (b) for a cultural heritage management plan—means the person who accepts responsibility for the plan.

“State land” means all land forming part of Queensland that is not freehold land, or land contracted to be granted in fee-simple by the State.

“study area”, for a cultural heritage study, means the area the subject of the study.

“stop order”, for a person’s activity, means an order of the Minister—

- (a) requiring the person to stop the activity; or
- (b) prohibiting the person from starting the activity.

“tribunal” means the Land and Resources Tribunal.

“warrant form” see section 129(5).

“written notice (proposed plan)”, for part 7, see section 79.

“written notice (proposed study)”, for part 6, see section 52.

