Submission on the Review of the *Queensland Heritage Act 1992*

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Confidential □ Yes  □ No

Please indicate if you are:

- □ An owner of a place entered on the Queensland Heritage Register.
- □ An owner of a place identified as a place of cultural heritage significance in a local government planning scheme.
- □ An occupier of a place entered on the Queensland Heritage Register.
- □ An occupier of a place identified as a place of cultural heritage significance in a local government planning scheme.
- □ Carrying out, propose to carry out, or have carried out development or works in respect of a place entered on the Queensland Heritage Register or a place identified as a place of cultural heritage significance in a local government planning scheme.
- □ A heritage professional (e.g. heritage architect, consultant historian).
- □ Involved in heritage management at a local government level (e.g. involved in town planning or development assessment).
- □ Involved in heritage management at a State Government level.
- □ Another person whose work relates to heritage management (e.g. a lawyer specializing in planning and environment or heritage law).
- □ A member of a historical society or similar organization.
- □ A member of a heritage organisation (e.g. the National Trust of Queensland).
- □ A member of the public with particular interest in heritage management or conservation.
- □ Submitting feedback on behalf of an organisation (if so, please specify).  
  Organisation: Australia ICOMOS

Additional comments included:  □ Yes (please attach)  □ No
Australia ICOMOS

Review of the Queensland Heritage Act 1992
Response to the discussion paper

Introduction
This submission is a response to a discussion paper prepared in the office of the Director-General, Environmental Protection Agency, as part of a review of the Queensland Heritage Act 1992.

About Australia ICOMOS
Australia ICOMOS is Australia’s leading non-government professional organisation for cultural heritage. Australia ICOMOS is the national committee of the International Council on Monuments and Sites, a non-government professional organisation primarily concerned with the philosophy, terminology, methodology and techniques of cultural heritage conservation. Internationally, ICOMOS works closely with UNESCO, and acts as UNESCO’s principal advisor on cultural matters related to world heritage.

In Australia, we have a nation-wide membership of over 300 practitioners from a wide range of disciplines, working in all facets of the understanding and protection of Australia’s cultural heritage. Australia ICOMOS has been particularly active in the development and promotion of the philosophy and standards of practice for cultural heritage conservation. The Burra Charter (Australia ICOMOS Charter for Places of Cultural Significance) has become the Australian national standard for heritage conservation.

Australia ICOMOS’s role in Queensland
Australia ICOMOS has actively supported the development by the Queensland government of measures to protect places of cultural heritage significance. Its activities have included staging national and international conferences in Queensland — notably the 1990 Heritage futures for Queensland conference, which brought together experts from around Australia in the aftermath of the demolition of the Commonwealth Bank in Queen Street, Brisbane. That conference was influential in the process that led to the interim Heritage Buildings Protection Act 1990, the Green Paper, and the Queensland Heritage Act 1992.

This response
This submission has been prepared by Australia ICOMOS members from inside and outside Queensland. It reflects expert observation and practical experience of the current situation in Queensland and in other parts of Australia.
General points

Queensland was the last Australian state to legislate to protect places of cultural heritage significance. The 1992 *Queensland Heritage Act* was enacted after extensive consultation with stakeholders, and drew on extensive experience in other State and Commonwealth jurisdictions. The fundamental provisions of the present Act are sound.

The real issue is not the Act, and not the Heritage Council, but the resources available to pursue the purposes of the Act.

Resources for heritage conservation

Since Pat Comben introduced the *Heritage Buildings Protection Act* in 1990 successive Queensland governments have provided only bare bones funding for heritage conservation programs.

Australia ICOMOS recommends that the government provide substantially better resources for heritage conservation.

Continued consultation

The discussion paper raises a number of issues — some minor, others fundamental to the workings of the legislation — that require proper consultation, discussion and debate before any action. The process that led to the 1992 Act, including the Green Paper, is a model to be followed now.

The Queensland Heritage Council

The Heritage Council makes judgements about the identification and protection of culturally significant places. Its expertise, and its independence from political influence, are essential to its effective operation on behalf of the community.

Australia ICOMOS does not support the removal of any of the council’s current functions.

The Queensland Heritage Register

Heritage registers should not be static documents. The community’s perceptions of cultural significance change along with changes in the environment and in society. It is proper that the Heritage Council respond to nominations of places that are threatened.

It is also proper that the Heritage Council, with the support of the Cultural Heritage Branch of the EPA (Environmental Protection Agency), work to make the register more complete, balanced and representative. The council, the branch, and other government agencies supported by the branch, should be given credit for the work they have already done in this area, despite having inadequate resources for the task.

Some instances of state-wide systematic assessments of heritage places already done or in progress include:

» *Queensland schools: a heritage conservation study*, 1996

» *Queensland health heritage study*, 1996

» *Queensland Rail study*, 1998
The branch has also supported systematic heritage studies of many local government areas or regions, and these studies have enriched the Queensland Heritage Register.

Australia ICOMOS supports the government in its plan for state wide surveys to improve the completeness and representativeness of the Queensland Heritage Register. A mix of regional and thematic approaches are needed.

Australia ICOMOS considers that bringing places of local significance into an integrated register and protective regime could benefit local communities. Among the benefits could be better access to and clarity of information, immediate protection from the moment of provisional entry, and the recording of heritage status on the land title.

The purpose should be to empower local communities to do a better job of recognising, protecting and celebrating the places that are significant to them — for this, local communities will need to maintain control and ownership of decisions about the cultural significance of places.

Lots of sticks, but few carrots

Owners of places listed in the heritage register get little support from the community, in recompense for their custodianship of assets that the community enjoys. In the past the EPA supported a local authority heritage advisors scheme and a grants scheme, but both of these programs have been abandoned. When they were operating, both of these Queensland schemes were meagre in comparison with similar programs in other states.

The Queensland Heritage Act 1992 directs the Heritage Council to encourage public interest in, and understanding of, issues relevant to the conservation of Queensland’s cultural heritage, as well as other more explicit tasks. In the past, the Heritage Council and the Cultural Heritage Branch have had slender resources for this work.

Australia ICOMOS would like to encourage a substantial expansion in programs that support private owners, and programs for heritage education, interpretation, research, debate, and celebration.
Heritage protection under IPA

The first round of local authority planning schemes under the Integrated Planning Act 1997 have had mixed success in identifying and protecting cultural heritage resources — some local government authorities have done excellent work, many have not. It is clear that better support and guidance is needed. This should be backed up by a state government planning policy.

Places of local significance scheduled in local plans do not currently have the same protection as places entered in the Queensland Heritage Register, since they are not protected until the plans are gazetted.

Australia ICOMOS favours integrating the protection of places of local significance with those of state significance, provided local communities have control of the process.
Responses to the questions

A  Listing heritage places

A1 Is the current system for listing places of cultural significance to the State as set out in the Queensland Heritage Act 1992 working well?

Given the existing resources, Australian ICOMOS believes that generally the current system for listing places of cultural significance is working well.

The Queensland Heritage Register has been considerably developed since 1992 and is now more balanced and representative, although it is recognised that more systematic work will address this even further.

One of the strengths of the Queensland list — and a factor that distinguishes it from other Australian jurisdictions — is that there has been a greater focus on social and industrial history than for example on architecture. This was a deliberate strategy undertaken by the Cultural Heritage Branch of the EPA and evident in the employment of multi-disciplinary teams (including historians, planners, architects, archaeologists etc) in the assessment section.

The current assessment process is a rigorous one. It includes both the statutory process and the supporting administrative process including an assessment of a nominated place by EPA officers based on variety of sources including documentary sources and the physical fabric of the place itself; consideration of that material by an expert committee of the Heritage Council with a recommendation to the Council; consideration by the full Council, which ultimately considers whether the place satisfies the criteria for listing contained in s.23 of the Act, but also retains a discretion to enter or not enter a place in the Register.

Following the provisional entry of a place in the Register, rights of objection and appeal to the Planning & Environment Court also accrue.

Charges have been made that the listing process is ‘reactive’. In part this is the nature of the beast in that it is not until a place is perceived to be under threat that action is thought to be required to protect it. Nominations may well be made in response to perceived threats but, based on annual report figures, even if all nominations were considered to be ‘reactive’ only a very small portion are considered frivolous and not on the face of the application capable of satisfying the criteria for entry. Moreover the system identifies ‘frivolous’ nominations very early in the process. In this regard, it is also noted that where owners or developers are looking for certainty regarding the heritage status of a particular place, an application can be made under s.32 of the Heritage Act for a certificate of immunity; if granted the place may not be entered in the Register for 5 years.

There is also some criticism that the Register is dominated by places in highly developed areas such as south-east Queensland and the larger regional centres. While this does suggest that other parts of the state may be under-represented (which it would be expected that the surveying of the state would alleviate), it is also true that that statistically you would expect that areas of high population and corresponding historical changes and developments would be likely to have a higher number of places of significance both in existence and identified. Moreover such areas tend to be those which are subject to greater developmental pressure and therefore are more likely to come to the attention of the Heritage Council.
A2 Would you like to see changes made? If so, what changes would you like to see made?

Increase the representativeness of the heritage register — for example some of the big state stories are not represented either well or at all on the Register. Examples include places of (non-traditional) significance to Indigenous peoples; places associated with important industries such as dairying and sugar. In this regard it is noted that the forthcoming broad heritage surveying of the state can be expected to address this issue. The surveying of the state’s cultural assets was identified and accepted as a priority from the early 1990s and was always intended to complement the introduction of the Heritage Act in 1992. Until now, it has not been resourced. That funding is now earmarked is a significant step. But there are some concerns with the process to date, in particular:

» The EPA’s own specialist unit, the Cultural Heritage Branch and also the Heritage Council itself have not been involved in establishing the framework for those studies

» $2.7 million dollars spread over 5 years may not be sufficient to undertake the task

» Both geographic (regional) and thematic (historical) survey approaches should be used.

A3 Would you like to see a single register which recognises, and therefore seeks to protect, places of local, State and national cultural heritage significance?

Australia ICOMOS supports having a single list, provided that the listing mechanism gives local communities control of decisions about significance.

A4 Would you also like to see places of significance recognised in Local Government Planning Schemes?

Yes. The introduction of the Integrated Planning Act 1997 (IPA) was intended to herald a new era in heritage identification and management at local level. The Act’s inclusion of areas and places of cultural heritage significance as core matters to be considered in planning schemes was backed by the preparation by the EPA of supporting guidelines (Guidelines for cultural heritage management, 2001) for use by local authorities, as well as two state interest planning policies (SIPP) for cultural heritage. But neither the guidelines nor the state planning policies are mandatory and the IPA provisions have generally been interpreted as requiring only ‘consideration’ of cultural heritage values. In practice for many local authorities this has meant no systematic cultural heritage survey is undertaken and thus the inclusion of places of significance in local planning schemes (apart from places already on the state heritage register) never becomes an issue. Ideally, places of local significance should be identified and managed at the local level.

Another major issue for local authorities is the lack of expertise to deal with such issues, which creates an important role for state agencies to provide assistance.
Would you also like to see some changes to the listing criteria?

The criteria for listing contained in s23(1)(a)-(h) are generally consistent with those in use in other Australian jurisdictions and the *Burra Charter* — there is good reason to maintain that consistency. What is needed is a more detailed explanation of their use and application and in terms of good governance for this to be articulated as part of Heritage Council policy. Australia ICOMOS understands that this work is in hand and looks forward to seeing the work in the public domain.

Other parts of s.23 are problematic. Firstly s23(1) which requires that a place be of cultural heritage significance and satisfy one of the criteria (a)-(h). This may have been a drafting error in the 1992 legislation. Although this two-step test is addressed by Heritage Council policy and procedure, it is nevertheless a nonsense in that it sets up ‘cultural heritage significance’ and the criteria as separate notions, when in fact they are intimately related, the criteria being interpreted as a fine tuning of the notion of cultural heritage significance.

Section 23(3) has also caused consistent problems of interpretation. This section has very convoluted wording, but has generally been interpreted as applying only when there was no prospect of the physical conservation of the place. A recent decision by the Planning & Environment Court related to the T&G building in Townsville makes the subsection almost unworkable. S.23(3) should be amended to restore its previously understood meaning.

Who should make decisions to enter places on the Queensland Heritage Register (please select one)

Under the current system, the full council of the Queensland Heritage Council makes the decision to enter or not enter places in the heritage register based on the advice of the EPA and the Heritage Council expert subcommittee, but with Council discretion to accept or reject that advice and/or recommendation.

Australia ICOMOS supports the status quo. As envisaged by the green paper (*Green paper: proposals for a Heritage Act for Queensland: a discussion paper*. Department of Environment & Heritage, 1990) and as incorporated in the *Queensland Heritage Act*, the register sits at the heart of the system of heritage management under the Queensland system. That is why the Act requires that decisions regarding entering, not entering, and removing from the Register are decided by the full Queensland Heritage Council and cannot, like some other matters, be delegated. The Act envisages the Heritage Council as both representative of Queensland communities and expert in heritage matters. It is also designed to be independent. That is why Australia ICOMOS believes that the current system of decision making with regard to the heritage register is the most appropriate one and also that any changes to this section of the Act would be a fundamental change to the intentions of the legislation.

What are some other possible reforms and why?

Here are some possible reforms:

- A more outgoing role for the Heritage Council and the EPA. Both are currently forced by lack of resources to be reactive and primarily regulatory, where they should also be advocates and educators.
Inclusion of heritage places in local planning schemes together with interim protection for places proposed for inclusion in local planning schemes. It is however, important to recognise that this is a new process in which local authorities may need varying types and levels of support according to their own resources and skills.

Better use of the heritage register as a resource for public education.

Further comments
B  Development in registered places

B1  Is the current system where the Heritage Council makes the decisions regarding development applications proposing development in registered places entered in the Heritage Register working well?

Development generally

For many years, the assessment of development applications was one of the most successful aspects of the work of the Heritage Council and the EPA. Annual Report figures support this, with some 90% of applications receiving approval. More recently the impact of several administrative changes has caused some disruption to the system:

» The roll-out of changes under IPA
» Delegation to regions of assessment of development applications
» Introduction of the ecoaccess system

Individually these were likely to cause some teething problems, but coming as they did pretty much altogether has in many ways complicated a system that was working well.

Development by the State

In most cases ministers have followed the advice of the Heritage Council, but there have been some problematic exceptions.

Australia ICOMOS believes that the State should be bound by the Heritage Act in the same way as other owners.

B2  Would you like to see changes made?

Yes. The administrative processes involved in development approval should be refined, and better resources provided.

A recommendation has also been made by the Cultural Heritage Ministerial Advisory Committee (2005) that the Heritage Council not maintain its status as a concurrence agency under IPA. The impact of recommendation 8 is not on its face apparent. However this would amount to a major stripping of the power of the Heritage Council in favour of the EPA. Such a fundamental alteration to the powers of the Heritage Council is also a fundamental change to the Act itself and requires a more proper consultation and discussion. However, for now, we simply ask what would be practically achieved by changing this important function of the Heritage Council. The Heritage Act already allows for delegation from the Heritage Council to the EPA. Considerable delegation is already in place, and further delegation is being explored. What is important is that the Act is based on the strength of the role envisaged for the Heritage Council, as a body which is properly independent, expert and representative of the community, and which must employ fully transparent processes of assessment.

B3  Are the current arrangements within local government for assessing development applications proposing development in places of local heritage significance (that are not listed on the Queensland Heritage Register) working well?
The situation with local authorities is widely varied. For example in Brisbane and Ipswich, there is lots of experience compared with what’s possible in a shire like Diamantina, which doesn’t even have a shire engineer. It is unreasonable to expect that all shires have (or even in the future will have) the capacity to deal with development applications for heritage places. The larger local authorities, however, are certainly capable of developing the capacity to deal with heritage issues, although a number to date have chosen not to — as discussed under A4.

Another related issue is a cultural one arising from the history of local government in Queensland. In some states, the state agencies have long been involved with local authorities in providing policy co-ordination as well as advice and resources on such matters as heritage. In Queensland, there is not the same history of state agencies playing a more active role, as required and where appropriate.

**B4 Would you like to see changes made?**

Yes. It is important to recognise that this is a new process for which local authorities may need varying types and levels of support according to their own resource and skill base.

Councils with capacity to deal with applications should be encouraged to commit resources to the area. For smaller councils, other things need to be considered.

As such there is an important role for state agencies in co-ordinating policy, developing education programs, training, establishing networks for smaller authorities to access, setting up a fully developed technical support program.

**B5 Should decisions regarding development in places of State significance be assessed by the State, and those regarding places of local significance be assessed by the relevant local government?**

In general, decisions affecting places of state significance should continue to be assessed by the Heritage Council. But it may be in the future that some local authorities are willing and able to assess development in places of state significance. Such a delegation from the Heritage Council to local authorities is envisaged by s.9 of the *Queensland Heritage Act*. The main issue however is whether local authorities have the resources to accept delegation.

For places of local significance, again the question is one of resources and capacity — see response to B3.

**B6 Should local government be required to identify places of local and State significance in local government planning schemes, and include provisions directed to the conservation of those places?**

Yes. Australia ICOMOS understands that this was the intention of the *Integrated Planning Act 1997*. Interpretations of the requirements of IPA with respect to matters of cultural heritage however seem to vary — see discussion under A4.

**B7 Should heritage registers / lists be categorised to reflect whether the local, State or Commonwealth Government will be involved in development decisions?**

Isn’t this effectively what happens?
**B8** Should the EPA determine development applications for places of State significance rather than the Heritage Council?

No. Decision making should stay with the Heritage Council, for reasons stated earlier.

**B9** Should the Heritage Council retain its role to determine only the most significant development applications regarding places of State interest?

Refer to response to B8.

**B10** What are some other possible reforms and why?

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**B11** Further comments?

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C Minor works

C1 Are you satisfied with the current system for assessing and issuing exemption certificates?

This system was only recently introduced; Australia ICOMOS supports its introduction as a positive reform. It is too early to comment on the efficacy of the system, but it is established practice in other jurisdictions where it works well. The workability of the system will depend on continued resources to further develop other standard forms of exemption certificates as well as place specific exemptions and also sufficient resources to maintain and review the system.

C2 Is the current system for assessing and issuing exemption certificates efficient?

See comments C1

C3 Would you like to see changes made?

See comments C1

C4 Would you like to see provision made for certain works, such as maintenance and cleaning works, and works for liturgical purposes, to be carried out without need for approval?

With respect to maintenance, Australia ICOMOS understands that the general exemption issued on 3 December 2004 (GE1) already means that works such as maintenance do not require approval.

With respect to works for liturgical purposes, the situation is slightly different but very straightforward in that an exemption for work undertaken for liturgical purposes is applied for and must be decided by the Heritage Council within 20 days. In this regard Australia ICOMOS understands that there are very few applications for development received for places of worship and similarly very few applications requesting the application of the liturgical exemption. The liturgical exemption already acknowledges places of worship as a special case; Australia ICOMOS supports this, but does not believe that a case has been made for any changes to the provisions.

C5 Would you like to see site-specific exemptions being issued at the time a place is entered on the Queensland Heritage Register.

Yes. Australia ICOMOS understands that it is part of the intended application of exemption certificates and has been used already. The exemption mechanism is an important management tool for conserving the significance of the place. In terms of the process, it is a more effective use of resources to consider certain management issues at the time a place is being considered for entry on the register.
C6  Would you support allowing certain classes of owners such as religious organizations and Queensland Government departments that own or control large numbers of heritage places to carry out works provided the works are carried out in accordance with certain guidelines?

Yes, provided that the guidelines are well developed and agreed upon by all parties including the Heritage Council and EPA. It is noted that provision for this already exists (and is utilised) in terms of heritage agreements and also more recently with the introduction of exemption certificates.

For example, the EPA and Queensland Heritage Council are currently working with Q-Rail to develop an agreement which will result in the delegation of exemption certificates to Q-Rail itself. Other large property owners, such as the Brisbane City Council (who like Q-Rail already have well established internal processes for considering heritage matters, including a Heritage Committee) might also find this an appropriate model for the maintenance of their own estate. The model could be extended to other organizations including other government departments, but the real issue is that no other government department has the capacity to do this.

C7  What are some other possible reforms and why?

As outlined above the system of exemptions which was enabled by the 2003 amendments to the Queensland Heritage Act is a major reform, which is already proving its worth. Its further development and refinement (some of which is already being undertaken) is supported by Australia ICOMOS.

C8  Further comments?
**D**  Other issues

**D1** Do you support the Minister, QHC or EPA being required to publish a Queensland Heritage Strategy?

The issue is not so much about a requirement to publish a strategy, as there being sufficient resources to develop and implement a strategy. Australia ICOMOS supports the development of a heritage strategy, which would necessarily need to be a partnership between the Minister, the Heritage Council and the EPA and would also require consultation with various stakeholders including local authorities, owners and other interest groups so that a workable plan was established together with a commitment by government to fund the plan.

It is also noted that the preparation and implementation of such a strategy forms recommendation 1 of the report of the Cultural Heritage Ministerial Advisory Committee (2005).

**D2** Do you support the introduction of a more planned approach to the identification of precincts?

The question is perhaps best put in this way: What is the most appropriate way to conserve the cultural significance of complex areas, in particular those in multiple ownership?

Town-planning schemes are better suited to dealing with complexity of ownership usually associated with precincts; the fine grain of regulation is also usually better done at local level. Again the role of the Heritage Council and EPA would be well suited to providing support for local authorities in this area — for example, by providing policy guidelines, case studies and training.

**D3** Do you support the introduction of a State Planning Policy for cultural heritage?

Yes.

**D4** Do you support the expansion of the powers of authorised persons to enable investigation of all heritage offences?

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**D5** Do you support the introduction of Heritage Conservation Orders (to replace Stop Orders) to be issued by the Heritage Council or EPA requiring a person to stop or not start a stated activity, or carry out certain works?

The Heritage Council should have the power to require protective action in cases of wilful neglect or endangerment of registered places in addition to the existing ‘stop’ powers of the Minister. From an administrative point of view, it would be an advantage if the ‘stop’ powers could be invoked by others than the Minister.

**D6** Do you support the introduction of provisions allowing the Heritage Council, EPA and / or third parties to apply to the Planning and Environment Court for orders requiring a person to stop or not start a stated activity, or carry out certain works?

Yes.
D7  *Do you support the introduction of State of Heritage reporting requirements?*

The discussion paper does not provide any background to this question, other than saying that State of Heritage reporting is not currently required. Australia ICOMOS notes that heritage is currently included within the State of Environment Report and that there is already an existing statutory requirement for the Heritage Council to produce an annual report.

D8  *Do you support the introduction of State-owned Heritage Management Principles requiring government departments or agencies with control of state-owned heritage assets to manage them in a certain way?*

The state government is one of the major owners of properties of cultural significance and as such ought to provide a role model for other owners. Australia ICOMOS supports heritage management guidelines for state owned properties. However in Queensland it is not so much their introduction that is at issue, but their implementation. Such guidelines have existed for some years, but the real problem is the general lack of commitment to implementing them. This has varied across departments — for example, Queensland Rail is currently involved in developing a finer grain of management guidelines; some departments have commissioned conservation plans of individual places; others have undertaken heritage surveys of their property assets but failed to implement recommendations; others have done very little or nothing. With few exceptions government agencies have shown little commitment to implementing the existing heritage guidelines.

D9  *What are some other possible reforms and why?*

The protection of historical archaeology resources needs to be reconsidered. Part VII of the *Queensland Heritage Act* does deal with this area, but the system is not integrated with other parts of the Act nor with IPA.

D10  *Further comments?*

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