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The Research Director
Transport, Housing and Local Government Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: thlgc@parliament.qld.gov.au

Submission about the Queensland Heritage and Other Legislation Amendment Bill 2014

Thank you for inviting the Queensland Environmental Law Association (**QELA**) to make a submission about the Queensland Heritage and Other Legislation Amendment Bill 2014 (**Heritage Bill**) to the Transport, Housing and Local Government Committee.

QELA is a non-profit, multi disciplinary organisation. Its members include lawyers, town planners and a broad range of consultants who represent and advise a miscellany of participants in the development industry.

This submission focuses on the following aspects of the Heritage Bill:

- (a) Changing entries in the register;
- (b) Applying to enter a place in, or remove a place from, the register;
- (c) Making a further application;
- (d) Initial notice of an application;
- (e) Inspection of applications;
- (f) Excluded places;
- (g) Application for exemption certificate;
- (h) Heritage agreements;
- (i) Decision notice about essential repair or maintenance work;
- (j) Identifying places of local cultural heritage significance; and
- (k) Appeals to the Planning and Environment Court.

Changing entries in the register

- 1 The Heritage Bill proposes amendments to section 34 of the *Queensland Heritage Act 1992* (**Heritage Act**) to allow the chief executive to make a "minor change" to an entry for a place on the Queensland Heritage Register (**Register**). QELA does not support this amendment. The matters referred to sections 34(2) and 34(2)(b) involve matters of substance that should not be altered without the opportunity for meaningful input from the owner and the Queensland Heritage Council (**Council**).
- 2 Further, the definition of "minor change" in new section 34(3) is not adequate. If a "minor change" is to be made to the matters referred to sections 34(2)(a) and 34(2)(b), without input by the Owner or Council, the definition of "minor change" should be carefully confined.
- 3 It is noted that Clause 64 of the Heritage Bill proposes amendments to section 122 of the Heritage Act that correspond to the changes made to section 34, namely to allow a "minor change" to be made to an entry for a place in the local heritage register. QELA's comments made above apply equally to this proposed amendment.

Applying to enter a place in, or remove a place from, the register

- 4 The improved information requirements proposed by clause 16 of the Heritage Bill in relation to making an application to enter or remove a State heritage place from the Register is supported.

Making a further application

- 5 In relation to clause 18 of the Heritage Bill, QELA supports the extension of the moratorium in section 37 of the Heritage Act from one year to five years before the chief executive can accept a new application to enter a place after the Council decides not to enter that place in the Register.
- 6 QELA however does not support the moratorium period applying to prevent an owner seeking to remove a place from the Register within five years after the Council decides not to remove a place from the Register. An owner should have the ability to apply to have a place removed from the Register if new evidence becomes available. QELA submits that it is not acceptable for an owner of a State heritage place, to be deprived of an opportunity to reapply, where material evidence is later discovered.

Initial notice of an application

- 7 The Heritage Bill proposes amendments to section 38 of the Heritage Act regarding initial notice of an application. QELA supports the ability for an owner to give the Council a written response to the chief executive's heritage recommendation about the place.

Inspection of applications

- 8 Clause 21 of the Heritage Bill proposes to replace section 40 of the Heritage Act to allow the chief executive to publish a copy of each application on the department's website.
- 9 Proposed new section 40(2) contemplates that an applicant's personal information will be removed from the application published online unless the applicant has given written consent. QELA does not support the ability for an applicant to remain anonymous. If a person wishes to make an application to enter a place in the Register or an application to remove a place from the Register, that person should be prepared to make their identity known. The consequences of an application being made can be significant for the owner of the place and the owner is entitled to know the identity of the person who has initiated the process.

Excluded places

- 10 QELA notes that there appears to be an error in clause 29, the proposed amendment of section 56B(2)(c). The end of the paragraph appears to be incomplete and should include the words "heritage place".

Application for exemption certificate

- 11 Clause 37 of the Heritage Bill proposes to amend sections 72(2)(b)(vi) and (3)(b) of the Heritage Act relating to applications for an exemption certificate for a local heritage place, specifically, to replace the reference to "a detrimental impact" with "any impact, or only have a minimal impact".
- 12 It is unclear why the word "detrimental" is being omitted. QELA is concerned that the amendment may result in exemption certificates being refused in a wider range of cases, when it is only in cases involving detrimental impact on cultural historical significance that an exemption certificate should not be granted.
- 13 To address this concern, QELA suggests that section 72(2)(b)(iv) be amended to read:

"if the application is for development other than development mentioned in subparagraph (iii) – information about the impact of the development on the cultural heritage significance of the place"

and that section 72(3)(b) must be amended.

Heritage agreements

- 14 The ability to enter into local heritage agreements as proposed by clauses 42 - 45 of the Heritage Bill is supported.

Decision notice about essential repair or maintenance work

- 15 Clause 46 of the Heritage Bill proposes to replace Part 8 of the Heritage Act which currently relates to interim protection orders and notices about maintaining State heritage places. Instead, it is proposed that this part of the Heritage Act will relate to notices about essential repair and maintenance of State heritage places and local heritage places.
- 16 Proposed new section 84 of the Heritage Act relates to the decision-maker giving notice about essential repair or maintenance work. QELA does not support this amendment. The amendments lower the threshold for giving a notice by removing reference to the work being "urgently" required and to protect a place from "serious or irreparable" damage or deterioration. As proposed, the amendments will give a wide discretion to intervene and issue a notice to the owner of a place. This is not supported by QELA. The safeguards of "urgently" and "serious or irreparable" damage or deterioration are necessary as the giving of a notice can expose an owner of a place to substantial expense.
- 17 QELA considers it essential that an owner have the right to appeal the decision to give an essential repair or maintenance work notice to the Planning and Environment Court and for the lodgement of such an appeal to act as a stay of the notice. This is particularly relevant given that the thresholds for giving a notice have been substantially lowered, although the effect of the notice has been substantially increased.
- 18 The expanded list of examples of work that might be required (for example, to repair wall and roof frames) in new section 84(7) reinforces the need for an owner to have a right of appeal. The costs involved in effecting such work may be prohibitive and an owner of a place should not be left without redress in those circumstances.

Identifying places of local cultural heritage significance

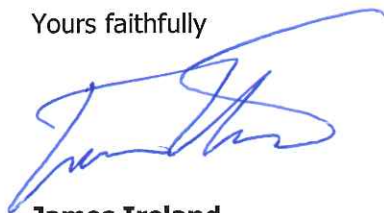
- 19 Clause 56 of the Heritage Bill proposes to replace Part 11, Division 1 of the Heritage Act relating to identifying places of local cultural heritage significance.
- 20 In particular, proposed new section 112 provides that a local government is taken to have fulfilled its obligations to identify places of local cultural heritage significance if it either identifies such places in its planning scheme or keeps a local heritage register.
- 21 There are no provisions in Heritage Bill to remove duplication. It is often the case that places are listed on both the State and local heritage registers for identical reasons. This leads to the potential for places to require assessment under two regimes.
- 22 Proposed new section 112 is unnecessary and queries the need for a local government to have the option of identifying places in local heritage registers when the appropriate place for this to occur is in the planning scheme.

Appeals to the Planning and Environment Court

- 23 In addition to providing a right of appeal in respect of a decision notice issued about essential repair or maintenance work identified above, QELA notes that the Heritage Bill does not provide a right of appeal to the Planning and Environment Court in respect of a local heritage listing. The lack of appeal rights for local heritage listings is problematic. At present, the only avenue to challenge a local heritage listing is by way of a development application (superseded planning scheme) and this avenue arises only during a very limited window of opportunity after a planning scheme is amended to include the place on the local heritage register. It does not admit of a direct challenge to the basis for listing, as occurs with State heritage places.
- 24 Further, QELA notes that should proposed new section 112 remain in its current terms, that is, a local government is allowed to identify a place in a local heritage register outside of the planning scheme, the opportunity to challenge a listing through a development application (superseded planning scheme) application will be excluded. A complete absence of appeal rights in respect of local heritage listing is deeply concerning and an owner of a place the subject of a local heritage listing should not be left without redress.

We thank you for the opportunity to make a submission about the Heritage Bill. Representatives of QELA would welcome the opportunity to discuss the submission in further detail as required.

Yours faithfully



James Ireland
President
Queensland Environmental Law Association