



# **Australian Heritage Council Act 2003**

**No. 85, 2003**

## **Compilation No. 4**

<b>Compilation date:</b>	1 July 2019
<b>Includes amendments up to:</b>	Act No. 86, 2018
<b>Registered:</b>	1 July 2019

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Australian Heritage Council Act 2003* that shows the text of the law as amended and in force on 1 July 2019 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# An Act to establish the Australian Heritage Council, and for related purposes

## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Australian Heritage Council Act 2003*.

### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	23 September 2003
2. Sections 3 to 25	At the same time as Schedule 1 to the <i>Environment and Heritage Legislation Amendment Act (No. 1) 2003</i> commences	1 January 2004

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

### 3 Definitions

- (1) In this Act, unless the contrary intention appears:

**associate member** means a person holding an appointment under subsection 7(4).

**Chair** means the Chair of the Council.

**Council** means the Australian Heritage Council established under section 4.

**meet** the registration criterion has the meaning given by subsection 22(2).

**member** includes the Chair and an associate member.

- (2) Except where the contrary intention appears, other expressions used in this Act have the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

## **Part 2—Establishment of the Council**

### **4 Establishment**

The Australian Heritage Council is established by this section.

### **5 Functions**

These are the functions of the Council:

- (a) to make assessments under Divisions 1A and 3A of Part 15 of the *Environment Protection and Biodiversity Conservation Act 1999*;
- (b) to advise the Minister on conserving and protecting places included, or being considered for inclusion, in the National Heritage List or Commonwealth Heritage List;
- (c) to nominate places for inclusion in the National Heritage List or Commonwealth Heritage List;
- (ca) to advise the Minister, in accordance with section 390P of the *Environment Protection and Biodiversity Conservation Act 1999*, in relation to the inclusion of places in, and the removal of places from, the List of Overseas Places of Historic Significance to Australia;
- (d) to advise the Minister on:
  - (i) promotional, research, training or educational activities relating to heritage; and
  - (ii) national policies relating to heritage; and
  - (iii) grants or other financial assistance relating to heritage; and
  - (iv) the monitoring of the condition of places included in the National Heritage List or Commonwealth Heritage List; and
  - (v) the Commonwealth's responsibilities for underwater cultural heritage; and
  - (vi) other matters relating to heritage;

**Part 2** Establishment of the Council

Section 5

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- (e) to promote the identification, assessment, conservation and monitoring of heritage;
- (g) to organise and engage in research and investigations necessary for the performance of its functions;
- (h) to provide advice directly to any person or body or agency either of its own initiative or at the request of the Minister;
- (i) to prepare reports in accordance with Part 5A;
- (j) to perform any other functions conferred on the Council by the *Environment Protection and Biodiversity Conservation Act 1999*.

## **Part 3—Constitution of the Council**

### **6 Membership of the Council**

The Council consists of:

- (a) the Chair; and
- (b) 6 members other than the Chair and associate members; and
- (c) each associate member (if any) who has been appointed.

### **7 Appointment of members**

- (1) The members of the Council are to be appointed by the Minister by written instrument.
- (2) The Minister must appoint the Chair. The Chair must have substantial experience or expertise concerning heritage.
- (3) In appointing the members other than the Chair and associate members, the Minister must ensure that:
  - (a) 2 of them have substantial experience or expertise concerning natural heritage; and
  - (b) 2 of them have substantial experience or expertise concerning historic heritage; and
  - (c) 2 of them are indigenous persons with substantial experience or expertise concerning indigenous heritage, at least one of whom represents the interests of indigenous people.
- (4) The Minister may appoint as an associate member a person who has substantial experience or expertise described in paragraph (3)(a), (b) or (c). The Minister may not appoint more than 2 persons to be associate members at one time.
- (5) The Minister may not appoint as the Chair or as a member, other than as an associate member, an employee of the Department administered by the Minister.

## 8 Term of office of members

- (1) A member is to be appointed on a part-time basis.
- (2) A member holds office for the period specified in the instrument of appointment. The period must not exceed 3 years, or 1 year for an appointment of an associate member.
- (3) A member cannot be appointed for more than 2 consecutive periods.

## 9 Acting appointments

The Minister may appoint a member, other than an associate member, to act as the Chair:

- (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Chair is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.

Note: Section 33A of the *Acts Interpretation Act 1901* has provisions relating to acting appointments.

## 10 Outside employment or other activities that conflict with a member's duties

A member must not engage in any paid employment, or any other activity, that the Minister is satisfied conflicts or may conflict with the proper performance of the member's duties.

### 10A No conflict with a member's duty

For the purposes of section 10, membership of an organisation with similar goals and interests to those of the Council shall not be taken to conflict with the proper performance of a member's duties.

**11 Remuneration and allowances of members**

- (1) A member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.
- (2) A member is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**12 Resignation**

A member may resign his or her appointment by giving the Minister a written resignation.

**13 Termination of appointment of members**

The Minister may terminate a member's appointment:

- (a) for misbehaviour or physical or mental incapacity; or
- (b) if the member:
  - (i) becomes bankrupt; or
  - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (iii) compounds with his or her creditors; or
  - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (c) if the Minister is satisfied that it is no longer appropriate that the person remain as a member because of the Minister's obligations under subsection 7(3); or
- (d) if the member is absent from 3 consecutive meetings of the Council; or
- (e) if the member engages in paid employment, or any other activity, that the Minister is satisfied conflicts or could conflict with the proper performance of the duties of his or her office; or

**Part 3** Constitution of the Council

Section 13

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- (f) if the member fails, without reasonable excuse, to comply with section 19 (disclosure of interests).

## **Part 4—Meetings of the Council**

### **14 Times and places of meetings**

- (1) The Council is to hold such meetings as are necessary for the efficient performance of its functions.
- (2) Meetings are to be held at the times and places determined by the Council.
- (3) The Chair may call a meeting at any time. However, the Chair must call a meeting if a majority of the members for the time being holding office, other than associate members, request the Chair to do so.
- (4) The Minister may, at any time, direct the Chair to call a meeting.
- (5) The Chair must ensure that at least 4 meetings are held each year.

### **15 Notice of meetings**

Each member is entitled to receive reasonable notice of the Council's meetings.

### **16 Who presides at meetings**

- (1) The Chair presides at all meetings at which he or she is present.
- (2) If the Chair is not present at a meeting, the members present, other than associate members, may elect a member, other than an associate member, to preside at the meeting.

### **17 Quorum**

A majority of the members for the time being holding office, other than associate members, constitutes a quorum.

### **18 Voting at meetings**

- (1) A question is decided by a majority of the votes of the members, other than associate members, present and voting.
- (2) The person presiding at a meeting has a deliberative vote and, if necessary, also a casting vote.

### **19 Disclosure of interests**

- (1) A member who has a direct or indirect pecuniary interest in a matter that is being considered, or is about to be considered, by the Council must disclose the nature of the interest to the other members.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the member's knowledge.
- (3) Unless the Council otherwise determines, the member:
  - (a) must not be present during any deliberation by the Council on the matter; and
  - (b) must not take part in any decision of the Council on the matter.
- (4) For the purposes of a determination under subsection (3), the member:
  - (a) must not be present during any deliberation of the Council on whether to make the determination; and
  - (b) must not take part in making the determination.

### **20 Conduct of meetings**

The Council may, subject to this Part, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

**20A Resolutions without meeting**

- (1) The Council may pass a resolution without a Council meeting being held if a majority of the members entitled to vote on the resolution:
  - (a) sign a document containing a statement that they are in favour of the resolution set out in the document; or
  - (b) otherwise indicate, in accordance with a method determined by the Council, that they are in favour of the resolution.
- (2) For the purposes of paragraph (1)(a), separate copies of a document may be used for signing by the members if the wording of the resolution and statement is identical in each copy.
- (3) The resolution is passed when the last of the members signs the document or otherwise indicates that he or she is in favour of the resolution.

## Part 5A—Reports

### 24A Reports

- (1) The Council may prepare a report on any matters related to the functions of the Council and provide the report to the Minister.
- (2) A report prepared under subsection (1) may include the following matters:
  - (a) the activities of the Council;
  - (b) the protection and conservation of heritage;
  - (c) how a place included in the National Heritage List or Commonwealth Heritage List is being managed or conserved;
  - (d) the effectiveness of any measures intended to protect or conserve the heritage values of a place or places included in the National Heritage List or Commonwealth Heritage List;
  - (e) the provisions of grants and other financial assistance related to heritage;
  - (f) policies, plans and programs of the Commonwealth or of a State or self-governing Territory that relate to or have an impact on heritage;
  - (g) how the National Heritage List or Commonwealth Heritage List are being maintained;
  - (h) how the condition of a place included in the National Heritage List or Commonwealth Heritage List is being monitored.
- (3) The Minister must cause a copy of a report provided to the Minister under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

## **Part 6—Regulations**

### **25 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Endnotes

### Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnote 1—About the endnotes

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Australian Heritage Council Act 2003	85, 2003	23 Sept 2003	s 3–25: 1 Jan 2004 (s 2(1) item 2) Remainder: 23 Sept 2003 (s 2(1) item 1)	
Environment and Heritage Legislation Amendment Act (No. 1) 2006	165, 2006	12 Dec 2006	Sch 1 (items 836, 838, 841–845): 19 Feb 2012 (s 2(1) items 10, 12, 14) Sch 1 (items 837, 839): 1 Jan 2007 (s 2(1) items 11, 13) Sch 1 (item 840): 19 Feb 2007 (s 2(1) item 13)	—
Underwater Cultural Heritage (Consequential and Transitional Provisions) Act 2018	86, 2018	24 Aug 2018	Sch 1 (item 2) and Sch 2: 1 July 2019 (s 2(1) item 2)	Sch 2

## Endnotes

### Endnote 4—Amendment history

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#### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
s 3 .....	am No 165, 2006
<b>Part 2</b>	
s 5 .....	am No 165, 2006; No 86, 2018
<b>Part 4</b>	
s 20A .....	ad No 165, 2006
Part 5 .....	rep No 165, 2006
s 21 .....	rep No 165, 2006
s 22 .....	rep No 165, 2006
s 23 .....	rep No 165, 2006
s 24 .....	rep No 165, 2006
s 24AA .....	ad No 165, 2006
	rep No 165, 2006
<b>Part 5A</b>	
s 24A .....	am No 165, 2006

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