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HERITAGE  
COUNCIL

# ***CHARTER***

## ***Vision***

***Heritage is integral to the vibrant life and prosperity of Western Australia***

**Document Control**

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## 1. Introduction

The purpose of this Charter is to set out the composition, authority, responsibilities and processes of the Heritage Council of Western Australia (Council), including its relationship with the Department of Planning, Lands and Heritage (Department) and the Minister for Heritage (Minister).

The provisions of this Charter are derived principally from the [Heritage Act 2018](#) (Act), [Heritage Regulations 2019](#) (Regulations) and the [Governance manual for WA Government boards and committees](#) published by the Public Sector Commission (PSC). Statutory provisions are indicated by reference to the relevant section of the Act or Regulations, or alternative legislation as appropriate.

## 2. Council governance

The Council is a statutory authority established by, and whose functions and powers are set out in, the Act [Division 2]. It is responsible to the Minister for Heritage and advises the Minister on heritage matters as relevant under the Act. The Minister may direct the Council in certain matters, excluding the identification of cultural heritage significance and the provision of advice to the Minister or a decision-making authority [s.22(3)].

The Council is recognised as a board in the Public Sector [Boards and Committees Register](#) and for most of its activities would be classified as an advisory board providing independent and expert advice to the Government. [PSC Board Essentials]

### 2.1. Council membership

#### 2.1.1. Appointment of members

A recruitment process for appointing Council members must begin with an expression of interest process [r.5(1)]. The nomination and appointment process is guided by [Premier's Circular 2023/02](#) and uses [OnBoard WA](#).

Review of nominations and recommendations to the Minister is undertaken by the Department in consultation with the Chair, with the Council providing input in relation to the skillsets, experience and capabilities required on the Council.

Appointment to any State government board or committee is subject to Cabinet approval [PC2023/02]. All members, whether standard, casual, or co-opted, are appointed via an instrument of appointment, which identifies the terms and conditions of their appointment [s.15(1); r.6(1)].

#### 2.1.2. Terms of office

Appointments to the Council are for a term of up to five years [r.6(2)], although the current practice is for members to be appointed for four years. While consecutive terms may be served [r.6(3)], the preferred maximum term for an individual membership of a State government board in Western Australia is ten years [PC2023/02]. Cabinet will consider each appointment on its merits and longer terms may be approved.

To ensure continuity it is intended that no more than four Council members have terms that expire concurrently or within a short period. To assist in this, the Minister may recommend appointment for a shorter term, commonly two years.

A Council member may serve an additional period of up to six months if their replacement has not been appointed [r.6(4)].

### **2.1.3. Casual vacancies**

The provisions for vacancies on the Council and for removal from office are defined under r.7 of the Regulations. This includes vacancy due to inability to serve, resignation and removal by the Minister.

If a member is unable to act because of illness, absence or other cause, the Minister may appoint another person as an alternate member to temporarily act in the member's place [r.9(1)]. This appointment does not require an expressions of interest process, although past nominations may be used by the Minister for identifying suitable temporary members.

### **2.1.4. Co-opted members**

The Council may appoint any person having relevant specialised knowledge or experience to be a co-opted member of the Council for a period or in relation to a matter [s.15(1)]. The period or matter(s) on which the co-opted member may vote are identified in the instrument of appointment [s.15(2); r.11].

Co-opted members are eligible for remuneration for those periods or matters for which they act as a Council member [s.16]. The appointment of a co-opted member must therefore be approved by Cabinet.

### **2.1.5. Chairperson**

The Council chairperson (Chair) is appointed by the Governor on the recommendation of the Minister [s.14(1)].

The Minister may appoint a member as Deputy Chair, who may act temporarily in the Chair's place if the Chair is unable or unavailable to act [r.10(1), (1A)]. Such acting duties include both those within and outside the Council's meetings.

Where the Chair and Deputy have given notice of absence from a meeting or Council activity, the Council may make a recommendation to the Minister, via the Chair or Department, on a member to act as Chair for the period of absence [r.10(1B)].

Where both the Chair and Deputy have declared a conflict of interest or are otherwise unable to act for one or more items at a meeting, the members present may elect a member to act as Chair for the item(s) [r.10(3)].

### **2.1.6. Committees**

The Council may from time to time establish committees to assist the performance of the Council's functions. A committee must include at least one member who is a Council member [r.25].

Committee members are entitled to such remuneration and allowances as determined by the Minister on the recommendation of the Public Sector Commissioner [s.16]. The establishment of any committee is reviewed and approved by Cabinet [PC2023/02]. The State government's preference is for there not to be an increase in the number of Boards and Committees.

## **2.2. Roles, responsibilities and relationships**

In fulfilling its role, the Council works with and through the Department while retaining accountability for governance of the Council. Council members require an understanding of the roles, responsibilities and reporting arrangement between key stakeholders.

### **2.2.1. The Minister**

The Minister is accountable to Parliament for the operation of the Council and makes recommendation to the Governor on the appointment of the Chair and Council members.

The administration of the Act is vested in the Minister, who may seek input on relevant matters from the Council. The Minister is also responsible for other functions including:

- giving the Council written directions of a general character with respect to its functions [s.22]
- power to determine the registration of places [s.41(1)], including amendments to these places [s.45(1); s.53(3)(b)(iii)] and removal of them from the Register [s.50(1)]
- power to issue protection orders and repair orders [Part 4, Act].

The Minister may delegate some of his or her powers and duties to the Chair or other persons. Any such delegations are published in the *Gazette* [s.24] and are maintained in a register of Ministerial delegations.

Regular and open communications are maintained between the Minister and the Council. These communications will normally be undertaken in meetings with the Chair and Department on behalf of the Council. Agendas for such meetings are provided at Council meetings, with outcomes reported verbally by the Chair.

Consistent with PSC guidelines, the Minister has provided the Council with a statement of expectations outlining key matters that the Minister's boards are intended to address.

### **2.2.2. Heritage Council**

The Council's responsibilities are generally provided under s.17 of the Act, which include:

- providing advice to the Minister on heritage related matters
- assessing and documenting places of cultural heritage significance, and administering the State Register of Heritage Places
- providing heritage advice to referring parties and agencies
- promoting and assisting in the management and maintenance of registered places, through the provision or facilitation of financial or technical assistance or other conservation incentives
- endeavouring to prevent the destruction, deterioration of or damage to heritage places
- advising and assisting local government in identifying and conserving local heritage
- encouraging public interest in and understanding of Western Australia's cultural heritage
- providing education and training on heritage matters.

Some of the Council's responsibilities are delegated to the Department or other delegates, while others are undertaken by the Department in its role as providing administrative support for the Council.

### **2.2.3. Chair**

The Chair leads the Council and maintains an understanding of the Council's business, State government priorities and the interests of stakeholders. The Chair ensures that the Minister, Council members and community have confidence in the Council and its leadership.

In this role, the Chair has responsibility for:

- providing effective leadership and support for members, building group cohesion and effectiveness
- identifying and addressing gaps in the board's collective skills, knowledge, experience, and diversity as part of the member appointment process
- ensuring that the Council gives clear strategic direction and that this is maintained through subsequent decisions and actions
- encouraging and demonstrating high standards of conduct and performance within the Council
- communicating with the Minister and the Department on behalf of the Council, facilitating the flow of information between parties
- representing the views of the Council to the general public
- participating in engagement with stakeholders, and encouraging and enabling engagement by Council members, consistent with the stakeholder engagement strategy or relevant plan
- leading Council meetings efficiently, encouraging members rather than directing them, enabling contribution from members, seeking consensus, and identifying and facilitating the resolution of differences where they exist
- signing and executing documents on behalf of the Council, consistent with any instrument of authorisation or relevant policy

- ensuring that the Council takes proper account of guidance provided by the Department
- understanding and implementing the role and responsibilities incumbent on the Chair as the Council's accountable authority.

#### **2.2.4. Councillors**

Each Council member must familiarise themselves with the Council's purpose, function and responsibilities, and the expectations on them as an individual. Council members have the status of director and have the same responsibilities for the Council as would a company director to their corporation under the *Corporations Act 2001* (Cth) [*Statutory Corporations (Liability of Directors) Act 1996*, Part 2]

The Council has determined that the role and responsibilities of members include:

- recognising legal and statutory obligations and acting within the authority of the role of a member
- informing themselves about the matters in front of the Council
- exercising diligence and care, and apply relevant skills, to the Council's actions and decisions
- acting in good faith in the best interests of the Council, irrespective of membership of other bodies
- being active advocates for Council decisions and objectives
- adhering to Council, Public Sector Commission and other policies relevant to their role.

#### **2.2.5. The Department of Planning Lands and Heritage**

The Department supports the Council and the Minister, providing the Council with any staff, facilities and other assistance reasonably required by the Council to perform its functions [s.25(1)]. In some cases, this means that the Council's statutory functions are carried out by the Department on behalf of the Council. This includes provision of information and notification, hosting of a website and similar administrative functions.

The relationship between the Council and Department is further outlined in a Service Charter.

#### **2.2.6. Committees**

The functions, membership and constitution of any committees will be specified in their terms of reference, with any delegated powers and functions detailed in an instrument of delegation [Division 4, Regulations].

### **3. Key Council functions**

#### **3.1. Strategy and policy**

The Council's vision, priorities and strategic objectives are articulated in its [Strategic Plan](#), with annual updates reporting on progress towards long term goals and identifying key actions for the coming year.

The Council is intended to act strategically, setting policy to guide decision-making on heritage matters. The implementation of Council strategy and policy is further detailed in the Service Charter.

#### **3.2. Delegations**

The Council may delegate any of its functions under the Act or under another written law [s.19(1)], except for the power to delegate [s.19(3)]. Delegating functions does not absolve the Council from accountability for those powers or functions, and the Council may 'call in' a decision rather than have it determined under delegation.

A person who holds a delegation must act within the limits of the delegation and any conditions placed on the delegation [s.19(4)].

A list of current delegations is maintained in a [register of delegations](#) and is published on the Council's website.

#### **3.3. Execution of documents**

The Council has a common seal and, when affixed to a document and signed by two members, that document is duly executed [s.13(2), (3)]. The Department has charge of the seal and is responsible for its safe custody and proper use.

Documents may also be executed without use of the seal, in circumstances and by persons identified in an instrument of authorisation [s.13(2), (5)], which may be prepared by the Department at the Council's request.

The use of the seal or the signing of an instrument of authorisation must be approved by an appropriate Council resolution.

### **4. Council meeting processes**

The Council has discretion under Division 3 of the Regulations to determine its own meeting proceedings, other than those matters fixed by the Regulations. This charter identifies the procedures and meeting processes as given in the Regulations or otherwise adopted by the Council.

#### **4.1. Meeting frequency**

The Council meets once per month, on the fourth Friday of the month. Proposed meeting dates may vary to allow for public holidays and/or any other competing activities, subject to Council approval. In January and December, the meeting is held on the third and second Friday respectively, unless otherwise determined by the Council [r.18(1)].

Special meetings of the Council may be convened by the Minister or Chair [r.18(2)] and must be convened by the Chair if at least half the members give written notice of such a request [r.18(3)].

The location of the meeting will be a room of suitable size and accessibility provided by the Department, with appropriate means for allowing remote attendance, external presentations, and other facilities as appropriate for the Council's use. Where access to a meeting room is not available for any reason, the Department will make provision for remote attendance for participants.

#### **4.2. Resolutions without a meeting**

The Council may resolve matters outside of a meeting, which requires that assent in writing needs to be provided by at least half of the members [r.23].

All Councillors must be contacted when considering items outside of a meeting. Unless otherwise agreed or the matter is deemed urgent by the Chair, at least three working days is to be allowed for consideration of a matter.

#### **4.3. Attendance**

Council members are expected to attend all scheduled and special meetings. Attendance may be achieved by telephone or other means of instantaneous communication [r.22], with Microsoft Teams currently given as the preferred method for remote attendance.

Absence of any member from a meeting will be recorded in the minutes. If a member is unable to attend a meeting, notice should be given at the earliest opportunity to the Chair prior to the meeting. An unplanned absence of which notice has been given will be recorded as an apology.

A member with a planned absence of up to two months may seek a leave of absence from the Council, which may be granted on terms and conditions determined by the Council [r.8(1)].

A member with a planned absence exceeding two months may, via the Chair or Department, request a leave of absence from the Minister [r.8(2)].

The Minister may remove a Council member from office if they are absent without leave from three consecutive meetings [r.7(5)(d)].

#### **4.4. Declarations of interest**

The management of conflicts of interest is set out in Division 2 of the Regulations and detailed in the Council's [Conflicts of Interest Policy](#), with the associated forms to be submitted by each member every meeting to identify conflicts, perception of bias or the absence of conflicts.

#### **4.5. Voting**

Decisions by resolutions of the Council will normally be made by consensus of the voting members present as reflected in the summing up made by the Chair.

In the event of a request to reach a decision by means of a vote, each member has a deliberative vote unless excluded from voting due to a conflict of interest [r.21(1)]. In the event of a tie, the Chair has a casting vote in addition to a deliberative vote [r.21(2)].

The minutes will record the outcome of any vote but will not name dissenting or abstaining members unless so requested by the member(s), the Chair, or a resolution of the Council.

#### **4.6. Quorum**

A quorum is at least half of the number of members in office [r.19].

Where a Council member is disqualified from voting due to a conflict of interest, the quorum is at least half of the members entitled to vote [r.16(1)]. For example, if two members declare a conflict of interest, seven remaining members are entitled to vote. In this case the quorum would be at least half of the seven entitled to vote, i.e. four members.

Should the Council be unable to deal with a matter due to its inability to form a quorum, the Minister may deal with the matter [r.16(2)] or vary the regulations to allow a quorum for the matter [r.17].

#### **4.7. Agendas and minutes**

The draft agenda for each meeting is approved by the Chair on the recommendation of the Department. Draft agendas outlining business to be transacted will be provided to every member at least ten calendar days prior to the date of a meeting to allow the identification of conflicts of interest. A detailed agenda will be provided to each member at least seven calendar days prior to the meeting, with items redacted where a material conflict has been identified.

The Council is responsible for the production of accurate minutes of its proceedings [r.24]. Minutes will be taken by the Department, with officers providing a summary that includes, for each item:

- key points of discussion
- reasons for decision
- significant issues

To assist in decision-making and the production of minutes, the Council will permit the relevant officer(s) for each item to be present in the meeting.

#### **4.8. Presentations**

Presentations may be made at Council meetings subject to [guidelines](#) determined by the Council. The guidelines indicate that presentations will generally be limited to those necessary to explain or clarify complex or major development proposals for State Registered places.

The Council's [consultation policy](#) identifies that any process of stakeholder engagement may include additional activities undertaken at the discretion of the

Council. This could include presentations to Council although it would need to be demonstrated why the information could not be conveyed through regular engagement activities.

Permission to present is at the discretion of the Chair. A request for an external party to present on a particular matter may be initiated from the Council.

## **5. Council effectiveness**

The Council is required to maintain standards of conduct and behaviour. A number of documents exist that assist Council members in identifying and meeting these standards.

### **5.1. Conduct**

The Council has adopted a [Code of Conduct](#), which deals with the personal conduct of Council members and should be read, understood and adhered to by all members. This incorporates information on management of conflicts of interest, controls on fraud and corruption, and statements on hospitality and gifts.

### **5.2. Code of ethics**

The Public Sector Commissioner (PSC) establishes the code of ethics for the public sector within *Commissioner's Instruction No. 40 – [Ethical Foundations](#)*. The code of ethics applies to all public sector boards and sets minimum standards of conduct and integrity.

### **5.3. Council evaluation**

The Council will undertake an annual evaluation of its performance through completion of an annual survey. The evaluation methodology and the process will review how the Council is tracking against standards within this charter and principles of good governance as defined by the PSC.

### **5.4. Remuneration**

Remuneration, travel expenses and other allowances are paid to members at rates recommended by the PSC [s.16]. Salaries are paid fortnightly by the Department from the budget allocated to the Council. While members are paid by the Department, their terms and conditions are not determined by the Department. They may, however, be asked to comply with Department policies, processes and practices independent of the Act or Council policies.

### **5.5. Independent legal advice**

The Council has access to legal assistance from the Department's legal officers. In consultation with the Department's Legal Services team, formal advice may also be sought from the State Solicitor's Office where appropriate.

## 5.6. Council member development

The Council has a commitment to the ongoing development of its members, in the pursuit of advancing the quality of its work. In order to continually improve performance, all Council members are encouraged to undergo ongoing professional training and development in relevant fields. This will generally be the responsibility of the individual; however, members are encouraged to participate where such activity is available from Council- or Department-led events.

All Council members are required to complete training on Accountable and Ethical Decision Making within three months of appointment to the Council, and to repeat the training annually. The Department provides access to relevant courses and maintains a register of training completion.

## 5.7. Council member induction

New members will receive a full introduction to their roles on the Council from the Chair and the Department prior to their first meeting. Induction activities may continue past the first meeting, with the member expected to undertake a range of training activities and become familiar with relevant documents and legislation.

The program for induction will be assessed before each recruitment process and reviewed by the Council to ensure that it contains relevant material and information to convey key information to new members.

## 5.8. Review of this Charter

The Council will review this Charter every two years to ensure it remains consistent with its objectives and responsibilities.

## 5.9. Source documents

- [Commissioner's Instruction No. 40 – Ethical Foundations](#) (PSC)
- [Delegation framework and instruments](#)
- [Governance manual for Western Australian Government boards and committees](#) (PSC)
- [Guidelines for presenting to the Heritage Council](#)
- [Heritage Council code of conduct](#)
- [Heritage Council conflicts of interest policy](#)
- [Heritage Council consultation policy](#)
- [Heritage Council strategic plan 2019-2023](#)
- [Premier's Circular 2023/02 – State government boards and committees](#)
- [Public Sector Commissioner's – Remuneration for Government Boards and Committees](#)
- Service charter between the Heritage Council and Department of Planning, Lands and Heritage

## 5.10. Applicable legislation

The following items of legislation, with associated regulations, guidelines and supporting material, are relevant to the work of the Council and the role of members.

- [Auditor General Act 2006](#)
- [Corporations Act 2001 \(Cth\)](#)
- [Corruption, Crime and Misconduct Act 2003](#)
- [Equal Opportunity Act 1984](#)
- [Fair Trading Act 2010](#)
- [Financial Management Act 2006](#)
- [Freedom of Information Act 1992](#)
- [Heritage Act 2018](#)
- [Heritage Regulations 2019](#)
- [Occupational Safety and Health Act 1984](#)
- [Parliamentary Commissioner Act 1971](#)
- [Planning and Development Act 2005](#)
- [Public Interest Disclosure Act 2003](#)
- [Public Sector Management Act 1994](#)
- [State Records Act 2000](#)
- [State Superannuation Act 2000](#)
- [Statutory Corporations \(Liability of Directors\) Act 1996](#)

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