

Historic Buildings Bill (No. 2)

EXPLANATORY MEMORANDUM

PART I.—PRELIMINARY

Clause 1 provides for the title of the Act for the Act to be divided into Parts and for the Act (except for sections 20 and 60 which are deemed to come into operation on 27 September 1974) to come into operation on a day or on the respective days to be fixed by proclamation or successive proclamations.

Clause 2 provides for the amendment or repeal of provisions mentioned in the Schedule and provides a savings clause to give continuing status and effect to statutory requirements where necessary.

Clause 3 contains the interpretation of certain expressions used in the Act.

PART II.—HISTORIC BUILDINGS COUNCIL

Clause 4 establishes a Historic Buildings Council as a body corporate with perpetual succession and a common seal and capable in law of suing and being sued.

The seal of the Council is not to be affixed without the consent of the Minister.

Clause 5 constitutes the Council to consist of 12 widely representative members. Also provides for appointment of a chairman and deputy chairman, appointment and replacement of certain members, appointment of deputy members, term of office and resignation and removal of members from office and enables the payment of fees and allowances to members of the Council.

Clause 6 is a transitional provision abolishing the Historic Buildings Preservation Council and making the Historic Buildings Council the successor in law.

Clause 7 sets out provisions dealing with meetings of the Council and enables the Council to regulate its own proceedings subject to the Act.

Clause 8 requires minutes of Council meetings to be kept, furnished to the Minister and to be available for inspection by members of the public without charge during normal office hours at the Council's office.

Clause 9 sets out the functions of the Council. Also enables the Council to prepare reports for submission to the Minister on specified matters when requested by responsible authorities, and consult with the National Trust of Australia (Victoria) and any other persons or bodies and carry out investigations. The Council is required to consider submissions made to it from time to time by the National Trust of Australia (Victoria).

Clause 10 enables the Council to appoint committees of not less than three of its members, that three members of the Council shall constitute a quorum of a committee for committees to regulate their own proceedings subject to the Act and for committees to make recommendations to the Council.

Clause 11 allows the Council to delegate to any officer of the Council its powers, discretions, functions or authorities except the power of delegation, its function of recommendation to the Minister following an examination as to whether a building should be added to or removed from the historic buildings Register or an alteration made to an item on the Register and its function of recommendation to the Minister concerning land in the same ownership as an historic building.

Clause 12 provides for a Director of the Council and such secretarial, administrative and other services to be provided by the Department of Planning. Also allows the Council, with the approval of the Minister, to use the services of staff of other Departments and public statutory authorities and to enter into arrangements for investigations, study or research.

Clause 13 requires that a member of the Council who has any direct or indirect pecuniary interest in a contract or other matter for consideration by the Council, other than as a member in common of a company having at least 20 members, is to declare the nature of his interest, as soon as practicable at a meeting of the Council. The disclosure is to be recorded in the minutes and the member is not to take further part in consideration of the matter, or the taking of a vote, nor is he to be counted in a quorum.

PART III.—PRESERVATION OF HISTORIC BUILDINGS

Division 1—Register of Historic Buildings

Clause 14 provides for a historic buildings Register and for the Governor in Council on the recommendation of the Minister by notice published in the *Government Gazette* to amend the Register.

Clause 15 provides for a Provisional Register of Historic Buildings which shall consist of any building which the Minister and owner agree should be included on the Register. Also provides that an owner who has been notified by the Council of its intention to conduct an examination pursuant to Section 18 may within 30 days apply to the Minister to include the building on the Provisional Register. Before the building is included on the Register the Minister shall require the owner to enter into an agreement with him under seal in which the owner covenants not to demolish, alter or remove the building, not to enter into an agreement for the sale of the land until after 30 days notice has been given to the Minister and to preserve, maintain and care for the building on the land.

The Minister is to obtain a report from the Council on the proposed agreement and is to take into account any matters raised by the Council in relation to the proposed agreement. When the agreement is executed, a copy is to be forwarded to the Council and the Minister is to cause notice that the

building has been added to the Provisional Register to be published in the *Government Gazette*. An agreement may be determined by the Minister or the owner giving 30 days notice in writing of that intention. Where notice of termination is given, the Minister is to notify the Council which is to make an examination pursuant to Section 18. No examination pursuant to Section 18 is to be otherwise made of a building on the Provisional Register.

The owner of a building who fails to comply with an agreement shall be guilty of an offence and the Minister shall recommend to the Governor in Council to add the building to the historic buildings Register. Also provides that any person who demolishes or makes any alteration to a building on the Provisional Register without the consent of the Minister shall be guilty of an offence.

Clause 16. The Registrar-General and Registrar of Titles are to be given notice of details of the land on which is situated a building on the provisional register and historic buildings Register and of any subsequent amendment.

Clause 17 requires a copy of the historic buildings Register and the Provisional Register to be kept at the office of the Department of Planning. Also requires copies of relevant parts of the registers to be kept at the office of the Melbourne and Metropolitan Board of Works, regional authority or council of a municipality as appropriate. Copies of the Registers are to be available for inspection by members of the public.

Clause 18 enables the Council of its own motion, on the application of the National Trust of Australia (Victoria), on the application in the prescribed form of the owner of a building, or at the direction of the Minister to make an examination as to whether a building should be added to or removed from the Register or that an alteration be made to the Register. Also provides that where the Council proposes to make an examination it is to notify the owner of its intention and of the part or parts of the building to be examined.

The Council is not to make an examination in respect of a building which is the subject of an application to the Minister to be added to the Provisional Register unless the Minister otherwise directs.

Provides that any person may in the prescribed form request the Minister to direct the Council to make an examination. When the Minister has made a determination, he is to advise the applicant and the Council of his determination and the reasons therefor.

The Council is to make a recommendation to the Minister after carrying out an examination. In making an examination the Council is to consider whether the building is of such architectural or historic importance or interest as to warrant preservation of the building and may at that time consider (and shall in the event of a request of the owner) whether preservation of the building is economically feasible, registration would render the building incapable of reasonable or economic use, and whether preservation of the building could be achieved without causing undue financial hardship to the owner in relation to the building or land and any other relevant matters.

Provides that before a recommendation is made to the Minister, the Council is to give the owner concerned an opportunity of being heard and is to report on any submissions made by the owner. The Council is also to report on all the matters it considered and whether the whole of the building should be included on the Register.

Provides also that in making an examination of a building on the Provisional Register, the Council is not to draw any inferences or conclusions from the fact that the building is or has been on the Provisional Register.

Clause 19 enables the Council to recommend to the Minister the inclusion on the Register of land in the same ownership and used in conjunction with a historic building. Such land shall remain on the Register after it ceases to be in the same ownership.

Clause 20 is a transitional provision to provide for the validity of existing land on the historic buildings Register except where permits for subdivision or development have already been granted.

Clause 21 provides that the Council shall give notice to owners of buildings which have been examined, of its recommendations to the Minister and notice may also be published in the *Government Gazette* inviting submissions to be made to the Minister within a specified period.

Clause 22 makes provision for owners of buildings or land which have been examined to make submissions to the Minister.

Clause 23 requires the Minister to appoint the chief chairman of the Planning Appeals Board to hold an inquiry into submissions made in relation to recommendations of the Council to the Minister.

Clause 24 gives right of appearance at an inquiry.

Clause 25 provides for a report on an inquiry to be furnished to the Minister who shall forward a copy of a report to the owner and to the Council. Unless the Minister otherwise directs copies of the report shall be made available for inspection by members of the public.

Clause 26 provides that the section is subject to any regulation under the *Local Government Act 1958* relating to the securing pulling down or removal of ruinous or dangerous buildings. Provides also that an owner may apply to the Council for a permit for certain matters. The Council is to cause a copy of a permit application to be served on a local council and the responsible authority for the area in which the registered building or land is included. Provision is also made for advertising the application in a newspaper in the area and that the display of a copy of the application on the registered building or land may be required. The application is to be available at the office of the Council for inspection by members of the public and any person may make representations to the Council. Provision is made for the Minister at the time a building or land is added to the register to declare that alterations of a class or classes specified in the

declaration may be carried out without obtaining a permit. After a building is added to the register, the owner may apply to the Council for a similar declaration. If the applicant is dissatisfied he may make a submission to the Minister and the provisions of sections 27, 28, 29, 30, 31 and 32, as appropriate, will apply to the application as if it were an application for a permit. This will streamline procedures where alterations are of a minor nature. The provisions relating to permits will not apply to any alterations to the interior of a church for liturgical purposes.

Clause 27 requires that any application to the Council shall be examined and determined by the Council which shall determine whether a permit or declaration should be granted or refused and whether the permit or declaration should be subject to conditions. Also provides that the Council is to take specified matters into consideration and that the Council is to grant or, after giving the owner an opportunity of being heard, refuse to grant the permit or declaration within 60 days or any longer period specified by the Minister.

Clause 28 provides for a right of submission by an applicant to the Minister against a decision of the Council.

Clause 29. Where a submission is made to the Minister, the Minister shall appoint the chief chairman of the Planning Appeals Board to furnish a report to him in respect of the submission.

Clause 30 provides for a right of hearing before the person furnishing a report on the submission.

Clause 31 provides that the Minister after considering a report furnished to him may return the report to the chief chairman of the Planning Appeals Board for further consideration or make a recommendation to the Governor in Council. Also provides the Governor in Council with power to refuse to grant the permit or allow the permit either unconditionally or subject to conditions.

Clause 32 provides that the decision of the Governor in Council shall be final and shall be given effect to by the Council.

Division 2—Offences and Repair Orders

Clause 33 provides that where the owner of a registered building enters into a contract of sale of a registered building he shall give the Council notice of such contract in the prescribed form within 28 days of the date of the contract.

Clause 34 provides that any person shall not allow a registered building to fall into disrepair to enable demolition of the building or development of land on which the building is situated or adjoining land.

Clause 35 provides for the Council, with the consent of the Minister where it is of the opinion that a registered building is being allowed to fall into disrepair to serve written notice on the owner to show cause why it should not make an order requiring certain repairs to be carried out. The notice is to specify only

repairs which are necessary to prevent any further deterioration of the building and shall inform the owner of the provisions of the Act relating to orders, appeals and failure to comply with an order of the Act.

Clause 36 provides that where an owner on whom a notice is served fails to show cause in respect of a repair specified in the notice, the Council may with the consent of the Minister order that the repairs be carried out within a period specified in the order.

Clause 37 enables an owner, on whom a copy of an order is served, to appeal against the order to a Judge of the County Court, provides for an extension of time pending the hearing of an appeal by a judge and for the decision of the Judge of the County Court to be final and have effect as if it were an order of the Council.

Clause 38 makes failure to comply with a repair order an offence.

Clause 39 provides for a penalty for failure to comply with the provisions of the Act and for offences by bodies corporate. Any person being the chairman, member of the governing body, director, manager, secretary or officer of the body corporate shall be deemed to have committed the like offence unless the offence took place without his knowledge or consent. Also provides that proceedings for an offence may be brought within three years after the commission of the alleged offence.

Division 3—Interim Preservation Orders

Clause 40 provides that an interim preservation order may be served by the Council with the consent of the Minister on the owner of any building which is being investigated by the Council and specifies the manner of serving an order. Also provides that any person who removes or demolishes such a building or alters the building without a permit shall be guilty of an offence. A building the subject of an interim preservation order shall be deemed to be a registered building for the purpose of obtaining a permit for alterations. An interim preservation order shall remain in force for a period of six months or for any further period specified by the Minister unless cancelled by the Minister or the building is added to the Register.

Division 4—Covenants

Clause 41 enables the owner of any registered land or land upon which a registered building is situated to enter into a covenant with the Minister which binds the owner as to the future development or use of the land by the owner. Provides that covenant arrangements may be entered into with the National Trust of Australia (Victoria) with the prior approval of the Minister. Also provides for the release or variation of covenants and the giving and publication of notice.

Clause 42 provides for registration of covenants and agreements made under section 15.

PART IV.—HISTORIC BUILDINGS FUND

Clause 43 establishes a Historic Buildings Fund for receipt of moneys by the Council and for their disbursement. Provides that the Council shall open and maintain bank accounts and shall maintain at all times one such account to be used for the purposes of the Fund. Moneys held in the Fund which for the time being are not required for the purposes of the Act may with the consent of the Minister be invested by the Council in such securities as the Treasurer from time to time approves.

Clause 44 provides the Council, with the consent of the Minister, with borrowing powers subject to the Treasurer's approval. Also provides for guarantees to be given by the Treasurer under certain conditions for the repayment of borrowings.

Clause 45 provides for the Council to keep accounts and records and for statements of accounts to be audited by the Auditor-General. Audited statements of accounts are to be submitted to the Minister.

Clause 46 enables the Council to acquire by gift, grant, bequest or demise any property, and for the Council to carry out any conditions of such gift, grant, bequest or demise.

Clause 47 enables the Council, with the consent of the Minister, to make grants or loans for the purpose of assisting the preservation or restoration of registered buildings.

Clause 48 provides for loans made by the Council to be at rates of interest, if any, fixed and approved by the Treasurer.

Clause 49 enables the Council, with the consent of the Minister, to acquire registered land on which is situated a historic building.

Clause 50 enables the Council, with the consent of the Minister, to sell, lease, exchange or dispose of property acquired by the Council.

Clause 51 enables the Council, with the consent of the Minister, to provide special assistance to the owner of a registered building for the purpose of preserving or restoring that building. The Council may with the consent of the Treasurer remit or defer the payment of the whole or any part of land tax in relation to land on which is situated a registered building and may, after consultation with the relevant rating authority and with the consent of the relevant authority or of the Minister concerned, remit or defer the payment of the whole or any part of any rate payable in respect of the land on which is situated a registered building. Also provides that rates or taxes shall be remitted or deferred for such period as the Minister, on the recommendation of the Council with the appropriate consent, may specify. The Council may also revoke or vary

any conditions. Any remission of taxes or rates for a period of up to five years may be recovered if the buildings is removed from the Register or a permit has been granted to remove or demolish the building.

PART V.—ORDERS OF THE SUPREME COURT

Clause 52 is an interpretation provision.

Clause 53 provides that any person may bring proceedings in the Supreme Court for an order to remedy or restrain a breach of the Act.

Clause 54 provides for orders of the Supreme Court and that such orders shall have effect and may be enforced as if they were orders or judgments made by the Supreme Court under the *Supreme Court Act 1958*.

Clause 55 provides that the functions of the Supreme Court under this Part are in addition to and not in derogation from any other function of the Supreme Court.

PART VI.—MISCELLANEOUS

Clause 56 provides that the Minister may establish advisory committees to advise on matters referred. Also enables payment of allowances and expenses as determined by the Governor in Council.

Clause 57 provides that where the owner of any registered building or land is convicted of an offence against sections 26, 38 or 40, or the Minister declares that the owner of a building or land on the Provisional Register has breached the agreement, the Governor in Council may declare by Order published in the *Government Gazette* that the building or land or both shall not be developed or used for a period of up to ten years. The Governor in Council may revoke or vary any such Order.

Clause 58 provides that while an Order under section 57 is in force no person shall carry out any works on the land or cause or permit any development of the land or make any alteration to a building on the land and any specified permits shall be of no force or effect.

Clause 59 provides the Council, members of the Council and any member of an advisory committee with exemption from liability for any damage, loss or injury sustained or alleged to be sustained as a result of the performance of a duty or function.

Clause 60 is a similar clause providing the Historic Buildings Preservation Council and members of the Council with exemption from liability.

Clause 61 enables any member of the Council or any person authorized by the Council for the purposes of or in the course of carrying out any of the Council's functions to enter into and upon any building or land.

Clause 62 provides for an annual report of the Council (which includes a summary of all recommendations made by the Council to the Minister during the year and particulars of financial assistance) to be made to the Minister and laid before Parliament.

Clause 63 contains regulation-making powers.

PART VII.—AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1958

Clause 64 amends the *Local Government Act 1958* in relation to the valuation of land on which is situated a registered building or which is registered land to be valued on the basis that the building or land is on the Register. Also the Council may make recommendations to the Uniform Buildings Regulations Referees with regard to modification of the regulations or by-laws in relation to a registered building.

