

## VICTORIA.



ANNO VICESIMO TERTIO

ELIZABETHÆ SECUNDÆ REGINÆ

No. 8569.

An Act to make Provision with respect to the Preservation of Buildings Works and Objects of Historic or Architectural Importance or Interest, to amend the *Town and Country Planning Act 1961*, and for other purposes.

[14th May, 1974.]

**BE** it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say) :—

Short title.

1. (1) This Act may be cited as the *Historic Buildings Act 1974*.

Commencement.

(2) The several provisions of this Act shall come into operation on a day or the respective days to be fixed by proclamation of the Governor in Council published in the *Government Gazette*.

Interpretation.

2. In this Act, unless inconsistent with the context or subject-matter—

“Alter” in relation to a building means to modify or change the appearance of a building whether by way of structural or other works, by painting plastering or any other form

of

of decoration or by any other means and "alteration" has a corresponding interpretation.

"Building" means a building work or object or any part thereof or appurtenances thereto.

"Council" means the Historic Buildings Preservation Council established under this Act.

"Designated building" means a building specified in the register of historic buildings.

"Owner" in relation to a building includes any mortgagee annuitant lessee sub-lessee or purchaser of the land upon which the building is situated whose interest in the land appears from an inspection of the register book kept pursuant to the provisions of the *Transfer of Land Act 1958* or from a search of memorials registered pursuant to Part I. of the *Property Law Act 1958*.

"Register" means the register of historic buildings established pursuant to section 3.

3. (1) The Minister shall cause a register of historic buildings to be established and kept specifying the buildings which are designated buildings for the purposes of this Act. Register of historic buildings.

(2) As soon as may be after the commencement of this Act the Governor in Council on the recommendation of the Minister may by notice published in the *Government Gazette* specify the buildings which shall initially constitute the register.

(3) The Governor in Council on the recommendation of the Minister may by notice published in the *Government Gazette* amend the register—

- (a) by adding any specified building ;
- (b) by removing any specified building ; or
- (c) by altering any item.

4. There shall be established a Historic Buildings Preservation Council. Historic Buildings Preservation Council.

5. (1) The Council shall consist of ten members being— Constitution of Council.

- (a) a person nominated by the Minister for the Arts ;
- (b) a town planner nominated by the Town and Country Planning Board ;
- (c) the Valuer-General or a person nominated by him ; and
- (d) seven members appointed by the Governor in Council (hereinafter referred to as appointed members) of whom—
  - (i) one shall be selected from a panel of three names submitted by the National Trust of Australia (Victoria) ;
  - (ii) one

- (ii) one shall be a practising architect selected from a panel of three names submitted by the Royal Australian Institute of Architects (Victorian Chapter);
- (iii) one shall be an architectural historian;
- (iv) one shall be a builder selected from a panel of three names submitted by the Master Builders Association of Victoria;
- (v) one shall be a person selected from a panel of three names submitted by the Building Owners and Managers Association of Australia Limited, Victorian Division;
- (vi) one shall be a person selected from a panel of three names nominated by the Institution of Engineers; and
- (vii) one shall be a barrister and solicitor of the Supreme Court of Victoria with special knowledge of the law relating to town planning.

(2) If for any reason an organization does not within twenty-eight days after receipt of a request in writing submit a panel of names for the purposes of sub-section (1), the Governor in Council may appoint any person to be a member of the Council.

(3) The Minister for the Arts, the Town and Country Planning Board and the Valuer-General may at any time remove their nominees and may nominate other persons to be members of the Council.

(4) The Minister for the Arts, the Town and Country Planning Board and the Valuer-General may respectively appoint a deputy who shall in the absence of the member whose deputy he is have all the powers and carry out the duties of the member.

(5) The appointed members of the Council shall be appointed for a term of not more than three years and upon expiration of such term shall be eligible for re-appointment.

(6) The Governor in Council may at any time remove any appointed member.

(7) In the event of any vacancy occurring in the office of any appointed member an eligible person shall in accordance with this section be appointed to fill the vacancy.

(8) The Governor in Council may appoint a deputy for any appointed member who shall in the absence of the appointed member have all the powers and carry out the duties of the member.

(9) A member of the Council not being a person employed by or on behalf of the Crown or any public statutory body shall receive such fees and allowances as are from time to time fixed by the Governor in Council.

6. (1) The Minister shall appoint one of the members of the Council to be chairman. Proceedings of Council.

(2) The chairman shall preside at all meetings of the Council at which he is present and in his absence a member elected by the members present shall preside and whilst so presiding shall have all the powers of the chairman.

(3) Six members of the Council shall be a quorum and subject to there being a quorum the Council may act notwithstanding any vacancies in its membership.

(4) All questions shall be decided by majority of those present at any meeting of the Council at which there is a quorum, and in the event of an equality of votes on any question the chairman shall have a second or casting vote.

(5) Subject to this Act the Council may regulate its own proceedings.

7. (1) The Council shall delegate its function of making recommendations to the Minister under paragraph (a) of sub-section (1) of section 10 to a sub-committee which shall be called the Classifications Sub-committee and which shall consist of the members of the Council referred to in paragraphs (a) and (b) and sub-paragraphs (i), (ii) and (iii) of paragraph (d) of sub-section (1) of section 5. Classifications Sub-committee.

(2) Three members of the Classifications Sub-committee shall be a quorum and subject to there being a quorum the sub-committee may act notwithstanding any vacancy in its membership.

(3) All questions shall be decided by a majority of those present at any meeting of the sub-committee at which there is a quorum, and in the event of an equality of votes on any question the chairman of the sub-committee shall have a second or casting vote.

(4) Subject to any directions given by the Minister, a member of the sub-committee may request the sub-committee to refer any matter with which the sub-committee is concerned to the Council for consideration and decision and the sub-committee shall comply with such a request.

(5) The Council may appoint other sub-committees and may delegate any of its functions to those sub-committees.

(6) A delegation under sub-section (5) shall be revocable at will and no such delegation shall prevent the exercise of any powers by the Council.

(7) A sub-committee shall appoint one of its members to be chairman and the chairman shall preside at all meetings of the sub-committee at which he is present and in his absence a member elected by the members present shall preside and, whilst so presiding shall have all the powers of the chairman.

(8) Subject

(8) Subject to this Act a sub-committee may regulate its own proceedings.

Secretary to  
Council.

8. (1) An officer of the Ministry of Planning shall be assigned to act as secretary to the Council.

(2) For the purposes of this Act the Council may, with the approval of the Minister—

- (a) and with the consent of the Minister administering the Department concerned, make use of the services of any officers and employes in any department of the Public Service ; and
- (b) enter into an agreement with any public statutory authority with respect to the use by the Council of the services of any officer or employe employed by that authority ; and
- (c) enter into arrangements with any body or person with respect to any investigation study or research which in the opinion of the Council is necessary or desirable for the purposes of this Act.

Annual report.

9. (1) The Council shall at least once in every year and not later than the thirtieth day of September in each year make a report to the Minister on the operation of this Act.

(2) Every such report shall be laid before both Houses of Parliament within fourteen days of the making thereof if Parliament is then sitting and if Parliament is not then sitting within fourteen days after the next meeting of Parliament.

Functions of  
Council.

10. (1) The functions of the Council shall be—

- (a) to recommend to the Minister—
  - (i) the buildings of architectural or historic importance which it considers should be added to the register ;
  - (ii) the designated buildings which it considers should be removed from the register ; and
  - (iii) any alteration which it considers should be made to any item in the register ;
- (b) of its own motion or at the request of the Minister to report to the Minister on any matter relating to designated buildings or to the administration of this Act.

(2) The Council may prepare reports when so requested by a responsible authority under the *Town and Country Planning Act 1961* in relation to any matter referred to in clause 8 or 8B of the Schedule to that Act.

(3) Before

(3) Before a recommendation is made to the Minister under paragraph (a) of sub-section (1) the Classifications Sub-committee shall give the owner of any building concerned an opportunity of being heard.

(4) For the purposes of carrying out its functions under this Act the Council may consult with any persons or bodies and carry out any investigations it thinks fit and in particular shall investigate any building the subject of an application under section 11.

11. (1) Any person may apply in the prescribed form to the Council for a recommendation under paragraph (a) of sub-section (1) of section 10 that a building be added to the register.

Applications to Council.

(2) Any person may apply in the prescribed form to the Council for a recommendation under paragraph (a) of sub-section (1) of section 10 that a building be removed from the register.

12. (1) Forthwith after the register is first established the Council shall lodge with the Registrar-General or the Registrar of Titles (as the case may be) notice of each designated building giving details of the land on which it is situated.

Notice to Registrar-General and Registrar of Titles.

(2) Each time the register is amended the Council shall give notice to the Registrar-General or the Registrar of Titles (as the case may be) of any land affected by such amendment.

(3) On receipt of such a notice the Registrar-General or the Registrar of Titles (as the case may be) shall make such entries as he thinks necessary or expedient for the purpose of bringing such notice to the attention of persons who search the title of the land to which such notice relates.

(4) The Registrar-General or the Registrar of Titles may require such evidence of the identity of any land affected by a notice lodged under this section as he thinks fit.

(5) No fee shall be charged for the lodging of a notice by the Council under this section.

13. (1) A copy of the register, duly amended, shall be kept at the office of the Council and at the office of the Town and Country Planning Board.

Copies of register.

(2) A copy of so much (if any) of the register, duly amended, as relates to any designated building within an area under the control of the Melbourne and Metropolitan Board of Works, a regional planning authority under the *Town and Country Planning Act 1961* or the council of a municipality shall be kept at the office of the Board, authority or council (as the case requires).

(3) A copy of the register or any part thereof kept pursuant to this section, shall be available for inspection by members of the public at the office concerned during normal office hours.

14. (1) This

Offence to  
remove, &c.  
designated  
building  
without permit.

14. (1) This section has effect subject to any regulation under the *Local Government Act* 1958 relating to the securing pulling-down or removal of ruinous or dangerous buildings but otherwise notwithstanding anything in or authorized by or under any other Act.

(2) An owner of a designated building who removes demolishes or alters that building or who causes or allows it to be removed demolished or altered without having first obtained a permit issued by the Council under section 16 shall be guilty of an offence against this Act.

(3) A person who wilfully carries out any removal demolition or alteration of a designated building which the owner thereof is not entitled to carry out shall be guilty of an offence against this Act.

(4) Any person who wilfully damages a designated building shall be guilty of an offence against this Act.

Penalty : \$1,000 or imprisonment for one year or both such fine and imprisonment.

Special  
provision as to  
offences by  
corporations.

15. Where a person who is guilty of an offence against this Act is a corporation any person being a chairman, member of a governing body, director, manager, secretary or officer of the corporation shall be deemed to have committed the like offence and be liable to the pecuniary penalty or imprisonment or both provided by this Act in the case of such an offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

Permits.

16. (1) An owner of a designated building may apply to the Council in the prescribed form for a permit to remove demolish or alter the building.

(2) Upon receipt of an application under sub-section (1) the Council—

- (a) shall cause a copy of the application to be served on the council of the municipality in which the building is situated and, except where the responsible authority is the council of a municipality, the responsible authority under the *Town and Country Planning Act* 1961 for the area in which the building is situated ;
- (b) shall cause notice of the application to be published in a newspaper circulating in the district in which the building is situated ; and
- (c) may require the owner to cause a copy of the application to be continuously displayed in a conspicuous position

on the building to which it relates for a specified period not exceeding twenty-eight days.

(3) An owner shall be deemed to have complied with any requirement of the Council under paragraph (c) of sub-section (2) if the Council is satisfied—

(a) that he took all reasonable steps to ensure that the notice was continuously and conspicuously displayed as required by that paragraph during the specified period ; and

(b) that any failure to keep the notice so displayed was not his fault.

(4) During a period of twenty-eight days after publication of notice of the application in a newspaper pursuant to sub-section (2)—

(a) the application shall be available for inspection by the public at the office of the Council during normal office hours ; and

(b) any person may lodge with the Council representations with respect to the application.

(5) The Council shall consider an application under sub-section (1) and any representations lodged pursuant to sub-section (4) and shall within six months after the receipt of the application or any longer period approved by the Minister grant, or after giving the owner concerned an opportunity of being heard, refuse to grant the permit requested.

(6) A permit under this section may be granted subject to any conditions that the Council thinks fit.

17. A person shall not enter into a contract for the sale of a designated building unless he has given the Council not less than twenty-eight days' notice in the prescribed form of his intention to enter into the contract.

Notice of intention to sell designated building.

Penalty : \$100.

18. (1) The Council may serve an interim preservation order on the owner of any building which it is investigating where in the opinion of the Council it is necessary or desirable to do so for the purposes of achieving the objects of this Act.

Interim preservation orders.

(2) An interim preservation order may be served on the owner—

(a) by delivering it to him ;

(b) by leaving it at his usual or last known place of abode ; or

(c) by forwarding it by post in a pre-paid letter addressed to him at his usual or last known place of abode and such order shall be deemed to have been duly served upon such person upon the fifth day after posting.

(3) Where



(3) Where the name or the address of the owner of a building is unknown the order may be served—

(a) by delivering it to the occupier or leaving it at the building ; and

(b) by publishing it three times at intervals of not less than one week in the *Government Gazette* and in a newspaper circulating generally in Victoria.

(4) While an interim preservation order served under this section remains in force the building to which it relates shall not be removed demolished or altered.

Penalty : \$500 or imprisonment for six months or both such fine and imprisonment.

(5) An interim preservation order—

(a) shall, subject to paragraph (b), remain in force for a period of six months or for any further period specified by the Council with the consent of the owner of the building concerned or of the Minister ;

(b) shall cease to have any force or effect—

(i) if it is cancelled by order of the Council ; or

(ii) if the building to which it relates is added to the register.

Power of  
Minister to  
purchase or  
compulsorily  
acquire land.

19. (1) The Minister may purchase or compulsorily acquire any land upon which a designated building is situated.

(2) Any land acquired by the Minister pursuant to sub-section (1) shall be conveyed or transferred to Her Majesty, and may notwithstanding anything to the contrary in any Act be dealt with as unalienated Crown land.

(3) The *Lands Compensation Act 1958* and the *Valuation of Land Act 1960* are hereby incorporated with this Act and subject to and so far as is consistent with this Act shall be read and construed as one therewith and shall take effect with regard to any purchase or compulsory acquisition of land under the provisions of this section.

(4) For the purposes of this Act in the construction of the *Lands Compensation Act 1958* and the *Valuation of Land Act 1960* unless inconsistent with the context or subject-matter—

“ Minister of Public Works ” and “ Minister ” shall mean the Minister administering this Act ;

“ Special Act ” shall mean this Act ;

“ Works ”

“ Works ” or “ the undertaking ” shall mean the preservation of the designated building—

but for the purposes of sub-section (2) of section 11B of the *Lands Compensation Act* 1958 the specification of a building on the register or the addition of a building to the register under this Act shall not be regarded as a notice or statement relating to the proposal to investigate or carry out the works or undertakings.

20. (1) Where it appears to the Council that the continued use of any designated building is not economically feasible and its preservation is thereby endangered the Council may make a report to the Minister recommending that special assistance be granted.

Power to  
Minister to  
grant special  
assistance.

(2) Where the Minister has received a recommendation that special assistance be granted he may do one or more of the following :—

(a) Out of any moneys made available by Parliament for the purpose, and subject to any terms and conditions he thinks fit, give assistance to any owner of the building ;

(b) With the consent of the Treasurer make an order under his hand remitting, subject to sub-section (5), the whole or any part of the tax payable by the owner under the *Land Tax Act* 1958 that is attributable to the land on which the designated building is situated ;

(c) After consultation with any relevant rating authority and with the consent of the authority or of the Minister administering the legislation under which the authority is constituted, make an order under his hand remitting, subject to sub-section (5), the whole or any part of any relevant rates payable in respect to the land on which the designated building is situated.

(3) Any order made by the Minister under sub-section (2) may at any time in like manner and subject to the like consents and conditions (if any) be varied or revoked by him.

(4) The Commissioner of Land Tax and any rating authority concerned shall comply with any order made by the Minister under this section.

(5) Any land tax or rate remitted under this section during the preceding five years shall become payable on—

(a) the building being removed from the register on the application of any owner ; or

(b) any

(b) any owner obtaining a permit to remove or demolish the building under section 16—  
unless the Minister otherwise directs and shall become payable if the Minister so directs on—

(c) any owner obtaining a permit to alter the building under section 16.

(6) In the case of an owner obtaining a permit to alter a building the Minister shall not give a direction under sub-section (5) unless in his opinion the granting of the permit will result in a substantial increase in the value of the land on which the building is situated.

**Covenants.**

21. (1) An owner of any land upon which a designated building is situated may enter into a covenant with the Minister which binds him as to the development or use of the land or any part thereof or the preservation maintenance or care of any buildings thereon.

(2) A covenant under this section may be released by the Minister or varied by an agreement between the Minister and all persons having an interest in the land burdened by the covenant who are bound by the covenant.

(3) Where a covenant has been entered into by any person pursuant to sub-section (1) or subsequently varied pursuant to sub-section (2)—

(a) and—

(i) (in the case of land under the operation of the *Transfer of Land Act 1958*) the Registrar of Titles has entered a memorandum of the covenant or the variation (as the case requires) upon the relevant Crown grant or certificate of title ; or

(ii) (in the case of land not under the operation of the *Transfer of Land Act 1958*) a deed embodying the covenant or the variation (as the case requires) has been registered under Part I. of the *Property Law Act 1958*—

the burden of the covenant or of the covenant as so varied (as the case requires) shall run with the land concerned and the Minister shall have power to enforce such covenant against persons deriving title from that person as if it were a restrictive covenant notwithstanding that it is not for the benefit of land of the Minister ;

(b) where the land is not under the operation of the *Transfer of Land Act 1958* a deed embodying the covenant or the variation (as the case requires) may be registered under Part I. of the *Property Law Act 1958* ; and

(c) where

- (c) where the land is under the operation of the *Transfer of Land Act 1958* and the registered proprietor of the land is the covenantor or one of the covenantors, the Registrar of Titles on application made to him in that behalf shall enter a memorandum of the covenant or the variation (as the case requires) upon the relevant Crown grant or certificate of title.

22. (1) For the purposes or in the course of carrying out any of its functions or duties under this Act the Council, any member of the Council and any person authorized by the Council may with the consent of the occupier or, in the absence of such consent, after giving two clear days notice to the occupier (if any) enter into and upon any building or land at any reasonable time and no member or person so authorized shall be liable to any legal proceedings on account of any such entry.

Council may enter building or land.

(2) Every person who—

(a) obstructs or hinders ; or

(b) refuses permission to enter any buildings or land to any member of the Council or any person authorized by the Council in the performance of anything which that person is authorized by this section to do—

shall be guilty of an offence against this Act.

Penalty : \$50.

23. (1) The Governor in Council may make regulations for or with respect to—

Regulations.

(a) specifying certain alterations which may be made to designated buildings or to any specified designated building or specified class of designated buildings without a permit under section 16 ; and

(b) generally for the purposes of this Act.

(2) Any regulation may incorporate by reference any document published by the National Trust of Australia (Victoria) or by any authority or body whether as in force at the time of such incorporation or whether as amended or prescribed or published from time to time.

24. The *Town and Country Planning Act 1961* is hereby amended as follows :—

Amendment of No. 6849.

(a) In sub-section (5) of section 12c after the word "rate" there shall be inserted the words "fixed by the authority in relation to that precept or agreement but" ;

(b) In

(b) In section 17—

- (i) in sub-section (1) for the words “make provision for the use or development of any land within the area to the extent to which it would be lawful for a scheme to do so” there shall be substituted the words “make any other provision for or with respect to giving effect to any of the matters referred to in the Third Schedule in relation to the land within the area”;
- (ii) in sub-section (1D) for the expression “the continuance of the use of any land for the purposes for which it was being lawfully used immediately before the coming into operation of the order or the modification or amendment thereof (as the case may be) or the use of any building or work for any purpose for which it was being lawfully erected or carried out immediately before that time” there shall be substituted the following expression :—

“(a) the continuance of the use of any land upon which no buildings or works are erected for the purposes for which it was being lawfully used before the coming into operation of the order or the modification or amendment thereof (as the case may be);

(b) the use of any building which was erected before such coming into operation for any purpose for which it was lawfully being used immediately before such coming into operation;

(c) the use of any works constructed before such coming into operation for any purpose for which they were being lawfully used immediately before such coming into operation; or

(d) the use of any building or work for any purpose for which it was being lawfully erected or carried out immediately before such coming into operation.”;

(c) In

- (c) In sub-section (4) of section 27 for the words "against the failure or refusal of the responsible authority to grant a permit or against any condition contained in any permit or against the grant of any permit pursuant to an interim development order" there shall be substituted the words "relating to such permits or to applications therefor";
- (d) After sub-paragraph (i) of paragraph (b) of sub-section (1) of section 28 there shall be inserted the following sub-paragraph :—
- “(ia) to the Historic Buildings Preservation Council where the scheme provides for the conservation and enhancement of a designated building within the meaning of the *Historic Buildings Act 1974*; and”;
- (e) In sub-section (5) of section 32 for the words "the use or development of any land included in that part of the scheme and shall specify" there shall be substituted the words "or make any other provision for or with respect to giving effect to all or any of the matters referred to in the Third Schedule in relation to the land included in that part of the scheme and may specify";
- (f) After Part IIIA. there shall be inserted the following Part :—

‘ PART IIIB.—HISTORIC BUILDINGS.

59C. (1) Notwithstanding that a planning scheme or interim development order in force in a specified area prescribes a limit on the height or size of any building that may be erected on any site in that area, a responsible authority may with the approval of the Minister (given after consideration of a report thereon by the Board) grant a permit under that planning scheme or interim development order for a building in the specified area of a height or size greater than that so prescribed where—

Power to grant permits for a building of a height and size greater than prescribed.

- (a) the applicant for the permit in addition to being the owner of the land in respect of which the permit is sought is also the owner of other land in the specified area on which is situated a building work or object which or any part of which is a designated building within the meaning of the *Historic Buildings Act 1974*; or

- (b) the

(b) the application for the permit is made with the consent of the owner of other land within the specified area on which such a designated building is situated.

(2) A permit referred to in sub-section (1) shall in addition to any other conditions imposed by the responsible authority be subject to a condition that prior to the commencement of any development the owner of the land upon which the designated building is situated enters into a covenant with the Minister administering the *Historic Buildings Act 1974* under section 21 of that Act for the preservation and maintenance of the designated building.

(3) There shall be no appeal against the exercise of or the refusal to exercise any power granted under this section.

(4) In this section "specified area" means the municipal district of the City of Melbourne and any additional areas which the Governor in Council may specify by Order published in the *Government Gazette*.

Responsible authority to be concerned to ensure conservation and enhancement of designated buildings.

59D. (1) A responsible authority which is preparing a planning scheme for any area in which there is a designated building within the meaning of the *Historic Buildings Act 1974* shall in preparing the planning scheme be concerned to ensure as far as practicable the conservation and enhancement of the designated building.

(2) Where—

(a) a planning scheme has been prepared and submitted to the Minister with respect to any area in which there is a designated building within the meaning of the *Historic Buildings Act 1974*; or

(b) a planning scheme is in force in an area in which there is a designated building within the meaning of the *Historic Buildings Act 1974*—

and it is practicable by amendment of the scheme to provide for the conservation and enhancement of the designated building, the responsible authority shall prepare and submit to the Minister an amendment accordingly; ;

(g) In

(g) In section 1 after the expression "Part IIIA.—Urban Renewal Proposals ss. 59A–59B" there shall be inserted the following :—

"Part IIIB.—Historic Buildings ss. 59C–59D."