



# **Code of Conduct**

Queensland Heritage Council

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## **Foreword**


The functions and powers of the Queensland Heritage Council (QHC) are documented in the *Queensland Heritage Act 1992* (Heritage Act). The Heritage Council is also a 'public sector entity' as defined by the *Public Sector Ethics Act 1994* (PSE Act). Every Heritage Council member is bound to follow the ethics principles in the PSE Act. These principles reflect community expectations that the Heritage Council should act in good faith, respecting the system of government. When contributing to the decisions of the Heritage Council, every member should show honesty, fairness and respect.

The Heritage Act has detailed processes that must be followed for many decisions. Applicants, owners and submitters have rights to make representations and for their opinions to be considered. There is a process for identifying and resolving conflicts of interest.

But there are always considerations that cannot be anticipated by the Act. There can be different views about how to best serve "the public interest". Answers to what is appropriate behaviour can depend on the circumstances. It is not always obvious how decisions can be made ethically.

This code of conduct is designed to fill that gap, and help Heritage Council members make sound decisions, addressing the issues that relate specifically to the work of the Council.

The Heritage Council can establish committees to perform its functions. The code applies to these committees and their members.



Leslie Shirreffs PSM

Chair, Queensland Heritage Council

## **About the Queensland Heritage Council**

### ***Queensland Heritage Act 1992***

The object in section 2 of the Heritage Act is to provide for the conservation of Queensland's historic cultural heritage for the benefit of the community and future generations. The object is accomplished in several ways:

- establishing the QHC;
- maintaining the Queensland Heritage Register QHR;
- reporting and managing underwater cultural heritage and archaeological artefacts;
- identification and management of local cultural heritage by local governments;
- development regulation of Queensland heritage places; and
- providing support to help protect Queensland heritage, through heritage agreements, enforcement and other mechanisms.

When exercising powers conferred by the Act, all persons and entities concerned in its administration must seek to achieve "the retention of the cultural heritage significance of the places and artefacts to which it applies" and "the greatest sustainable benefit to the community from those places and artefacts consistent with the conservation of their cultural heritage significance".

### ***Responsibilities of the QHC***

The QHC is established under the Heritage Act. The functions of the QHC are mostly outlined in part 2, sections 6 to 30 of the Heritage Act. The principal functions are:

- decisions to enter in or remove places from the QHR;
- promoting public interest in heritage places and heritage conservation, and providing information to the heritage community;
- making recommendations about State development on Queensland heritage places; and
- advising the Minister and other entities about protection of Queensland's cultural heritage.

Under the Heritage Act, the QHC includes a representative from the following organisations:

- the National Trust of Australia (Queensland) Limited;
- the Local Government Association of Queensland (Incorporated);
- the Queensland Council of Unions;
- an organisation representing interests of property owners/managers in Queensland; and
- an organisation representing the interests of rural industries in Qld.

The remaining seven QHC members are individuals with appropriate knowledge, expertise and interest in heritage conservation.

Decisions about entry of places in, or removal of them from, the QHR are a major part of the QHC's activities. Recommendations are made by the chief executive of the Department of Environment, Science and Innovation (the department), or their delegate, for consideration by the QHC.

## **Introduction**

### ***The Public Sector Ethics Act 1994***

The PSE Act is “[a]n Act about public sector ethics and conduct” and applies to ‘public service agencies’ and ‘public sector entities’.

All State government departments are public service agencies. A public sector entity includes “an entity established under an Act or under State or local government authorisation for a public, State or local government purpose”. The QHC meets these criteria, so is considered to be a public sector entity.

### ***The ethics principles and values***

The ethics principles in the PSE Act apply to all public sector entities. They are:

- integrity and impartiality
- promoting the public good
- commitment to the system of government
- accountability and transparency.

The ethics principles are explained in greater detail with reference to the ethics values, which are set out in the PSE Act.

The ethics principles and values represent best practice standards of behaviour that QHC members are required to adopt and demonstrate in their activities. It is the responsibility of all QHC members to serve the best interests of the community and demonstrate fair and ethical decision making. The same principles and values are reflected in the Heritage Act which requires the QHC, in performing its functions to conserve and protect heritage in Queensland, to act independently, impartially and in the public interest.

### ***Purpose of a code of conduct***

The PSE Act requires a code of conduct to be prepared for all public service agencies and public sector entities. The Act states that “the purpose of a code is to provide standards of conduct for public service agencies, public sector entities and public officials consistent with the ethics principles and values”.

This code of conduct will help the QHC and QHC members to uphold the ethics principles and values. It provides specific guidance on standards of conduct required while performing QHC roles and encourages members to report misconduct that is not consistent with this code.

### ***Applying the code***

This code applies to all individuals that are members of the QHC, including the Chair and Deputy Chair. It also applies to any external members that perform functions for the QHC, for example, sub-committees and advisory panels, and may apply to professionals, consultants or contractors engaged in paid services by the QHC.

The standards of behaviour in this code are expected to be adhered to when representing the QHC. This includes both official events and events or circumstances where a QHC member may be acting in a private capacity but might be perceived as undermining confidence in the integrity of the QHC. The code applies to online activities, for example, if QHC members conduct online meetings, are working from home, or interacting through email exchanges.

Applying the code in daily activities is the responsibility of the individual. However, the Chair has obligations to monitor compliance with the code. It is expected that as the entity responsible for reporting to the Minister, the Chair will:

- promote the code of conduct and standards of behaviour aligned with the ethics principles;
- promote an ethical, respectful, and safe working environment;
- provide further guidance on following this code of conduct, including education and training, or refer to the department for advice;
- escalate concerns of members, conflicts of interest and reports of misconduct where appropriate or required by law.

The Chair may also take the appropriate actions to address any issue relating to a breach or potential breach of the code of conduct by a member of the QHC.

References in this code to functions of the Chair also include the Deputy Chair when standing in for the Chair under section 11(7) of the Heritage Act.

Individuals appointed or re-appointed to the QHC must be informed of and given access to this code of conduct. In accepting appointment to the QHC members recognise that they are subject to the code of conduct. Obligations of the code of conduct regarding confidentiality, information privacy, retention or use of records and intellectual property continue to apply to a person after their membership of the QHC has ceased.

## **The Code of Conduct**

### ***Section 1: Integrity and impartiality***

The PSE Act states:

In recognition that public office involves a public trust, public service agencies, public sector entities and public officials seek to promote public confidence in the integrity of the public sector and

- are committed to the highest ethical standards; and
- accept and value their duty to provide advice that is objective, independent, apolitical, and impartial; and
- show respect towards all persons, including employees, clients and the general public; and
- acknowledge the primacy of the public interest and undertake that any conflict of interest issue will be resolved or appropriately managed in favour of the public interest; and
- are committed to honest, fair and respectful engagement with the community.

These values are expressed in the following conduct obligations.

#### ***Respect***

QHC members have a duty to behave respectfully towards other members, Queensland government employees, and any other person they engage with in their roles. QHC members should be courteous, demonstrate integrity and honesty, and bring sensitivity, equity, and fairness to all their decision-making.

QHC members should be open to, and respectful of, different opinions and perspectives and acknowledge diversity of experience or background. Members of the QHC must not behave in a discriminatory manner and should demonstrate a commitment to creating an environment that is welcoming and free of discrimination. Discrimination is prohibited by the *Anti-Discrimination Act 1991*. The Chair and Deputy Chair have an obligation to promote a respectful culture at the QHC and hold members accountable to this standard.

#### ***Personal behaviour and conduct***

Appropriate personal conduct must be maintained in all situations in which a member is representing the QHC. This extends to conduct outside of formal QHC meetings, if it may be perceived the member is representing the QHC, such as at industry events, training, conferences, and online conduct, for example through email, text, or social media use.

The QHC will not tolerate excessive consumption of alcohol, drugs, or other substances by members when performing their roles. QHC members should report any forms of personal misconduct to the Chair, Deputy Chair, or the department.

#### ***Bullying and harassment***

Every QHC member and person connected to QHC business is entitled to a safe and supportive working environment. Bullying, intimidation, sexual and other types of harassment will not be tolerated. All members of the QHC have a responsibility to report any inappropriate behaviours to the Chair, Deputy Chair or the department and must contribute to a work culture that is free from these behaviours. Instances of inappropriate behaviour will be addressed in an appropriate manner and may be escalated through the relevant channels.



### ***Health and safety***

Individuals have a duty to act in accordance with workplace health and safety legislation and ensure their own safety and wellbeing. This includes physical and psychological health, as defined in the *Work Health and Safety Act 2011* and extends to online or working from home environments. QHC members should also be vigilant and report any workplace health and safety hazards or incidents that may occur during QHC meetings or in other QHC settings.

QHC members routinely visit heritage places and development construction sites as a part of their roles, which include potential higher risks for physical safety or injury (i.e., falling objects, electrical hazards). The department has a duty of care to ensure the health and safety of members at QHC meetings and for regional visits. and QHC members should follow directions relating to health and safety from the department. The department undertakes risk assessments as appropriate prior to regional or remote visits. It is the responsibility of the department to ensure the appropriate response is undertaken.

### ***Conflicts of interest***

The PSE Act and the Heritage Act both require members of the QHC to disclose conflicts of interest. Section 6(d) of the PSE Act states that officials must “acknowledge the primacy of the public interest and undertake that any conflict of interest issue will be resolved or appropriately managed in favour of the public interest”. Sections 27 and 28 of the Heritage Act require members of the QHC and committees to disclose any direct or indirect interests that could conflict with the proper performance of their duties as soon as practicable after the relevant facts come to their knowledge.

The conduct obligations and processes for disclosing interests and resolving any conflict are set out in **Annexure 1**, which is part of this code of conduct.

### ***Gifts and benefits***

While engaging with local government, private organisations and the community, QHC members can receive offers of gifts or benefits. These may be only a token of appreciation or memento for their work. Gifts and benefits need not have financial value and can include preferential treatment, hospitality, free use of facilities, travel, entertainment, prizes, gift-cards, food, and beverages.

If offered a gift or benefit a QHC member must always consider whether it is appropriate to accept. The gift or benefit must be refused if acceptance is likely to affect or could reasonably be perceived to affect the independent and impartial performance of the QHC member’s functions.

The provision of hospitality, food, beverages, or meals to QHC members in the course of official QHC business is considered reasonable.

A gift of cash, or any item which is readily converted into cash must be refused in all circumstances.

Gifts remain the property of the QHC or the department unless the Chair determines it is appropriate for the QHC member to retain the gift. Gifts of cultural or historical significance must always remain the property of the QHC or the department, regardless of their value.

### ***Engaging with the media***

QHC members may be contacted by the media for statements and comments. The Chair is considered the representative and spokesperson for the QHC, and therefore is responsible for engaging with the media on behalf of the QHC. Any requests from the media for comment should be forwarded to the Chair. Contact should only be initiated with the media if cleared by the Chair.

### ***Complaints***

If a QHC member receives a complaint from the public about the QHC, it should be forwarded to the Chair to decide on a response. QHC members can get advice from the Queensland Ombudsman or the Crime and Corruption Commission (CCC) if the complaint relates to corrupt conduct.

## **Section 2: Promoting the public good**

The PSE Act states:

In recognition that the public sector is the mechanism through which the elected representatives deliver programs and services for the benefit of the people of Queensland, public service agencies, public sector entities and public officials—

- accept and value their duty to be responsive to both the requirements of the government and to the public interest,
- accept and value their duty to engage the community in developing and effecting official public sector priorities, policies, and decisions,
- accept and value their duty to manage public resources effectively, efficiently, and economically,
- value and seek to achieve excellence in service delivery, and
- value and seek to achieve enhanced integration of services to better service clients.

These values are expressed in the following conduct obligations.

### **Expectations of role**

The QHC has a range of responsibilities under the Heritage Act which can only be achieved through collaboration between members. QHC members should be reliable and professional and perform their duties with care. QHC members should commit to the following:

- attend QHC meetings if practical, and give notice if they are unable to attend;
- request leave of absence if they will be unable to attend meetings for longer than 3 months;
- carefully read agenda materials in advance of QHC meetings;
- contribute to discussions and decisions made by the QHC;
- disclose potential conflicts of interest;
- inform the Chair of any suspected wrongdoing or misconduct, and raise any other concerns as appropriate;
- always maintain confidentiality, and comply with privacy laws; and
- work collaboratively and respectfully with the department, stakeholders and the community.

### **Disclosure of wrongdoing**

QHC members are encouraged to report any suspected wrongdoing or misconduct relating to QHC business to the Chair. Misconduct can harm the reputation and reduce the effectiveness of the QHC and affect relationships with the community. Any member who believes they have personally acted inappropriately should self-report to the Chair.

There does not need to be concrete evidence of suspected wrongdoing or misconduct.

The QHC is a 'public sector entity' under the *Public Interest Disclosure Act 2010* (PID Act).

Disclosures relating to matters such as corrupt conduct, maladministration, misuse of public resources, dangers to public health, and dangers to the environment, which are described in section 13 of the PID Act can be made to the Chair. The identity of the person making the disclosure will remain confidential and the Chair must provide appropriate support to the person making the disclosure. If the disclosure involves corrupt conduct, the disclosure can be made directly to the CCC.

Under the *Crime and Corruption Act 2001* the Chair will have an obligation to report the complaint or information to the CCC if it involves corrupt conduct. In general, corrupt conduct involves conduct which, if proven, would be a criminal offence or is a disciplinary breach providing reasonable grounds for termination of the person's appointment.

QHC members can get further advice from the Chair, or directly from the Queensland Ombudsman or the CCC in relation to potential disclosures of corrupt conduct.

### ***Leaving the QHC***

The Heritage Act describes how membership of the QHC ceases. Most commonly members leave the QHC when their fixed term expires. If a member wishes to resign, they must provide a signed notice addressed to the Minister.

Before their appointment to the QHC ceases, members must give all public records they possess in electronic or hardcopy form to the department, if these are not already held by the department. All of the QHC member's copies should then be destroyed, and the department advised of the destruction.

If a member leaves the QHC, they are expected to continue to comply with the obligations in the code of conduct regarding confidentiality, information privacy, retention or use of records and intellectual property.

### ***Section 3: Commitment to the system of government***

The PSE Act states:

In recognition that the public sector has a duty to uphold the system of government and the laws of the State, Commonwealth and local government, public service agencies, public sector entities and public officials—

- accept and value their duty to uphold the system of government and the laws of the State, the Commonwealth and local government,
- are committed to effecting official public sector priorities, policies and decisions professionally and impartially, and
- accept and value their duty to operate within the framework of Ministerial responsibility to government, the Parliament and the community.

These values are expressed in the following conduct obligations.

#### ***Laws of the State, the Commonwealth and local government***

QHC members have a duty to uphold laws of the State, Commonwealth, and local government, and ensure they are familiar with the legislative requirements relevant to their work.

#### ***Engagement with the department***

The QHC and the department work together closely to effectively fulfill their responsibilities. One of the principal tasks of the department is to provide administrative support to the QHC. Legislation and administrative guidelines determine many of the processes which must be followed. Department officers may not be able to accede to requests from the QHC or QHC members if there is conflict with established processes. Professionalism, mutual understanding and respect needs to be maintained in working relationships between QHC members and department officers.

#### ***Engagement with stakeholders***

These expectations of appropriate conduct extend to interactions with other Queensland government departments, local governments, and organisations.

In general, liaison with government and non-government bodies and individuals involved in the QHR, development applications or other Heritage Act processes should be arranged with the Chair.

The Chair will liaise with the department to ensure matters are properly coordinated and administrative processes are followed.

An exception is where QHC members liaise with members of their own organisation which they represent. However, regard should be had to potential conflicts of interest, which are addressed separately in this code of conduct.

## **Section 4: Accountability and transparency**

The PSE Act states:

In recognition that public trust in public office requires high standards of public administration, public service agencies, public sector entities and public officials—

- are committed to exercising proper diligence, care, and attention,
- are committed to using public resources in an effective and accountable way,
- are committed to managing information as openly as practicable within the legal framework,
- value and seek to achieve high standards of public administration,
- value and seek to innovate and continuously improve performance, and
- value and seek to operate within a framework of mutual obligation and shared responsibility between public service agencies, public sector entities, and public officials.

These values are expressed in the following conduct obligations.

### **Attendance at QHC meetings**

If a QHC member is unable to attend a QHC meeting they should notify the Chair and the department, and their apologies will be noted in the minutes of that meeting. Notice of non-attendance should always be given as far as possible in advance, to ensure there is a quorum for all planned meetings. If a QHC member intends to be absent for more than 3 months, the Minister may approve leave of absence, allowing appointment of another person to act in the position.

### **Quality of decision making**

QHC decisions are important for the protection of Queensland's cultural heritage and can have a major effect on peoples' lives. QHC decisions for QHR applications, development approvals and other matters should be of a high quality and supported by appropriate evidence. QHC members should make full use of agenda material and other information that is provided. The information and opinions provided by submitters and owners are important.

The Heritage Act provides for diverse representation on the QHC. Members are appointed as representatives of organisations (subsection 10(a)) or for their knowledge, expertise and interest in heritage conservation (subsection 10(b)). The diversity of experience and knowledge helps the QHC make well-founded decisions that achieve conservation of Queensland's cultural heritage and are responsive to the needs and values of the community.

When making decisions on QHR applications the QHC must assess whether the place meets the cultural heritage criteria. However, the QHC may have regard to other matters it considers relevant. Assessments can require the application of technical knowledge in a range of professional disciplines, and evaluation of impacts on the community.

The department provides training on good decision making so QHC members have knowledge of these principles and their obligation to make lawful and justifiable decisions. Human rights training is also provided to QHC members to ensure that decisions are made fairly and in compliance with the *Human Rights Act 2019*.

Decisions should be well recorded. Section 54 of the Heritage Act requires the QHC to provide reasons for decisions on QHR applications to the applicant, owner, submitters and the local government.

### **Use and collection of records and confidentiality**

Agenda material and other information is provided to QHC members by the department electronically or in hardcopy. QHC members may store this information on their personal mobile devices or computers. At times QHC members may exchange information and communicate electronically with other QHC members and the department. Other documents can be generated by QHC members in the course of their work.

Section 6 of the *Public Records Act 2002* (PR Act) defines public records as "a record received or kept by a public authority in the exercise of its statutory, administrative or other public responsibilities or for a related purpose". Public records can take many forms, including video, images, text messages, emails, social media interactions, data held in business systems and messages in

messaging apps.

Both the department and the QHC are subject to the requirements of the PR Act for the management of public records such as the agenda material and other information provided to QHC members by the department.

QHC members must comply with the requirements of the PR Act, applicable policies, standards and guidelines and QHC resolutions with respect to capture, use, retention and return of public records in their possession or control. This includes records created by QHC members in relation to QHC business.

Public records must be kept confidential unless authorised for public release. QHC members should not share with or distribute public records to anyone other than the QHC or the department. For QHR applications, the Heritage Act requires that the personal information of the applicant (such as their name and address) should not be published online or given to the owner or local government unless the applicant consents. The *Information Privacy Act 2009* requires all personal information in public records to be kept confidential.

The PR Act requires full and accurate records to be kept of government activities. The department prepares draft minutes of QHC meetings, which are reviewed and accepted or amended by the QHC at the next meeting.

QHC members have a continuing obligation to comply with these requirements after they have left the QHC.

### ***Requesting access to records***

Department officers are required by the *Code of Conduct for Public Sector Employees* to treat public records with care, and only use records for the purpose for which they were collected. Public records must not be used to further personal interests.

Members should only request access to records for the purpose of QHC business.

### ***IT security***

Any use of information technology is a potential security risk. Public records are sensitive. The *Information security management policy* applies to any person given access to the department's information and technology assets. The policy requires the department to establish information security governance principles and for users to adhere to requirements for information security.

### ***Intellectual property***

State government bodies have a statutory licence under the *Copyright Act 1968* (Copyright Act) to use copyrighted material in public records "for the services of the Crown".

The QHC or the department have copyright for other material which is their original work. However, a Creative Commons Attribution 4.0 International licence (CC BY 4.0) is applied to information published online, including QHR entries. The CC BY 4.0 licence allows free use and distribution including for commercial purposes provided the copyright notice is kept on the material and attribution is given to the State of Queensland.

The *Queensland public sector intellectual property principles* (IP Principles) apply to all Queensland government agencies. The IP Principles require agencies to avoid infringing the IP rights of others.

The Copyright Act gives moral rights to authors of original works. These are personal rights to be identified as the author of the work, to prevent the work from being falsely attributed to someone else, and to prevent the work being subject to derogatory treatment that is harmful to the author's honour or reputation.

Moral rights will frequently apply to material included with QHR applications, such as photographs, drawings and histories. The department is careful to protect moral rights (for example, by comprehensively referencing sources in draft QHR entries). QHC members must also ensure IP and moral rights are not breached, both during and after their membership of the QHC.

## **ANNEXURE 1**

### **Conflicts of interest**

A conflict of interest occurs when a QHC member is in a position to be influenced, or appear to be influenced, by personal interests when making a decision under the Heritage Act.

Personal interests can be financial or non-financial. The interest may belong to the QHC member, or to a partner, relative or other person who is closely associated with the member. Sections 27(1) and 28(1) of the Heritage Act state that an interest can be “direct or indirect”.

#### ***Financial interests***

Financial interests can relate to ownership, shareholdings, contracts and tenders, income, gifts or benefits, or employment (including future prospects) in connection with an entity that is involved in some way with a decision by the QHC. A financial interest exists if the member has a reasonable expectation, they, their partner, relative or close associate stand to gain a benefit or suffer a loss, whether directly or indirectly. It is not necessary to be able to identify or quantify the benefit or loss. Nor is it necessary for money to change hands – the benefit could be an increase in the value of property or another material interest.

As soon as a financial interest of an associate is recognised it must be treated as if it is the member's own financial interest. If the answer to any of the following questions is “Yes”, it is likely there is a conflict of interest:

- Is there a realistic expectation the member will, directly or indirectly, gain a financial or other material benefit or suffer a financial or other material loss that is not minor or trivial?
- Will the matter affect the member's earning capacity or financial situation?
- Will it have an impact on the value of any shares or property that the member owns?
- Does the member have a job or private business that may be affected by the matter?
- Does the member have debts owing to a person who will be affected by the matter?
- Would any benefit or loss received from the decision be greater than that which would be received by a wide group or class of people in the community?
- Does a development, QHR entry or removal relate to a property owned by the member or in close proximity, such that there may be a financial gain or loss for the member?
- Has the member accepted hospitality or other benefits from a person who will be affected by the matter?
- Is there a realistic expectation that someone in a personal or business relationship with the member will, directly or indirectly, gain a financial or other material benefit or suffer a financial or other material loss?
- By nature of the relationship between the member and this individual, would any benefit or loss they receive be expected, under normal circumstances, to flow through to the member?

#### ***Non-financial interests***

Non-financial interests are other kinds of relationships between the member, their partner, relative or close associate with the entity. These can arise through social or cultural connections or through membership or involvement with organisations such as professional associations, trade unions, sporting clubs or political parties.

Conflicts of interest can be actual or perceived. An actual conflict exists where the actions of the QHC member, right now, could be influenced by the private interests. A perceived conflict arises where it appears that decisions may be influenced by the private interests, whether or not this is in fact the case.

It might seem excessive that a perception can give rise to a conflict of interest. However, the

reputation of the QHC is important – there should be no doubt of the impartiality or fairness of QHC decisions.

The “reasonable person” test is used to assess whether there is a conflict of interest which should be declared. Would a reasonable person, given the basic facts of the personal interest and the QHC member’s role, perceive that the member might be unable to bring an impartial mind to a decision, and instead will decide to better their own interests?

The assessment should involve “weighing up” the facts of the relationships or associations, such as the proximity of the relationship, its duration, nature and intensity.

Five of the members of the QHC are appointed under section 10(a) of the Heritage Act as representatives of organisations:

- the National Trust of Australia (Queensland);
- the Local Government Association of Queensland;
- the Queensland Council of Unions; and
- organisations representing the interests of property owners and managers and rural industries.

It is arguable that the Parliament is indicating the representative may put forward the views of the entity that they represent in the QHC.

However, the existence of conflicts is recognised by sections 27 and 28 of the Act. To determine whether there is a conflict of interest the same assessment is needed as in other contexts. If the QHC member has actively participated in preparing a QHR application or is a member of a committee or governing body within the organisation responsible for the application, there is probably a conflict of interest.

In these circumstances a reasonable person is likely to perceive that the QHC member has already decided their opinion and brings to the matter a prejudiced mind. On the other hand, if the QHC member is merely a member of an organisation making a QHR application, and has not previously actively participated in the matter, there is unlikely to be a conflict of interest.

Aside from involvement in a QHR application, there can also be a conflict of interest if the QHC member is involved in submissions or representations concerning the application, outside their formal role as a member of the QHC.

Ultimately, if there is any doubt about a conflict of interest, or ability to consider any matter impartially or without bias, the QHC member should err on the side of caution and declare the interest. The declaration will be evidence that the member has acted responsibly and is accountable.

### ***Managing the risk***

In Queensland, expertise and knowledge of cultural heritage is concentrated in a relatively small number of people. There can be a limited choice of persons to provide advice or perform functions. Conflicts of interest in the QHC are common.

The processes for managing disclosed conflicts of interest detailed in the following sections of this policy will ensure they are properly resolved. Subsections 27(7) and 28(7) of the Heritage Act ensure there will be a quorum when a QHC member is excluded from a decision. However, once the member is excluded, their expertise will not be used and the decision may be less representative of the full range of views intended by the Heritage Act.

Accordingly, it is prudent for QHC members to anticipate and avoid future conflicts of interest where possible. Here are some principles or strategies for managing the risk:

- Avoid gifts or benefits from entities that may have a future role in QHC business;
- Job offers can be a conflict while they remain current;
- Avoid informal requests for advice or help from associates or friends about QHC business;
- Information or documentation provided to QHC members that is not publicly available should never be given to outside parties.



QHC members who are heritage professionals should recognise that acceptance of an engagement in respect of a particular place would normally be viewed as a conflict of interest disqualifying them from participating in QHC business regarding that place.

One of the functions of the QHC is to encourage interest in, and understanding of, Queensland's cultural heritage. QHC members can and do encourage participation by the community in activities to protect cultural heritage, such as applying for places to be entered in the QHR. However, once a formal application has been made to the chief executive, QHC members should avoid communicating directly with the individual or community group about the application.

Temporarily stopping communication about the matter will ensure that the department can receive formal submissions, assess the application, make a recommendation, and QHC members can reach a joint decision, based on the information that is available to everyone. If a QHC member is contacted informally during this period, they should inform the Chair.

### ***Disclosure of personal interests***

Under section 10 of the Heritage Act, appointments to the QHC are made by the Governor in Council. As part of the vetting process candidates are required to declare any conflicts of interest that may affect or appear to affect their public duty.

If the conflicts of interest in the declaration change during the term of appointment, the QHC member should give a new declaration to the department.

## ***Procedure for meetings***

### ***Step 1: Declaration by member of interest***

Sections 27 and 28 of the Heritage Act require the QHC member to declare a conflict of interest to the meeting “as soon as practicable after the relevant facts come to the interested person’s knowledge”.

This obligation applies even for conflicts that have been disclosed previously, as part of the disclosure of personal interests before appointment, or at an earlier meeting.

The member should disclose the matter in advance of the meeting on the form provided by the department. Details should be provided of the nature of the interest and the conflict that results or may result. The department will prepare a covering report and the matter will be placed on the agenda.

A QHC member who accepts a professional engagement for a place which is likely to become an item of QHC business or is an existing Queensland heritage place should inform the Chair as soon as practicable.

A QHC member who becomes aware during a meeting that they have an undeclared interest should declare it immediately.

### ***Step 2: Non-conflicted members consider whether interest gives rise to a conflict***

A prudent QHC member will have declared interests that may fall below the threshold set by the “reasonable person” test.

As stated above, the test requires “weighing up” the facts of the relationships or associations, such as the proximity of the relationship, its duration, nature and intensity.

Before deciding whether the matter is a conflict of interest, the non-conflicted members should consider:

- how the matter compares to other matters where it has been decided that there is a conflict of interest.
- whether more information is needed from the member who made the declaration, and
- whether there are any other relevant factors to take into account.

### ***Step 3: Non-conflicted members decide how to appropriately manage the conflict***

If the non-conflicted members have decided there is a conflict of interest, a further decision must be made on how to appropriately manage the conflict.

Sections 27 and 28 of the Heritage Act state that after disclosure, the person may not be present when the matter is considered, take part in a decision, or if the matter is a heritage recommendation, the person may not make an oral representation, unless the QHC directs otherwise.

Subsections 27(4) and 28(4) require that the person who has made the declaration must not be present while the QHC is considering whether to give a direction.

Disqualification of a member completely from the relevant decision is the most common action for any board or council managing a conflict of interest.

Although they are not documented in the Heritage Act, there are other strategies available to manage conflicts.

Sometimes, for very low-risk conflicts of interest, and potential conflicts of interest, disclosure is sufficient to resolve the conflict, for example, if the potential effect of the conflict is minimal.

Partial disqualification is another option. If the conflicted member has unique or particular skills, knowledge or expertise that would help the QHC make the best decision in the public interest, it may be appropriate for the member to give a briefing at the beginning of consideration of the matter, or be present the whole time, but not take part in the decision.

Another way to manage a conflict is for the conflicted member to agree to withdraw from an arrangement that is causing a conflict.

If a large number of QHC members are conflicted, the QHC can co-opt other persons who are not conflicted by delegating some of its functions to a committee under section 25 of the Heritage Act.

In rare circumstances, if a conflict is incapable of resolution and will recur frequently, voluntary resignation of a QHC member may be the best option. However, normally it is expected these types of conflicts should have been identified before the member was appointed.

Whichever strategy is selected, the decision of the non-conflicted members and their reasons should be fully documented.