

HERITAGE (AMENDMENT) ACT 1987 No. 11

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Principal Act
3. Amendment of Act No. 136, 1977
4. Savings and transitional provisions

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CONSERVATION INSTRUMENTS

SCHEDULE 2—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE PREVENTION OF HARM TO CERTAIN ITEMS OF THE ENVIRONMENTAL HERITAGE

SCHEDULE 3—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CONTROLS IMPOSED BY CONSERVATION INSTRUMENTS

SCHEDULE 4—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

SCHEDULE 5—SAVINGS AND TRANSITIONAL PROVISIONS

HERITAGE (AMENDMENT) ACT 1987 No. 11

NEW SOUTH WALES



Act No. 11, 1987

An Act to amend the Heritage Act 1977 to make further provision with respect to the conservation of the environmental heritage of the State.
[Assented to 3 April 1987]

Heritage (Amendment) 1987

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Heritage (Amendment) Act 1987".

Principal Act

2. The Heritage Act 1977 is referred to in this Act as the Principal Act.

Amendment of Act No. 136, 1977

3. The Principal Act is amended in the manner set forth in Schedules 1-4.

Savings and transitional provisions

4. Schedule 5 has effect.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
CONSERVATION INSTRUMENTS

(1) Section 4 (**Interpretation**)—

(a) Section 4 (1), definition of "affected person"—

Before the definition of "approval", insert:

"affected person", in relation to a conservation instrument or a recommendation to make or revoke a conservation instrument, means a person who is—

(a) an owner or occupier of—

- (i) land on which a building, work or relic which is subject to the instrument or recommendation is situated or that comprises a place which is subject to the instrument or recommendation; or

Heritage (Amendment) 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
CONSERVATION INSTRUMENTS—*continued*

- (ii) land (other than land to which subparagraph (i) applies) which is subject to the instrument or recommendation; or
 - (b) in the case of a relic which is not attached to or does not form part of land, an owner of the relic;
- (b) Section 4 (1), definition of “Commissioner of Inquiry”—
- Before the definition of “consent authority”, insert:
- “Commissioner of Inquiry” has the same meaning as in the Environmental Planning and Assessment Act 1979;
- (c) Section 4 (1), definition of “heritage precinct”—
- Omit “an interim conservation order”, insert instead “a conservation instrument”.
- (d) Section 4 (1), definition of “permanent conservation order”—
- Before “44 (1)”, insert “35A (1) or”.
- (e) Section 4 (1), definition of “precinct”—
- Omit “containing buildings, works, relics or places, the majority of which are items of the environmental heritage:”, insert instead:
- which—
- (d) contains one or more buildings, works, relics or places which is an item or which are items of the environmental heritage; and
 - (e) has a character or appearance that it is desirable to conserve;

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
CONSERVATION INSTRUMENTS—*continued*(2) Section 24 (**Recommendation to make interim conservation order**)—

Omit “the making of a permanent conservation order with respect to that item or an environmental planning instrument referred to in section 82 with respect to the land in that precinct.”, insert instead:

the making of—

- (c) in the case of an item of the environmental heritage—a permanent conservation order; or
- (d) in the case of a precinct—
 - (i) a permanent conservation order; or
 - (ii) an environmental planning instrument referred to in section 82 with respect to the land in that precinct.

(3) Section 29 (**Notice of making of interim conservation orders**)—

(a) Section 29 (1) (a)—

Omit the paragraph, insert instead:

- (a) each person who appears to the Minister to be an affected person;

(b) Section 29 (2), (2A)—

Omit section 29 (2), insert instead:

(2) A notice given to a person referred to in subsection (1) (a) shall—

- (a) include a statement as to the effect of the interim conservation order; and
- (b) inform the person—
 - (i) of the right to make a submission by way of objection to the making of the interim conservation order and of the grounds on which such a submission may be made;

*Heritage (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
CONSERVATION INSTRUMENTS—*continued*

- (ii) that a submission may be made only within 6 months after the date on which the interim conservation order took effect;
- (iii) that, if a submission is made, the Minister is required to appoint a Commissioner of Inquiry to hold an inquiry into the submission;
- (iv) that a recommendation made at the conclusion of an inquiry could lead, without further notice, to the making of a permanent conservation order; and
- (v) that, if a Commissioner of Inquiry is not required to be appointed, the Heritage Council is required to carry out an inquiry and investigation which could lead, without further notice, to the making of a permanent conservation order.

(2A) The notice may include other matter by way of explanation or summary of sections 29B, 29C, 29D, 30 and 35A and any other provisions of this Part.

(c) Section 29 (3) (b), (c)—

After “statement” wherever occurring, insert “or information”.

(4) Sections 29A–29D—

After section 29, insert:

Objections

29A. (1) The owner, mortgagee or lessee of land on which a building, work or relic which is subject to an interim conservation order is situated or that comprises a place or is land (other than such a place) or a relic which is subject to the order may make a submission to the Minister by way of objection to the making of the order.

SCHEDULE 1—*continued*
AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
CONSERVATION INSTRUMENTS—*continued*

(2) A submission may be made on any one or more of the grounds set out in section 41 (as if the references in that section to a permanent conservation order included references to an interim conservation order).

(3) A submission may be made only within 6 months after the date on which the interim conservation order took effect.

Inquiry into objections

29B. If a submission is made under section 29A, the Minister shall appoint a Commissioner of Inquiry to hold an inquiry into the submission.

Right of appearance at inquiry held under s. 29B

29C. At an inquiry held under section 29B—

- (a) the owner, mortgagee or lessee;
- (b) the Heritage Council; and
- (c) any other person with the leave of the Commissioner of Inquiry,

may appear before the Commissioner either personally or by counsel, solicitor or agent.

Report of inquiry held under s. 29B

29D. (1) At the conclusion of an inquiry held under section 29B, the Commissioner of Inquiry shall furnish a report in writing to the Minister containing a summary of the submissions made at the inquiry, the findings of the Commissioner with respect to those submissions and a recommendation as to how those submissions should be dealt with.

(2) The Minister shall make copies of the report available to the public.

Heritage (Amendment) 1987

SCHEDULE 1—*continued*
AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
CONSERVATION INSTRUMENTS—*continued*

(5) Section 30 (**Duration of interim conservation orders**)—

(a) Section 30 (1)—

Omit the subsection, insert instead:

(1) Subject to subsection (2) and section 34, an interim conservation order shall remain in force—

- (a) if no inquiry concerning the interim conservation order is held under section 29B, for a period of 12 months after the date on which the interim conservation order took effect; or
- (b) if an inquiry concerning the interim conservation order is held under section 29B, until the date on which—
 - (i) a permanent conservation order is made by the Minister under section 35A; or
 - (ii) the interim conservation order is revoked by the Minister under section 34,

following consideration of the report of the inquiry furnished to the Minister under section 29D.

(b) Section 30 (2) (b), (c)—

Omit the paragraphs, insert instead:

- (b) a heritage precinct if—
 - (i) a permanent conservation order is made in respect of that heritage precinct; or
 - (ii) an environmental planning instrument referred to in section 82 takes effect under the Environmental Planning and Assessment Act 1979 in respect of the land within that heritage precinct.

SCHEDULE 1—*continued*
AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
CONSERVATION INSTRUMENTS—*continued*

(6) Section 31—

Omit the section, insert instead:

Inquiry, etc., by Heritage Council

31. (1) If—

- (a) the owner of an item of the environmental heritage subject to an interim conservation order consents or the owner (or, if more than one, all the owners) of land within a heritage precinct consents (or consent); or
- (b) no submission is made under section 29A by way of objection to the making of an interim conservation order,

the Heritage Council shall carry out an inquiry and investigation under this section.

(2) The inquiry and investigation shall be such as will enable the Heritage Council to determine whether or not the conservation of the item of the environmental heritage or heritage precinct is so necessary as to warrant the making of—

- (a) in the case of an item of the environmental heritage—a permanent conservation order; or
- (b) in the case of a heritage precinct—
 - (i) a permanent conservation order; or
 - (ii) an environmental planning instrument referred to in section 82 with respect to the land in that heritage precinct.

(3) The report of the Heritage Council's inquiry and investigation shall be furnished to the Minister within the period of 12 months from the date on which the interim conservation order took effect.

Heritage (Amendment) 1987

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
CONSERVATION INSTRUMENTS—*continued*(7) Section 34 (**Revocation of interim conservation orders**)—

Section 34 (1) (a)—

Omit “made under section 32”, insert instead “or report made under section 29D, 31 or 32”.

(8) Section 35A—

Before section 36, insert:

Making of permanent conservation order following inquiry held under s. 29B

35A. (1) The Minister may make an order, designated in the order as a permanent conservation order, in respect of—

- (a) an item of the environmental heritage; or
- (b) a precinct,

specified or described in the order, following consideration by the Minister of a report furnished to the Minister under section 29D or 31.

(2) Sections 36–43 and section 44 (1) do not apply to or in respect of an order made under subsection (1).

(9) Section 36 (**Recommendation to make permanent conservation order**)—

Omit “in respect of an item of the environmental heritage”, insert instead:

in respect of—

- (a) an item of the environmental heritage; or
- (b) a precinct,

Heritage (Amendment) 1987

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
CONSERVATION INSTRUMENTS—*continued*

- (10) Section 37 (**Request by Minister for recommendation to make permanent conservation order**)—
- (a) Section 37 (1)—
- Omit “in respect of an item of the environmental heritage”, insert instead:
- in respect of—
- (a) an item of the environmental heritage; or
- (b) a precinct,
- (b) Section 37 (3)—
- After “heritage”, insert “or precinct”.
- (c) Section 37 (3)—
- After “item” where secondly occurring, insert “or precinct”.
- (11) Section 39 (**Recommendation for making of permanent conservation order**)—
- Section 39 (1)—
- Omit the subsection, insert instead:
- (1) After consideration of a recommendation made under section 36, 37 or 38, the Minister may—
- (a) cause notice of the recommendation to be given to—
- (i) each person who appears to the Minister to be an affected person;
- (ii) the council of the area, if any, in which a building, work, relic or place which is subject to the recommendation is situated;
- (iii) the Director; and
- (iv) any prescribed person; and

*Heritage (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
CONSERVATION INSTRUMENTS—*continued*

(b) cause public notice of the recommendation to be given in a daily newspaper circulating throughout the State and in a weekly newspaper, if any, circulating throughout such area, if any, as is referred to in paragraph (a) (ii).

(12) Sections 39 (2), 40, 41, 44, 50 (2), 51, 52, 55 (1)—

Omit “proposal” wherever occurring, insert instead “recommendation”.

(13) Section 41 (**Inquiry into objections by owner, mortgagee or lessee**)—

(a) Section 41 (a)—

After “heritage”, insert “or a precinct or should not be included in a heritage precinct, as the case requires”.

(b) Section 41—

Omit “a person”, insert instead “a Commissioner of Inquiry”.

(14) Section 42 (**Right of appearance at inquiry held under s. 41**), section 53 (**Right of appearance at inquiry held under s. 52**)—

(a) Sections 42 (c), 53 (c)—

Omit “the person appointed by the Minister to hold that inquiry” wherever occurring, insert instead “the Commissioner of Inquiry”.

(b) Sections 42, 53—

Omit “that person so appointed” wherever occurring, insert instead “the Commissioner”.

(15) Section 43 (**Report of inquiry held under s. 41**), section 54 (**Report of inquiry held under s. 52**)—

(a) Sections 43 (1), 54 (1)—

Omit “the person appointed by the Minister to hold the inquiry” wherever occurring, insert instead “the Commissioner of Inquiry”.

Heritage (Amendment) 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
CONSERVATION INSTRUMENTS—*continued*

(b) Sections 43 (1), 54 (1)—

Omit “that person” wherever occurring, insert instead “the Commissioner”.

(16) Section 44 (**Permanent conservation orders**)—

(a) Section 44 (1)—

Omit “in respect of an item of the environmental heritage”, insert instead:

in respect of—

(c) an item of the environmental heritage; or

(d) a precinct,

(b) Section 44 (3)—

After section 44 (2), insert:

(3) Where a permanent conservation order is made in respect of a precinct, that precinct shall be designated in the order as a heritage precinct.

(17) Section 46 (**Notice of making of permanent conservation orders**)—

(a) Section 46 (1) (a)—

Omit the paragraph, insert instead:

(a) each person who appears to the Minister to be an affected person;

(b) Section 46 (1) (b)—

Omit “that item”, insert instead “a building, work, relic or place which is subject to the order”.

*Heritage (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
CONSERVATION INSTRUMENTS—*continued*(18) Section 50 (**Notice of recommendation to revoke permanent conservation order**)—

Section 50 (1)—

Omit the subsection, insert instead:

(1) After consideration of a recommendation made under section 48 or 49, the Minister may—

(a) cause notice of the recommendation to be given to—

(i) each person who appears to the Minister to be an affected person;

(ii) the council of the area, if any, in which a building, work, relic or place which is subject to the recommendation is situated;

(iii) the Director; and

(iv) any prescribed person; and

(b) cause public notice of the recommendation to be given in a daily newspaper circulating throughout the State and in a weekly newspaper, if any, circulating throughout such area, if any, as is referred to in paragraph (a) (ii).

(19) Section 52 (**Inquiry into submissions**)—

Omit “a person”, insert instead “a Commissioner of Inquiry”.

(20) Part III, Division 3—

After Division 2, insert:

DIVISION 3—*Inquiries***Interpretation**

55A. In this Division—

“Commissioner” means a Commissioner of Inquiry;

“inquiry” means an inquiry held under section 29B, 41 or 52.

SCHEDULE 1—*continued*
AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
CONSERVATION INSTRUMENTS—*continued*

Procedure at inquiries

55B. (1) An inquiry shall be held in public and evidence in the inquiry shall be taken in public and may be required to be taken on oath or affirmation.

(2) Before a Commissioner commences to hold an inquiry, the Commissioner shall give reasonable notice, by advertisement published in the Gazette and in such newspapers as the Commissioner thinks necessary, of the holding of the inquiry, of the subject of the inquiry and of the time and place at which the inquiry is to be commenced.

(3) A Commissioner may, by writing signed by the Commissioner, summon a person to appear before the inquiry at a time and place specified in the summons to give evidence and to produce such books and documents (if any) as are referred to in the summons.

(4) A person served with a summons to appear as a witness at an inquiry shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report from day to day unless excused or released from further attendance by the Commissioner.

Penalty: \$1,000.

(5) If a Commissioner is satisfied that it is desirable to do so in the public interest by reason of the confidential nature of any evidence or matter or for any other reason, the Commissioner may—

- (a) direct that an inquiry or a part of an inquiry shall take place in private and give directions as to the persons who may be present; or

Heritage (Amendment) 1987

SCHEDULE 1—*continued*
AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
CONSERVATION INSTRUMENTS—*continued*

(b) give directions prohibiting or restricting the publication of evidence given at the inquiry or of matters contained in documents lodged at the inquiry,

or do both of those things.

(6) A Commissioner may, if the Commissioner thinks fit, permit a person appearing as a witness at an inquiry to give evidence by tendering, and verifying by oath or affirmation, a written statement.

(7) If a Commissioner considers that the attendance of a person as a witness at an inquiry would cause serious hardship to the person, the Commissioner may permit the person to give evidence by sending to the Commissioner a written statement, verified in such manner as the Commissioner allows.

(8) If evidence is given to a Commissioner by a written statement in accordance with subsection (6) or (7), the Commissioner shall make available to the public in such manner as the Commissioner thinks fit the contents of the statement (other than any matter the publication of which, in the opinion of the Commissioner, would be contrary to the public interest by reason of its confidential nature or for any other reason).

(9) Subject to this section and the regulations—

(a) the procedure to be followed at an inquiry by a Commissioner shall be determined by the Commissioner; and

(b) a Commissioner, in the conduct of an inquiry, is not bound by the rules of evidence.

(10) An oath or an affirmation may be administered for the purposes of this section by a Commissioner or by any person authorised by the Oaths Act 1900 to administer a judicial oath.

(11) Nothing in this section derogates from any law relating to Crown privilege.

Heritage (Amendment) 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
CONSERVATION INSTRUMENTS—*continued*

(21) Section 167 (**Certificates**)—

(a) Section 167 (1)—

Omit “such land as is”, insert instead “land or a relic”.

(b) Section 167 (2)—

After “land” wherever occurring, insert “or a relic”.

SCHEDULE 2

(Sec. 3)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
PREVENTION OF HARM TO CERTAIN ITEMS OF THE
ENVIRONMENTAL HERITAGE

(1) Part VI, Division 8, heading—

Omit “*Demolition of Buildings and Works*”, insert instead “*Harm to Buildings, Works, Relics and Places*”.

(2) Section 129A—

Before section 130, insert:

Interpretation

129A. In this Division—

“harm” means—

- (a) in relation to a building or work—demolish;
- (b) in relation to a relic—damage, despoil, move or alter;
and

*Heritage (Amendment) 1987*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
PREVENTION OF HARM TO CERTAIN ITEMS OF THE
ENVIRONMENTAL HERITAGE—*continued*

(c) in relation to a place—damage, despoil, develop the land which comprises that place or damage or destroy any tree or other vegetation on or remove any tree or other vegetation from that place.

(3) Section 130 (**Order preventing harm to buildings, works, relics or places**)—

Section 130 (1)—

Omit the subsection, insert instead:

(1) For the purpose of preventing harm to buildings, works, relics or places the conservation of any one or more of which the Minister considers may be found, on further inquiry and investigation, to be so necessary as to warrant the making of a conservation instrument, the Minister may, by order published in the Gazette, declare that such buildings, works, relics or places as are specified or described in the order shall not be harmed except in accordance with this Division.

(4) Section 131 (**Notice of order under s. 130 (1)**)—

Omit “buildings or works” wherever occurring, insert instead “buildings, works, relics or places”.

(5) Section 132 (**Notice of proposal to harm building, etc.**)—

(a) Section 132—

Omit “demolish a building or work”, insert instead “harm a building, work, relic or place”.

(b) Section 132—

Omit “may”, insert instead “shall”.

(6) Section 133 (**Duration of order under s. 130 (1)**)—

(a) Section 133—

Omit “building or work” wherever occurring, insert instead “building, work, relic or place”.

*Heritage (Amendment) 1987*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
PREVENTION OF HARM TO CERTAIN ITEMS OF THE
ENVIRONMENTAL HERITAGE—*continued*

(b) Section 133 (b)—

Before “the expiration”, insert “except as provided by subsection (2)”.

(c) Section 133 (b)—

Omit “is given to the Heritage Council in accordance with”, insert instead “is received by the Heritage Council under”.

(d) Section 133 (b)—

Omit “or” where lastly occurring.

(e) Section 133 (c), (d)—

At the end of section 133 (c), insert:

; or

(d) the expiration of 12 months after the date of publication of the order in the Gazette,

(f) Section 133 (2)—

At the end of section 133, insert:

(2) If, within the 40 days after a notice is received by the Heritage Council under section 132, the Heritage Council notifies the person giving the notice that the harm proposed to be done to the building, work, relic or place is, in its opinion, of a minor nature and will not adversely affect the significance of the building, work, relic or place as an item of the environmental heritage—

(a) the order shall remain in force; and

(b) the harm proposed to be done may be done.

(7) Section 135 (**Unlawful harm**)—

(a) Section 135—

Omit “A”, insert instead “Except as provided by section 133 (2), a”.

*Heritage (Amendment) 1987*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
PREVENTION OF HARM TO CERTAIN ITEMS OF THE
ENVIRONMENTAL HERITAGE—*continued*

- (b) Omit “demolish a building or work”, insert instead “harm a building, work, relic or place”.
- (8) Section 136 (**Order restricting harm to buildings, etc.**)—
- (a) Section 136 (1)—
Omit “that—”, insert instead “that”.
- (b) Section 136 (1) (a), (b)—
Omit the paragraphs, insert instead “a building, work, relic or place (not being a building, work, relic or place the subject of a conservation instrument) is being or is about to be harmed.”.
- (c) Section 136—
Omit “building, work or place” wherever occurring, insert instead “building, work, relic or place”.
- (d) Section 136—
Omit “28” wherever occurring, insert instead “40”.
- (9) Section 137 (**Unlawful work**)—
Before “or place”, insert “, relic”.
- (10) Section 137A—
After section 137, insert:
- Conflicting orders void**
- 137A. If an order under section 130 (1) or 136 (1) is in force in relation to a building, work, relic or place, a notice or order (whether made or issued before or after the order under section 130 (1) or 136 (1)) under any other Act which requires or permits the building, work, relic or place to be harmed, other than—
- (a) an order made in accordance with Division 4B of Part XI of the Local Government Act 1919; or

Heritage (Amendment) 1987

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
PREVENTION OF HARM TO CERTAIN ITEMS OF THE
ENVIRONMENTAL HERITAGE—*continued*

(b) a notice or order which is prescribed for the purposes of
this section,

is void.

(11) Section 167 (**Certificates**)—

Section 167 (2) (b)—

Omit “building or work” wherever occurring, insert instead
“building, work, relic or place”.

SCHEDULE 3

(Sec. 3)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
CONTROLS IMPOSED BY CONSERVATION INSTRUMENTS

(1) Section 57 (**Effect of interim conservation orders and permanent
conservation orders**)—

(a) Section 57 (1) (c)—

Before “excavate”, insert “move that relic or”.

(b) Section 57 (1) (g)—

After “tree” wherever occurring, insert “or other vegetation”.

(2) Section 63 (**Determination of application**)—

(a) Section 63 (2)—

Omit “a building or work is subject to a permanent conservation
order and”.

(b) Section 63 (2) (a), (b)—

Omit “that” wherever occurring, insert instead “a”.

Heritage (Amendment) 1987

SCHEDULE 3—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
CONTROLS IMPOSED BY CONSERVATION INSTRUMENTS—
continued

(3) Sections 67-69—

Omit the sections, insert instead:

Order of giving of approvals

67. An approval given by a consent authority to a prescribed application before the Heritage Council's determination of the application has been notified to the consent authority is void.

Consistency of approvals

68. An approval given by a consent authority to a prescribed application is, to the extent of any inconsistency with the Heritage Council's determination of the application, void.

Liability of consent authorities

69. Nothing in this Subdivision affects the liability of a consent authority in respect of an approval granted by it.

(4) Section 70 (**Appeal to the Minister against certain determinations of the Heritage Council**)—

After "Division 3", insert " , not being the determination of an application referred to in section 63 (2),".

SCHEDULE 4

(Sec. 3)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 4 (**Interpretation**)—

(a) Section 4 (1), definition of “development”—

Omit paragraphs (c) and (d), insert instead:

(c) the use of that land or of a building or work on that land;
and

(d) the subdivision of that land,

but does not include any development of a class or description prescribed by the regulations for the purposes of this definition;

(b) Section 4 (1), definition of “relic”—

Omit the definition, insert instead:

“relic” means any deposit, object or material evidence—

(a) which relates to the settlement of the area that comprises New South Wales, not being aboriginal settlement; and

(b) which is 50 or more years old;

(c) Section 4 (3)—

After “duty,”, insert “a reference to”.

(d) Section 4 (5) (c1)—

After section 4 (5) (c), insert:

(c1) a work includes a reference to any physical activity in relation to land that is specified by a regulation to be a work for the purposes of this Act but does not include a reference to any activity that is specified by a regulation not to be a work for the purposes of this Act;

(e) Section 4 (5) (d) (i)—

Before “the subdivision”, insert “(without limiting the following provisions of this paragraph)”.

Heritage (Amendment) 1987

SCHEDULE 4—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(f) Section 4 (5) (d) (ii), (iii)—

After “occupation” wherever occurring, insert “, use or disposition”.

(g) Section 4 (5) (d)—

Omit “and” where lastly occurring.

(h) Section 4 (5) (e), (f)—

At the end of section 4 (5) (e), insert:

; and

(f) the carrying out of development includes a reference to the erection of a building, the carrying out of a work, the use of land or of a building or work, or the subdivision of land, as the case may require.

(2) Section 8 (**Members of the Heritage Council**)—

(a) Section 8 (1)—

Omit “11”, insert instead “12”.

(b) Section 8 (2)—

Omit “Nine”, insert instead “Ten”.

(c) Section 8 (2) (h)—

Omit “and”.

(d) Section 8 (2) (i), (j)—

At the end of section 8 (2) (i), insert:

; and

(j) a person who, in the opinion of the Minister, possesses suitable knowledge relating to the building, development and property industries.

Heritage (Amendment) 1987

SCHEDULE 4—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued(3) Section 17 (**Quorum**)—

Section 17 (1)—

Omit “Six”, insert instead “Seven”.

(4) Section 21 (**Functions of the Heritage Council**)—

Section 21 (2)—

At the end of section 21, insert:

(2) Without limiting subsection (1), the Heritage Council may—

(a) make submissions to persons or bodies in respect of—

(i) environmental studies;

(ii) draft environmental planning instruments; and

(iii) environmental impact statements,

prepared under the Environmental Planning and Assessment Act 1979 in so far as they relate to the environmental heritage; and

(b) provide opinions, statements or other information relating to the environmental heritage to persons or bodies if the Heritage Council considers it appropriate to do so.

(5) Section 35 (**Delegation by the Minister**)—

Omit the section.

(6) Section 71 (**Appointment of person to furnish report to the Minister**)—

(a) Section 71—

Omit “a person”, insert instead “a Commissioner of Inquiry”.

(b) Section 71 (a)—

Omit “that person”, insert instead “the Commissioner”.

Heritage (Amendment) 1987

SCHEDULE 4—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued(7) Section 72 (**Right of appearance**)—

Omit “the person appointed by the Minister to furnish that report”, insert instead “the Commissioner of Inquiry”.

(8) Section 73 (**Minister’s decision**)—

Section 73 (1) (d)—

Omit “require”, insert instead “return the report to the Commissioner of Inquiry concerned and request”.

(9) Section 102 (**Minister to be corporation sole for certain purposes**)—

Section 102 (3)—

Omit “and he”, insert instead “or a person authorised by the Minister, who”.

(10) Section 121 (**Failure to comply with order under s. 119 (1)**)—

Section 121 (2) (b)—

Omit “or a conservation scheme”.

(11) Sections 146A–146C—

After section 146, insert:

Disposition of certain relics

146A. (1) As soon as practicable after a relic is obtained from an excavation carried out by the holder of an excavation permit, the holder shall notify the Minister of the existence of the relic.

(2) The holder shall furnish the Minister with such information concerning the relic as the Minister may reasonably require.

SCHEDULE 4—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
*continued***Conservation of certain relics**

146B. The Minister may, by notice in writing to a person who is or was the holder of an excavation permit, direct that a relic obtained from an excavation carried out by the holder be given to—

- (a) the Museum of Applied Arts and Sciences or another museum specified in the notice; or
- (b) a person who, in the opinion of the Minister, is able to conserve the relic.

Forfeiture of certain relics

146C. (1) A relic the subject of a direction under section 146B shall be forfeited to the Crown.

(2) No compensation is payable to any person as a consequence of the forfeiture of a relic under this section.

(12) Section 150 (**Notices**)—

Section 150 (3), (4)—

After section 150 (2), insert:

(3) A notice or other document required to be given to or served upon any person by the Heritage Council may be given or served by the Secretary of the Heritage Council.

(4) A notice or other document required to be given to or served upon the Heritage Council may be given to or served upon the Secretary of the Heritage Council.

(13) Section 157 (**Penalties**), section 158 (**Proceedings for offences**)—

Omit “\$10,000” wherever occurring, insert instead “\$20,000”.

Heritage (Amendment) 1987

SCHEDULE 4—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(14) Sections 168–170—

Omit section 168, insert instead:

Liability of members of Heritage Council, etc.

168. (1) No matter or thing done by the Heritage Council or a person, being a member of the Heritage Council, a person acting under the direction of the Heritage Council or a person acting as a delegate under section 169, shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the person to any action, liability, claim or demand.

(2) A person aggrieved as a consequence of the issue to the person of a certificate under section 167 shall be deemed to be a person deeming himself or herself to have a just claim or demand against the Government of New South Wales within the meaning of section 3 (1) of the Claims against the Government and Crown Suits Act 1912.

Delegation of functions

169. (1) The Minister may delegate to a person the exercise of any of the Minister's functions, other than this power of delegation.

(2) The corporation constituted by section 102 may delegate to a person the exercise of any of the corporation's functions, other than this power of delegation.

(3) The Heritage Council may, with the consent of the Minister, delegate to a person the exercise of any of the Heritage Council's functions, other than this power of delegation.

(4) The Chairman of the Heritage Council may—

(a) with the consent of the Minister, delegate to a person the exercise of any of the Chairman's functions, other than this power of delegation; and

SCHEDULE 4—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (b) delegate to a person the exercise of any of the functions delegated to the Chairman by the Minister or the Heritage Council, unless the Minister or the Heritage Council, as the case requires, otherwise provides in the instrument of delegation to the Chairman.
- (5) A delegation—
- (a) may specify the delegate by name or may designate a particular officer, or the holder of a particular office, as the delegate by reference to the title of the office concerned;
 - (b) may be general or limited;
 - (c) shall be in, or be evidenced by, writing signed by the delegator or, if the delegator is a body, by a person authorised by the body for that purpose; and
 - (d) may be revoked, wholly or partly, by the delegator.
- (6) A delegated function may be exercised only in accordance with any conditions to which the delegation is subject.
- (7) A delegate may, in the exercise of a delegated function, exercise any other function that is incidental to the delegated function.
- (8) A delegated function that purports to have been exercised by a delegate shall, until the contrary is proved, be taken to have been duly exercised by the delegate.
- (9) A delegated function that is duly exercised by a delegate shall be taken to have been exercised by the delegator.
- (10) If—
- (a) the exercise of a function by a person or body is, by or under this Act, dependent on the opinion, belief or state of mind of the person or body in relation to any matter; and

Heritage (Amendment) 1987

SCHEDULE 4—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (b) the person or body has delegated the function to some other person or body,

the function may be exercised by the delegate on the opinion, belief or state of mind of the delegate in relation to any such matter.

(11) If a function is delegated to a particular officer or the holder of a particular office—

- (a) the delegation does not cease to have effect merely because the person who was the particular officer or the holder of the particular office when the function was delegated ceases to be that officer or the holder of that office; and
- (b) the function may be exercised (or, in the case of a duty, shall be performed) by the person for the time being occupying or acting in the office concerned.

(12) A function that has been delegated may, notwithstanding the delegation, be exercised by the delegator.

Heritage and Conservation Register

170. (1) In this section—

“government instrumentality” means a statutory body which, or Department Head who, is required to furnish details of land to the Secretary of the Premier’s Department under section 14 of the Annual Reports (Statutory Bodies) Act 1984 or section 17 of the Annual Reports (Departments) Act 1985.

(2) Words and expressions used in this section which are defined in the Annual Reports (Statutory Bodies) Act 1984 or the Annual Reports (Departments) Act 1985 have the same meanings as in the Act in which they are defined.

(3) A government instrumentality shall establish and keep a register entitled the “Heritage and Conservation Register”.

Heritage (Amendment) 1987

SCHEDULE 4—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(4) A government instrumentality shall enter in the register details of each item of the environmental heritage—

(a) which—

(i) is subject to a conservation instrument; or

(ii) could, in accordance with guidelines issued from time to time by the Heritage Council, be subject to a conservation instrument; and

(b) which—

(i) in the case of a statutory body, is owned or occupied by the statutory body; or

(ii) in the case of a Department Head, is vested in or owned or occupied by, or subject to the control of, the appropriate Minister or the Department.

(5) A government instrumentality shall review and, if necessary, amend its register not less than once each year.

(6) A government instrumentality shall furnish a copy of its register and of any amendments to its register to the Heritage Council in accordance with such directions as may be given by the Heritage Council.

(7) A person may inspect a government instrumentality's register or a copy of the register at the office, or principal office, of the government instrumentality or the Heritage Council during the ordinary office hours of the government instrumentality or the Heritage Council.

(8) A register or copy may be inspected free of charge but a fee may be charged for the making of a copy or an extract.

Heritage (Amendment) 1987

SCHEDULE 5

(Sec. 4)

SAVINGS AND TRANSITIONAL PROVISIONS

Making and revocation of conservation instruments

1. The Principal Act, as in force immediately before the commencement of this Act, continues to apply to and in respect of the making or revocation of a conservation instrument, the making or revocation of which commenced before that commencement, as if this Act had not been enacted.

Constitution of the Heritage Council

2. The Heritage Council shall not be invalidly constituted during the period of 1 month after the commencement of this Act only because the member referred to in section 8 (2) (j) of the Principal Act, as amended by this Act, may not, during that period, have been appointed.

Section 130 orders

3. Section 133 (d) of the Principal Act, as amended by this Act, does not apply to an order made under section 130 (1) of the Principal Act before the commencement of this Act.

Relics

4. Sections 146A–146C of the Principal Act, as amended by this Act, do not apply to or in respect of a relic obtained from an excavation carried out pursuant to an excavation permit issued before the commencement of this Act.

Heritage and Conservation Register

5. A government instrumentality to which section 170 of the Principal Act, as amended by this Act, applies on the commencement of this Act shall establish the register required to be established under that section on or before 1 January 1988.