



New South Wales

Heritage Amendment Bill 2009

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to amend the *Heritage Act 1977* (the **Heritage Act**) and the *Environmental Planning and Assessment Act 1979* (the **Planning Act**) as follows:

- (a) to insert objects into the Heritage Act,
- (b) to require criteria used by the Heritage Council to determine whether a place, building, work, relic, moveable object or precinct (an **item**) is of State heritage significance to be approved by the Minister for Planning (the **Minister**),
- (c) to reduce the membership of the Heritage Council from a maximum of 15 members to a maximum of 11 members and to remove the appointment of members nominated by particular organisations (other than the National Trust of Australia (New South Wales)),
- (d) to require the Minister, when considering the inclusion or removal of an item on or from the State Heritage Register, to consider whether the item should be conserved and other specified effects of the listing,
- (e) to provide for the endorsement by the Heritage Council of conservation management plans for items listed on the State Heritage Register and other matters related to those plans,

- (f) to enable the Minister or Chairperson of the Heritage Council to make stop work orders to prevent an item that is subject to an interim heritage order or is listed on the State Heritage Register from being harmed,
- (g) to provide for the referral by councils of disputed proposals to list items as heritage items in local environmental plans to independent hearing and assessment panels,
- (h) to prevent a consent authority from refusing a development application for integrated development on heritage grounds if the development is the subject of a relevant approval under the Heritage Act,
- (i) to make other minor amendments and amendments of a law revision, consequential or savings and transitional nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation, other than provisions related to certain amendments made by the *Environmental Planning and Assessment Amendment Act 2008*.

Schedule 1 Amendment of Heritage Act 1977 No 136

Heritage Council

Schedule 1 [9] substitutes sections 8 and 9 of the Heritage Act and repeals other provisions currently relating to the membership and procedures of the Heritage Council. The proposed sections reduce the maximum membership of the Council from 15 to 11, replace the Director of the Heritage Office with the Director-General of the Department of Planning as a statutory member of the Council and remove those members who were formerly appointed by organisations (other than the member appointed from nominations made by the National Trust of Australia (New South Wales)). The amendments retain the 3 statutory members and provide for up to 8 appointed members, while widening the qualifications, knowledge and skills such members may possess before being appointed.

Schedule 1 [2] and [7] make amendments consequential on the amendment made by Schedule 1 [9].

Schedule 1 [8] gives the Heritage Council the status and privileges of the Crown by declaring it to be a NSW Government agency.

Schedule 1 [10] amends section 21 of the Heritage Act to update the functions of the Heritage Council to reflect changes to plan-making processes under the Planning Act.

Schedule 1 [43] inserts proposed Schedule 2 into the Heritage Act, containing provisions relating to the membership and procedure of the Heritage Council.

State Heritage Register and items of State heritage significance

Schedule 1 [6] amends section 4A of the Heritage Act to require the criteria that the Heritage Council uses to make decisions about whether an item is of State heritage significance to be approved by the Minister before the Minister publishes them in the Gazette and to require only those published criteria to be used by the Council. Currently, the criteria must merely be notified to the Minister before they are published in the Gazette.

Schedule 1 [13] amends section 32 of the Heritage Act to require the Minister, when determining whether to direct that an item be listed on the State Heritage Register, to consider whether the long-term conservation of the item is necessary, whether listing would render the item incapable of reasonable or economic use and whether it would cause undue financial hardship.

Schedule 1 [14] amends section 33 of the Heritage Act to provide that before making a recommendation for the listing of a precinct the Council must publish a notice of intention to consider listing in at least one metropolitan newspaper and one local newspaper circulating in the precinct, rather than giving written notice to each owner or occupier of land in the precinct, as is currently the case.

Schedule 1 [16] amends section 33 of the Heritage Act to prohibit the Heritage Council from recommending that an item be listed on the State Heritage Register unless it is satisfied that the item satisfies at least one of the criteria established under section 4A of that Act and also provides that the Council may consider whether the long-term conservation of the item is necessary, whether listing would render the item incapable of reasonable or economic use and whether listing would cause undue financial hardship. **Schedule 1 [15] and [26]** make consequential amendments.

Schedule 1 [17] amends section 34 of the Heritage Act to make it clear that the Minister may refer a recommendation for the listing of an item on the State Heritage Register to a review body on the Minister's own motion or at the request of an affected owner, mortgagee, lessee or occupier.

Schedule 1 [24] amends section 37 of the Heritage Act to require notice of the Minister's decision on a proposed State Heritage Register listing to be given in the same manner as notice of an intention to consider the listing by the Heritage Council.

Schedule 1 [25] amends section 38 of the Heritage Act relating to the power of the Minister to direct that an item be removed from the State Heritage Register on the recommendation of the Heritage Council. Under the amended section, the Minister may make such a direction, after considering a recommendation by the Heritage Council, if of the opinion that the item is not of State heritage significance or that the long-term conservation of the item is not necessary and if either the listing would render the item incapable of reasonable or economic use or if the listing would cause undue financial hardship to the owner, mortgagee or lessee of the item or land on which it is situated.

Schedule 1 [27] inserts proposed section 38A into the Heritage Act to enable the Heritage Council to endorse conservation management plans for items listed on the State Heritage Register and to enable regulations to be made for or with respect to conservation management plans.

Controlled activities

Schedule 1 [28] amends section 57 of the Heritage Act to exempt a person from having to obtain approval to work on an item that is listed on the State Heritage Register if the work is exempted from the operation of Part 4 of that Act by a conservation management plan endorsed by the Heritage Council.

Schedule 1 [29] amends section 62 of the Heritage Act to require the relevant approval body to consider any applicable conservation management plan when determining whether to grant approval to carry out work on an item listed on the State Heritage Register.

Schedule 1 [32] inserts proposed Division 5 of Part 4 (proposed section 79C) into the Heritage Act. The proposed Division enables the Minister or the Chairperson of the Heritage Council to make a stop work order (being an order that work on an item cease for a period of 40 days) if of the opinion that an item that is subject to an interim heritage order or listed on the State Heritage Register is being or is about to be harmed. Only one stop work order may be made in relation to any work and other remedies under the Heritage Act may be pursued in relation to the work. An order may not be made if approval for the work has been given under Part 4 of the Heritage Act. **Schedule 1 [11]** makes a consequential amendment.

Other amendments

Schedule 1 [1] inserts proposed section 3 into the Heritage Act to set out the objects of that Act.

Schedule 1 [3] amends section 4 of the Heritage Act to update definitions.

Schedule 1 [4] amends section 4 of the Heritage Act to omit a redundant definition.

Schedule 1 [5] amends section 4 of the Heritage Act to substitute the definition of *relic*, so that a relic under that Act must be of State or local heritage significance but is no longer required to be more than 50 years old. **Schedule 1 [33]** makes a consequential amendment.

Schedule 1 [12], [34] and [35] make minor amendments consequential on the inclusion of the Heritage Council in the Department of Planning.

Schedule 1 [18], [20]–[23], [36] and [37] make law revision amendments.

Schedule 1 [19] amends section 36 of the Heritage Act to enable regulations to be made to remove or change the right of a party to legal or other representation at a review by the Planning Assessment Commission of a recommendation that an item be listed on the State Heritage Register.

Schedule 1 [30] amends section 72 of the Heritage Act to enable regulations to be made to remove or change the right of a party to legal or other representation at a review by the Planning Assessment Commission of an appeal against a decision by the Heritage Council about an application for approval of actions in relation to an item that is subject to an interim heritage order or listed on the State Heritage Register.

Schedule 1 [31] amends section 79 of the Heritage Act to enable regulations to be made to remove or change the right of a party to legal or other representation at a review by the Planning Assessment Commission of an appeal under the Planning Act or other Act that is to be determined by the Minister for Planning.

Schedule 1 [38] amends section 170 of the Heritage Act to require government instrumentalities to enter on their Heritage and Conservation Registers items of the environmental heritage that are required to be listed on the Registers in accordance with the regulations. Currently, items subject to interim heritage orders or listed on the State Heritage Register, or that could be subject to such an order or listing, or that are listed in environmental planning instruments, are required to be entered on the Registers.

Schedule 1 [39] amends section 170A of the Heritage Act to remove the requirement for government instrumentalities to include information about matters related to Heritage and Conservation Registers in their annual reports.

Schedule 1 [40] inserts proposed section 170B into the Heritage Act. The proposed section enables a council to refer a submission about the inclusion of an item as an item of heritage significance in a proposed local environmental plan to an independent hearing and assessment panel established under the Planning Act.

Schedule 1 [41] amends Schedule 1 to the Heritage Act to enable regulations containing savings and transitional provisions to be made consequent on the enactment of the proposed Act.

Schedule 1 [42] amends Schedule 1 to the Heritage Act to insert savings and transitional provisions consequential on the enactment of the proposed Act.

Schedule 2 Amendment of Environmental Planning and Assessment Act 1979 No 203

Schedule 2 [1]–[3] amend uncommenced provisions of the Planning Act as proposed to be inserted by the *Environmental Planning and Assessment Amendment Act 2008 (the 2008 Act)*.

Section 23G (2) (a) of the Planning Act (as proposed to be inserted by the 2008 Act) confers on joint regional planning panels (**regional panels**) functions as a consent authority that are conferred on it under an environmental planning instrument. **Schedule 2 [1]** clarifies that the relevant functions as a consent authority that may be conferred on a regional panel under section 23G (2) (a) are any of the consent authority functions of a local council. This enables the council to retain certain functions as a consent authority for development applications determined by a regional panel.

Schedule 2 [2] resolves a technical issue concerning the entity to which a regional panel's exercise of a local council's functions as consent authority conferred on the panel under section 23G (2) (a), is to be attributed. The effect of the amendment is to deem a regional panel to be the applicable local council in the exercise of those functions, subject to the regulations. The amendment also clarifies that a regional panel is to exercise functions conferred on it under section 23G (2) (a) to the exclusion of the applicable council.

The amendment also allows proposed section 23G (5A) and (5B) to apply in relation to the functions conferred on a regional panel under an environmental planning instrument that are conferred on the Planning Assessment Commission under section 23D (1) (d) of the Planning Act (as proposed to be inserted by the 2008 Act).

Schedule 2 [3] specifically provides for a power to make regulations for or with respect to the functions conferred by the Planning Act on a regional panel.

Schedule 2 [4] amends section 90 of the Planning Act to apply the provisions of that Act relating to procedures for integrated development to development made by or on behalf of the Crown if it is development that requires an approval to carry out work under section 57 (1) of the Heritage Act (a *heritage approval*).

Schedule 2 [5] amends section 90A of the Planning Act to insert a definition of *heritage approval*.

Schedule 2 [6] inserts proposed section 92 into the Planning Act. The proposed section prohibits a consent authority from refusing development consent on heritage grounds if a heritage approval has been granted in respect of the same development.

Schedule 2 [7] amends section 118 of the Planning Act to enable the functions of preparing, making and approving development control plans to be conferred on panels appointed under Division 1AA of Part 6 of that Act to exercise planning functions of councils.

Schedule 2 [8] amends section 118 of the Planning Act to enable the functions of preparing and approving contributions plans to be conferred on panels appointed under Division 1AA of Part 6 of that Act to exercise planning functions of councils.

Schedule 2 [9] amends section 158 of the Planning Act to exclude committees, or members of committees, established under section 22 of that Act, from personal liability for things done or omitted to be done for the purposes of that Act. The amendment will be taken to have commenced on the same day as the removal of the previous provision relating to the liability of such committees (see proposed section 2 of the proposed Act).

First print



New South Wales

Heritage Amendment Bill 2009

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Heritage Act 1977 No 136	3
Schedule 2 Amendment of Environmental Planning and Assessment Act 1979 No 203	21



New South Wales

Heritage Amendment Bill 2009

No. , 2009

A Bill for

An Act to amend the *Heritage Act 1977* and the *Environmental Planning and Assessment Act 1979* with respect to the Heritage Council of New South Wales, State heritage items and other items of heritage significance; and for other purposes.

The Legislature of New South Wales enacts: 1

1 Name of Act 2

This Act is the *Heritage Amendment Act 2009*. 3

2 Commencement 4

(1) This Act commences on a day or days to be appointed by proclamation, 5
except as provided by this section. 6

(2) Schedule 1 [18]–[23] and Schedule 2 [7]–[9] are taken to have 7
commenced on 3 November 2008. 8

(3) Schedule 2 [1] and [2] commence on the commencement of section 23G 9
of the *Environmental Planning and Assessment Act 1979* to be inserted 10
by Schedule 2.1 [13] to the *Environmental Planning and Assessment 11
Amendment Act 2008*. 12

(4) Schedule 2 [3] commences on the commencement of section 23H of the 13
Environmental Planning and Assessment Act 1979 to be inserted by 14
Schedule 2.1 [13] to the *Environmental Planning and Assessment 15
Amendment Act 2008*. 16

Schedule 1	Amendment of Heritage Act 1977 No 136	1
[1] Section 3		2
	Insert after section 2:	3
	3 Objects	4
	The objects of this Act are as follows:	5
	(a) to promote an understanding of the State's heritage,	6
	(b) to encourage the conservation of the State's heritage,	7
	(c) to provide for the identification and registration of items of State heritage significance,	8
	(d) to provide for the interim protection of items of State heritage significance,	9
	(e) to encourage the adaptive reuse of items of State heritage significance,	10
	(f) to constitute the Heritage Council of New South Wales and confer on it functions relating to the State's heritage,	11
	(g) to assist owners with the conservation of items of State heritage significance.	12
		13
		14
		15
		16
		17
[2] Section 4 Definitions		18
	Omit "section 8 (2) (a) (i)" from the definition of <i>Chairperson</i> in section 4 (1).	19
	Insert instead "section 8 (5)".	20
[3] Section 4 (1), definitions of "Department" and "Director-General"		21
	Omit the definitions. Insert in alphabetical order:	22
	<i>Director-General</i> means the Director-General of the Department of Planning.	23
		24
[4] Section 4 (1), definition of "Director"		25
	Omit the definition.	26
[5] Section 4 (1), definition of "relic"		27
	Omit the definition. Insert instead:	28
	<i>relic</i> means any deposit, artefact, object or material evidence that:	29
	(a) relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and	30
	(b) is of State or local heritage significance.	31
		32

[6] Section 4A Heritage significance	1
Omit section 4A (3). Insert instead:	2
(3) The Heritage Council must notify the Minister of the proposed criteria for the making of decisions as to whether or not an item is of State heritage significance and of any proposed change to the criteria. If the Minister approves the criteria or any proposed change, the Minister is to cause notice of the criteria or any change to be published in the Gazette.	3 4 5 6 7 8
(4) The Heritage Council must use only criteria published in the Gazette under this section for the making of decisions as to whether or not an item is of State heritage significance.	9 10 11
[7] Section 6 Definitions	12
Omit the section.	13
[8] Section 7 The Council	14
Insert at the end of the section:	15
(2) The Heritage Council is a NSW Government agency.	16
[9] Sections 8 and 9	17
Omit sections 8–20. Insert instead:	18
8 Members of Heritage Council	19
(1) The Heritage Council is to consist of 11 members. Of the members, 8 are to be appointed by the Minister (the <i>appointed members</i>).	20 21 22
(2) The other 3 members are to be:	23
(a) the NSW Government Architect, and	24
(b) the Director-General, and	25
(c) the Director-General of the Department of Environment and Climate Change.	26 27
(3) Six of the appointed members are to be persons who, in the opinion of the Minister, possess qualifications, knowledge and skills relating to any of the following areas:	28 29 30
(a) Aboriginal heritage,	31
(b) archaeology,	32
(c) architecture,	33
(d) the building, development and property industries,	34

(e)	conservation of the environmental heritage,	1
(f)	engineering,	2
(g)	New South Wales or Australian history,	3
(h)	local government,	4
(i)	moveable heritage,	5
(j)	natural heritage,	6
(k)	planning,	7
(l)	property, planning or environmental law,	8
(m)	property economics,	9
(n)	rural interests,	10
(o)	cultural landscapes.	11
(4)	One of the other appointed members is to be a person appointed from a panel of 3 persons nominated by the National Trust of Australia (New South Wales).	12 13 14
(5)	The other appointed member is to be appointed as Chairperson by the member's instrument of appointment or a subsequent instrument executed by the Minister.	15 16 17
(6)	One member appointed under subsection (3) or (4) is to be appointed as Deputy Chairperson by the member's instrument of appointment or a subsequent instrument executed by the Minister.	18 19 20 21
9	Members and procedure of Heritage Council	22
	Schedule 2 contains provisions relating to the members and procedure of the Heritage Council.	23 24
[10]	Section 21 Functions of Heritage Council	25
	Omit section 21 (2) (a) (ii). Insert instead:	26
	(ii) proposed environmental planning instruments, and	27
[11]	Section 23 Annual report	28
	Insert at the end of section 23 (2) (a) (vi):	29
	, and	30
	(a1) particulars of stop work orders made under section 79C, and	31 32

[12] Section 23 (4)	1
Omit the subsection. Insert instead:	2
(4) The report of the Heritage Council under this section may be included in the annual report of the Department of Planning.	3 4
[13] Section 32 Minister can direct listing on State Heritage Register	5
Omit section 32 (1) and (2). Insert instead:	6
(1) The Minister may direct the listing on the State Heritage Register of a place, building, work, relic, moveable object or precinct that the Minister considers is of State heritage significance, but only if the Heritage Council has recommended that the item be listed and the Minister has considered the following:	7 8 9 10 11
(a) the recommendation of the Heritage Council that the item should be listed,	12 13
(b) whether the long-term conservation of the item is necessary,	14 15
(c) whether the listing would render the item incapable of reasonable or economic use,	16 17
(d) whether the listing would cause undue financial hardship to the owner, mortgagee or lessee of the item or the land on which the item is situated.	18 19 20
(2) The Heritage Council may make a recommendation to the Minister that an item be listed on the State Heritage Register at the request of the Minister, on the Heritage Council's own initiative or at the request of the owner of the item concerned or the council of the area in which the item is situated.	21 22 23 24 25
[14] Section 33 Procedure before recommendation for listing	26
Omit section 33 (1). Insert instead:	27
(1) Before making a recommendation for the listing of an item on the State Heritage Register, the Heritage Council must follow this procedure:	28 29 30
(a) the Heritage Council is to give notice that it is going to consider whether or not to recommend the listing of the item concerned (a <i>notice of intention to consider listing</i>):	31 32 33
(i) by written notice given to each person that it considers to be an affected owner or occupier (except in the case of the listing of a precinct), or	34 35 36

(ii)	in the case of the listing of a precinct, by notice published in at least one metropolitan newspaper and one local newspaper circulating in the precinct, and	1 2 3 4
(b)	within 14 days after notice of intention to consider listing is given under paragraph (a) (i), the Heritage Council is to cause a notice of intention to consider listing to be published in at least one newspaper circulating in the area in which the item is situated, and	5 6 7 8 9
(c)	a notice of intention to consider listing is to invite submissions on the listing and is to specify a date as the closing date for the receipt of submissions (being a date that is at least 14 days after publication of the newspaper notice) and the manner in which submissions may be made, and	10 11 12 13 14 15
(d)	the Heritage Council is to consider the submissions that are received before the closing date for receipt of submissions and is to decide within 30 days after that closing date whether or not to recommend the listing, and	16 17 18 19
(e)	the Heritage Council is to give notice of its decision in the same manner as it is required to give notice of its intention to consider listing under paragraph (a) and is also to give notice to the council of the area in which the item is situated and to each of the persons who made submissions that were considered, and	20 21 22 23 24 25
(f)	if the decision of the Heritage Council is to recommend the listing, the Heritage Council is to make that recommendation to the Minister as soon as possible after notice is given of the decision under paragraph (e).	26 27 28 29
[15]	Section 33 (2) (d)	30
	Omit “without causing undue financial hardship to the owner, mortgagee or lessee”.	31 32
	Insert instead “without causing undue financial hardship to the owner, mortgagee or lessee of the item or the land on which the item is situated”.	33 34
[16]	Section 33 (3) and (4)	35
	Insert after section 33 (2):	36
	(3) The Heritage Council must not make a decision to recommend the listing of an item on the State Heritage Register unless it considers that:	37 38 39

(a)	the item satisfies more than one of the criteria approved as referred to in section 4A for determining whether an item is of State heritage significance, or	1 2 3
(b)	if it satisfies only one of those criteria, the item is of such particular significance that it should be listed.	4 5
(4)	Without limiting any other matter it may consider in determining whether to make a recommendation, the Heritage Council may consider the following (whether or not any submissions are made under subsection (2)):	6 7 8 9
(a)	whether the long-term conservation of the item is necessary,	10 11
(b)	whether the listing would render the item incapable of reasonable or economic use,	12 13
(c)	whether the listing would cause undue financial hardship to the owner, mortgagee or lessee of the item or the land on which the item is situated.	14 15 16
[17]	Section 34 Action by Minister following recommendation for listing	17
	Insert after section 34 (2):	18
(3)	The Minister may make a referral or request under this section on the Minister's own motion or after a request by an affected owner, mortgagee, lessee or occupier.	19 20 21
[18]	Section 36 Planning Assessment Commission	22
	Omit "an inquiry held by a Commissioner of Inquiry each of the following is entitled to appear before the Commissioner" from section 36 (1).	23 24
	Insert instead "a review conducted by the Planning Assessment Commission each of the following is entitled to appear before the Commission".	25 26
[19]	Section 36 (1)	27
	Insert ", unless otherwise provided by the regulations," after "personally or".	28
[20]	Section 36 (1) (e)	29
	Omit the paragraph. Insert instead:	30
(e)	the Director-General or a nominee of the Director-General,	31
[21]	Section 36 (1) (f)	32
	Omit "Commissioner of Inquiry". Insert instead "Commission".	33

[22] Section 36 (2)	1
Omit “inquiry, the Commissioner of Inquiry is to provide a report in writing to the Minister containing a summary of the submissions made at the inquiry, the findings of the Commissioner”.	2 3 4
Insert instead “review, the Planning Assessment Commission is to provide a report in writing to the Minister containing a summary of the submissions made to the review, the findings of the Commission”.	5 6 7
[23] Section 36 (3)	8
Omit the subsection.	9
[24] Section 37 Action by Heritage Council on Minister’s decision	10
Omit section 37 (1) (a). Insert instead:	11
(a) give notice of the Minister’s decision in the same manner as it is required under section 33 (1) (a) to give notice of its intention to consider the listing,	12 13 14
[25] Section 38 Removal of items from State Heritage Register	15
Omit section 38 (1). Insert instead:	16
(1) The Minister may, after considering the recommendation of the Heritage Council on the matter, direct the removal of a listing from the State Heritage Register:	17 18 19
(a) if the Minister is of the opinion that the item is not of State heritage significance, or	20 21
(b) if the Minister is of the opinion that the long-term conservation of the item is not necessary and that either or both of the following apply to the item:	22 23 24
(i) the listing renders the item incapable of reasonable or economic use,	25 26
(ii) the listing causes undue financial hardship to the owner, mortgagee or lessee of the item or the land on which the item is situated.	27 28 29
[26] Section 38 (3)	30
Insert “(other than section 33 (3))” after “sections 33–37”.	31

[27] Section 38A	1
Insert after section 38:	2
38A Conservation management plans for State heritage items	3
(1) The Heritage Council may, for the purposes of this Act, endorse a conservation management plan for an item listed on the State Heritage Register.	4 5 6
(2) The regulations may make provision for or with respect to conservation management plans for items listed on the State Heritage Register.	7 8 9
(3) In this section:	10
<i>conservation management plan</i> means a document that:	11
(a) identifies the State heritage significance of an item, and	12
(b) sets out policies and strategies for the retention of that significance, and	13 14
(c) is prepared in accordance with the guidelines for the preparation of conservation management plans (if any) publicly issued from time to time by the Heritage Council.	15 16 17
[28] Section 57 Effect of interim heritage orders and listing on State Heritage Register	18 19
Insert after section 57 (1C):	20
(1D) Subsection (1) does not apply to anything that is exempted from the operation of this Part by a conservation management plan (within the meaning of section 38A) endorsed by the Heritage Council.	21 22 23 24
[29] Section 62 Matters for consideration	25
Insert after section 62 (c):	26
(c1) any applicable conservation management plan (within the meaning of section 38A) endorsed by the Heritage Council, and	27 28 29
[30] Section 72 Right of appearance	30
Insert “, unless otherwise provided by the regulations,” after “personally or”.	31
[31] Section 79 Right of appearance	32
Insert “, unless otherwise provided by the regulations,” after “personally or”.	33

[32] Part 4, Division 5	1
Insert after Division 4:	2
Division 5 Stop work orders	3
79C Order restricting harm to heritage items	4
(1) The Minister or the Chairperson may make a stop work order if the Minister or Chairperson is of the opinion that a building, work, relic, moveable object or place the subject of an interim heritage order or listing on the State Heritage Register is being or is about to be harmed.	5 6 7 8 9
(2) A stop work order is an order that:	10
(a) work being carried out on a building, work, relic, moveable object or place cease, and	11 12
(b) no work, other than work specified in the order, be carried out on the building, work, relic, moveable object or place within a period of 40 days after the date of the order.	13 14 15
(3) A stop work order takes effect on and from the date that a copy of the order is affixed to the building, work, relic, moveable object or place the subject of the order.	16 17 18
(4) A person must not, while an order under this section is in force, carry out any work, other than such work as may be specified in that order, with respect to the building, work, relic, moveable object or place the subject of that order.	19 20 21 22
(5) The Minister or Chairperson:	23
(a) may only make a stop work order in relation to work for which approval is required under this Part, and	24 25
(b) must not make a stop work order in relation to work for which an approval is in force under this Part.	26 27
(6) More than one stop work order may not be made in relation to the same work.	28 29
(7) Nothing in this section prevents a person from seeking, or the Court from granting, an order under section 154 in relation to work.	30 31 32
(8) A stop work order ceases to have effect if an order is made in relation to the work concerned under section 154 or the work is approved under this Part.	33 34 35

(9)	Section 137A applies in respect of a building, work, relic, moveable object or place subject to a stop work order in the same way as it applies to a building, work, relic, moveable object or place subject to an order under section 136 (1).	1 2 3 4
[33]	Section 139 Excavation permit required in certain circumstances	5
	Omit section 139 (4) (d). Insert instead:	6
	(d) any disturbance or excavation of land in respect of which an archaeological assessment approved by the Heritage Council indicates that there is little likelihood of there being any relics in the land.	7 8 9 10
[34]	Section 151 Evidence	11
	Omit “in the custody of the Heritage Office, under the hand of the Chief Administrative Officer or other prescribed officer of the Heritage Office” from section 151 (2) (b).	12 13 14
	Insert instead “in the custody of the Department of Planning, under the hand of an officer of that Department”.	15 16
[35]	Section 151 (3)	17
	Omit “Heritage Office” wherever occurring.	18
	Insert instead “Department of Planning”.	19
[36]	Section 169 Delegation of functions	20
	Insert “under this Act” after “functions” in section 169 (1).	21
[37]	Section 169 (5)–(12)	22
	Omit the subsections.	23
[38]	Section 170 Heritage and Conservation Register	24
	Omit section 170 (4) (a). Insert instead:	25
	(a) which is of a class prescribed by the regulations, and	26
[39]	Section 170A Heritage management by government instrumentalities	27
	Omit section 170A (4).	28

[40] Section 170B	1
Insert after section 170A:	2
170B Referral to panel of submissions relating to items of local heritage significance	3
(1) This section applies if a submission is made under Part 3 of the <i>Environmental Planning and Assessment Act 1979</i> objecting to the identification of an item as an item of heritage significance (however described) in a proposed local environmental plan.	4
(2) A council that is the relevant planning authority under that Act for the proposed local environmental plan may (but need not) refer the submission, or any matter related to the submission, to a panel constituted by the council under section 231 of that Act for assessment by the panel under that Act.	5
(3) Nothing in this section affects the operation of Part 3 of the <i>Environmental Planning and Assessment Act 1979</i> with respect to issues raised in a submission or limits any matter that may be referred to a panel under that Act by a council.	6
[41] Schedule 1 Savings and transitional provisions	7
Insert at the end of clause 1 (1):	8
<i>Heritage Amendment Act 2009</i>	9
[42] Schedule 1	10
Insert at the end of the Schedule with appropriate Part and clause numbering:	11
Part Provisions consequent on enactment of Heritage Amendment Act 2009	12
Definition	13
In this Part, 2009 amending Act means the <i>Heritage Amendment Act 2009</i> .	14
Determination of heritage significance	15
(1) The criteria notified in the Gazette under section 4A (3), as in force before its substitution by the 2009 amending Act, are taken to be criteria approved by the Minister and published in the Gazette under section 4A (3) as substituted by the 2009 amending Act.	16

(2) The Minister may, by notice published in the Gazette, revoke approval of any criteria taken to be approved and published under subclause (1).	1 2 3
Heritage Council	4
(1) In this clause: <i>existing appointed member</i> means a member appointed under section 8 (2) (a) (ii) or (b), and holding office as such a member, immediately before the substitution of section 8 by the 2009 amending Act.	5 6 7 8 9
(2) A person who held office as a member (other than an existing appointed member) of the Heritage Council immediately before the substitution of section 8 by the 2009 amending Act ceases to hold office on that substitution and is not entitled to any remuneration or compensation for loss of office.	10 11 12 13 14
(3) Subject to clause 6 of Schedule 2, an existing appointed member continues in office as a member of the Heritage Council after that substitution for the remainder of the term of the person's appointment (as specified in the member's instrument of appointment under section 8 as in force before that substitution). Any such member, if eligible for reappointment, may be reappointed.	15 16 17 18 19 20 21
(4) The Heritage Council, as constituted immediately after the substitution of section 8 by the 2009 amending Act, is a continuation of, and the same legal entity as, the Heritage Council as constituted immediately before that substitution.	22 23 24 25
Recommendations relating to State heritage listing	26
(1) Section 32, as in force before its amendment by the 2009 amending Act, applies to the listing of an item for which a recommendation was made by the Heritage Council, but not determined by the Minister, before that amendment.	27 28 29 30
(2) Section 38, as in force before its amendment by the 2009 amending Act, applies to the removal of an item for which a recommendation was made by the Heritage Council, but not determined by the Minister, before that amendment.	31 32 33 34
Heritage and Conservation Registers of government instrumentalities	35 36
(1) Section 170 (4), as in force before its amendment by the 2009 amending Act, continues to apply in respect of a government instrumentality if the instrumentality had furnished a copy of its	37 38 39

	Heritage and Conservation Register to the Heritage Council before that amendment.	1 2
(2)	This clause ceases to apply to a government instrumentality when the instrumentality amends its Heritage and Conservation Register in accordance with section 170 (4), as amended by the 2009 amending Act.	3 4 5 6
[43]	Schedule 2	7
	Insert after Schedule 1:	8
	Schedule 2 Members and procedure of Heritage Council	9 10
		(Section 9) 11
	Part 1 General	12
	1 Definitions	13
	In this Schedule:	14
	<i>appointed member</i> means a member appointed by the Minister under section 8 (1).	15 16
	<i>Chairperson</i> means the Chairperson of the Heritage Council.	17
	<i>Deputy Chairperson</i> means the Deputy Chairperson of the Heritage Council.	18 19
	<i>member</i> means any member of the Heritage Council.	20
	Part 2 Constitution	21
	2 Terms of office of members	22
	Subject to this Schedule and the regulations, an appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.	23 24 25 26
	3 Part-time appointments	27
	Appointed members hold office as part-time members.	28
	4 Remuneration	29
	An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.	30 31 32

5	Deputies	1
(1)	The Minister may, from time to time, appoint a person to be the deputy of an appointed member, and may revoke any such appointment.	2 3 4
(2)	A member (other than an appointed member) may, from time to time, appoint a person to be the deputy of the member, and may revoke any such appointment.	5 6 7
(3)	In the absence of a member, the member's deputy may, if available, act in the place of the member.	8 9
(4)	While acting in the place of a member, a person has all the functions of the member and is taken to be a member.	10 11
(5)	For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.	12 13
(6)	This clause does not operate to confer on the deputy of a member who is the Chairperson or Deputy Chairperson the member's functions as Chairperson or Deputy Chairperson.	14 15 16
6	Vacancy in office of appointed member	17
(1)	The office of an appointed member becomes vacant if the member:	18 19
(a)	dies, or	20
(b)	completes a term of office and is not re-appointed, or	21
(c)	resigns the office by instrument in writing addressed to the Minister, or	22 23
(d)	is removed from office by the Minister under this clause, or	24 25
(e)	is absent from 3 consecutive meetings of the Heritage Council of which reasonable notice has been given to the member personally or by post, except on leave granted by the Council or unless the member is excused by the Council for having been absent from those meetings, or	26 27 28 29 30
(f)	becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or	31 32 33 34
(g)	becomes a mentally incapacitated person, or	35

(h)	is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.	1 2 3 4 5
(2)	The Minister may remove an appointed member from office at any time.	6 7
7	Filling of vacancy in office of appointed member	8
	If the office of an appointed member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.	9 10 11
8	Chairperson and Deputy Chairperson	12
(1)	The Chairperson or Deputy Chairperson vacates office as Chairperson or Deputy Chairperson if he or she:	13 14
(a)	is removed from that office by the Minister under this clause, or	15 16
(b)	resigns that office by instrument in writing addressed to the Minister, or	17 18
(c)	ceases to be a member of the Heritage Council.	19
(2)	The Minister may at any time remove the Chairperson or Deputy Chairperson from office as Chairperson or Deputy Chairperson.	20 21
9	Disclosure of pecuniary interests	22
(1)	If:	23
(a)	a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Heritage Council, and	24 25 26
(b)	the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,	27 28 29
	the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Heritage Council.	30 31 32
(2)	A disclosure by a member at a meeting of the Heritage Council that the member:	33 34
(a)	is a member, or is in the employment, of a specified company or other body, or	35 36

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| (b) | is a partner, or is in the employment, of a specified person,
or | 1
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| (c) | has some other specified interest relating to a specified
company or other body or to a specified person,
is a sufficient disclosure of the nature of the interest in any matter
relating to that company or other body or to that person which
may arise after the date of the disclosure and which is required to
be disclosed under subclause (1). | 3
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| (3) | Particulars of any disclosure made under this clause must be
recorded by the Heritage Council in a book kept for the purpose
and that book must be open at all reasonable hours to inspection
by any person on payment of the fee determined by the Heritage
Council. | 9
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| (4) | After a member has disclosed the nature of an interest in any
matter, the member must not, unless the Minister or the Heritage
Council otherwise determines: | 14
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| (a) | be present during any deliberation of the Heritage Council
with respect to the matter, or | 17
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| (b) | take part in any decision of the Heritage Council with
respect to the matter. | 19
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| (5) | For the purposes of the making of a determination by the Heritage
Council under subclause (4), a member who has a direct or
indirect pecuniary interest in a matter to which the disclosure
relates must not: | 21
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| (a) | be present during any deliberation of the Heritage Council
for the purpose of making the determination, or | 25
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| (b) | take part in the making by the Heritage Council of the
determination. | 27
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| (6) | A contravention of this clause does not invalidate any decision of
the Heritage Council. | 29
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| (7) | This clause applies to a member of a committee of the Heritage
Council and the committee in the same way as it applies to a
member of the Heritage Council and the Heritage Council. | 31
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| 10 | Effect of certain other Acts | 34 |
| (1) | Chapter 2 of the <i>Public Sector Employment and Management Act
2002</i> does not apply to or in respect of the appointment of an
appointed member. | 35
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- (2) If by or under any Act provision is made: 1
- (a) requiring a person who is the holder of a specified office to 2
devote the whole of his or her time to the duties of that 3
office, or 4
- (b) prohibiting the person from engaging in employment 5
outside the duties of that office, 6
- the provision does not operate to disqualify the person from 7
holding that office and also the office of an appointed member or 8
from accepting and retaining any remuneration payable to the 9
person under this Act as a member. 10

Part 3 Procedure 11

11 General procedure 12

The procedure for the calling of meetings of the Heritage Council 13
and for the conduct of business at those meetings is, subject to 14
this Act and the regulations, to be as determined by the Heritage 15
Council. 16

12 Quorum 17

The quorum for a meeting of the Heritage Council is a majority 18
of its members for the time being. 19

13 Presiding member 20

- (1) The Chairperson (or, in the absence of the Chairperson, the 21
Deputy Chairperson, or in the absence of both the Chairperson 22
and the Deputy Chairperson, a person elected by the members of 23
the Heritage Council who are present at a meeting of the Heritage 24
Council) is to preside at a meeting of the Heritage Council. 25
- (2) The presiding member has a deliberative vote and, in the event of 26
an equality of votes, has a second or casting vote. 27

14 Voting 28

A decision supported by a majority of the votes cast at a meeting 29
of the Heritage Council at which a quorum is present is the 30
decision of the Heritage Council. 31

15 Transaction of business outside meetings or by telephone or other means 32 33

- (1) The Heritage Council may, if it thinks fit, transact any of its 34
business by the circulation of papers among all the members of 35
the Heritage Council for the time being, and a resolution in 36

	writing approved in writing by a majority of those members is taken to be a decision of the Heritage Council.	1 2
(2)	The Heritage Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.	3 4 5 6 7
(3)	For the purposes of:	8
	(a) the approval of a resolution under subclause (1), or	9
	(b) a meeting held in accordance with subclause (2),	10
	the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Heritage Council.	11 12
(4)	A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Heritage Council.	13 14 15
(5)	Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.	16 17 18
16	First meeting	19
	The Minister may call the first meeting of the Heritage Council in such manner as the Minister thinks fit.	20 21
17	Minutes of meetings	22
(1)	The Heritage Council must cause minutes of meetings and decisions at each meeting of the Heritage Council to be kept and must furnish the Minister with a copy of those minutes as soon as practicable after each meeting.	23 24 25 26
(2)	A copy of the minutes furnished to the Minister must be made available by the Heritage Council for public inspection without charge at the office of the Heritage Council during ordinary office hours.	27 28 29 30

Schedule 2	Amendment of Environmental Planning and Assessment Act 1979 No 203	1
		2
[1] Section 23G Joint regional planning panels		3
	Insert “any of a council’s” before “functions” in section 23G (2) (a).	4
[2] Section 23G (5A)–(5C)		5
	Insert after section 23G (5):	6
	(5A) Subject to the regulations, a regional panel is, in the exercise of functions conferred under subsection (2) (a), taken to be the council whose functions are conferred on a regional panel as referred to in subsection (2) (a).	7 8 9 10
	(5B) A regional panel is to exercise functions conferred as referred to in subsection (2) (a) to the exclusion of the applicable council (subject to any delegation under this Act).	11 12 13
	(5C) Subsections (5A) and (5B) apply to the Commission in its exercise of the functions of a regional panel under an environmental planning instrument that are conferred on the Commission under section 23D (1) (d) in the same way as they apply to a regional panel in the exercise of functions conferred as referred to in subsection (2) (a).	14 15 16 17 18 19
[3] Section 23H Regulations		20
	Omit section 23H (a). Insert instead:	21
	(a) the functions conferred by this Act on a regional panel including its procedures in exercising its functions, and procedures in relation to its determination of development applications and applications to modify development consents,	22 23 24 25 26
[4] Section 90 Application of this Division		27
	Insert “, other than development that requires a heritage approval” after “Division 4” in section 90 (2) (as amended by Schedule 2.2 [33] to the <i>Environmental Planning and Assessment Amendment Act 2008</i>).	28 29 30
[5] Section 90A Definitions		31
	Insert in alphabetical order:	32
	<i>heritage approval</i> means an approval in respect of the doing or carrying out of an act, matter or thing referred to in section 57 (1) of the <i>Heritage Act 1977</i> .	33 34 35

[6] Section 92	1
Insert after section 91A:	2
92 Consent authority may not refuse certain development applications	3
(1) This section applies to the determination by a consent authority of a development application for development that is integrated development for which a heritage approval is required.	4
(2) A consent authority must not refuse development consent on heritage grounds if the same development is the subject of a heritage approval.	5
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[7] Section 118 Appointment of planning administrator, planning assessment panel or regional panel	11
Insert at the end of section 118 (3) (b):	12
, or	13
(c) in relation to the preparation, making and approval of development control plans.	14
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[8] Section 118 (3) (d)	17
Insert at the end of section 118 (3) (c) (as inserted by item [7]):	18
, or	19
(d) in relation to the preparation and approval of contributions plans.	20
	21
[9] Section 158 Exclusion of personal liability	22
Insert after section 158 (d):	23
(d1) any committee referred to in section 22, or any member of such a committee, or	24
	25