

Act No. 11

## HERITAGE (AMENDMENT) BILL 1987

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The objects of this Bill are to amend the Heritage Act 1977—

- (a) to simplify the procedures whereby a permanent conservation order may be made following the making of an interim conservation order;
- (b) to extend the circumstances in which items of the environmental heritage, particularly relics and places, may be protected from harm;
- (c) to remove certain restrictions on the making of applications for the approval of consent authorities to activities which also require the approval of the Heritage Council;
- (d) to increase the membership of the Heritage Council from 11 to 12 by enabling the appointment of a person having knowledge of the building, development and property industries;
- (e) to make provision for the conservation of relics obtained from excavations carried out by the holders of excavation permits;
- (f) to increase the maximum penalty for offences against the Principal Act from \$10,000 to \$20,000;
- (g) to require the keeping by government instrumentalities of a register of items of the environmental heritage under their control; and
- (h) to generally facilitate the administration of the Principal Act.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the Heritage Act 1977 is referred to in the proposed Act as the Principal Act.

Clause 3 gives effect to the Schedules of amendments.

Clause 4 gives effect to the Schedule of savings and transitional provisions.

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

Schedule 1 (1) makes consequential amendments to various definitions in the Principal Act and inserts definitions of “affected person” and “Commissioner of Inquiry”.

Schedule 1 (2), (5) (b), (9), (10), (13) (a) and (16) enable, and make consequential amendments relating to, the making of a permanent conservation order for a precinct. (The Principal Act presently allows a permanent conservation order to be made only in respect of an item of the environmental heritage.)

Schedule 1 (3) provides for the contents of a notice of the making of an interim conservation order to be given to affected persons.

Schedule 1 (4) inserts proposed sections 29A–29D into the Principal Act.

Proposed section 29A enables objections to be made to the making of an interim conservation order within 6 months after the order takes effect and specifies the grounds of objection.

Proposed section 29B requires the Minister to appoint a Commissioner of Inquiry to hold an inquiry if an objection is made.

Proposed section 29C provides for the rights of appearance of persons at an inquiry.

Proposed section 29D requires a report of an inquiry to be made to the Minister and requires the Minister to make the report publicly available.

Schedule 1 (5) (a) reduces the duration of an interim conservation order from a maximum period of 2 years to a maximum period of 12 months, except where an inquiry under proposed section 29B has not been completed within the 12-month period.

Schedule 1 (6) substitutes section 31 of the Principal Act and provides for the Heritage Council to carry out an inquiry to determine whether a permanent conservation order should follow the making of an interim conservation order in a case where no objection is made to the making of the interim conservation order.

Schedule 1 (7) extends the circumstances in which the Minister may revoke an interim conservation order.

Schedule 1 (8) inserts proposed section 35A into the Principal Act. The proposed section enables the Minister to make a permanent conservation order in respect of an item of the environmental heritage or a precinct following consideration of a report of a Commissioner of Inquiry (under proposed section 29D of the Principal Act) or the Heritage Council (under the substituted section 31 of the Principal Act).

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Schedule 1 (11) amends section 39 of the Principal Act to remove any suggestion that the Minister may propose to make a permanent conservation order before persons who may be affected by the order have had an opportunity to object to it and Schedule 1 (12) makes amendments consequential on this amendment.

Schedule 1 (13) (b), (14), (15) and (19) provide that other inquiries required to be held under the Principal Act into the making or revocation of permanent conservation orders shall be held before a Commissioner of Inquiry.

Schedule 1 (17) makes consequential amendments.

Schedule 1 (18) amends section 50 of the Principal Act to remove any suggestion that the Minister may propose to revoke a permanent conservation order before persons who may be interested in the revocation have had an opportunity to make submissions concerning the revocation.

Schedule 1 (20) inserts a new Division 3 (Inquiries) into Part III of the Principal Act. The new Division contains proposed sections 55A and 55B.

Proposed section 55A is an interpretation provision.

Proposed section 55B provides for the procedure to be followed at an inquiry conducted by a Commissioner of Inquiry into the making of an interim conservation order or the making or revocation of a permanent conservation order. The proposed section is substantially the same as section 120 of the Environmental Planning and Assessment Act 1979 which relates to the conduct of a Commission of Inquiry under that Act.

Schedule 1 (21) makes a consequential amendment.

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

Schedule 2 (1) makes a consequential amendment.

Schedule 2 (2) inserts a definition of "harm" into Division 8 of Part VI of the Principal Act so as to extend the scope of the Division beyond its present scope of enabling only buildings and works to be protected from damage and demolition to enable relics and places (including trees and other vegetation on those places) to be protected from damage also.

Schedule 2 (3)–(6) (d) and (7)–(9) amend provisions of the Division to extend its operation to prevent harm to relics and places.

Schedule 2 (6) (e) provides that an order under section 130 of the Principal Act preventing harm to a building, work, relic or place shall not remain in force for more than 12 months.

Schedule 2 (6) (f) provides that notice to the Heritage Council of intention to cause harm of only a minor nature to a building, work, relic or place the subject of an order under section 130 of the Principal Act will not have the potential to terminate the order after 40 days in the way in which a notice of intention to carry out more significant harm does.

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Schedule 2 (10) inserts proposed section 137A into the Principal Act to make it clear that a protection order under the Division prevails over orders made under other Acts which might otherwise permit buildings, works, relics or places to be harmed.

Schedule 2 (11) makes a consequential amendment.

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

Schedule 3 (1) adds to the list of activities which cannot be carried out, except in accordance with the approval of the Heritage Council, in respect of an item of the environmental heritage which is subject to an interim conservation order or a permanent conservation order—

- (a) the moving of a relic; and
- (b) the damaging or destruction of vegetation, other than trees (trees currently being included in the list).

Schedule 3 (2) requires the Heritage Council to refuse to approve an application to wholly demolish a building or work which is subject to an interim conservation order (as is currently the case with a building or work which is subject to a permanent conservation order).

Schedule 3 (3) substitutes sections 67–69 of the Principal Act.

Proposed section 67 enables an application for the approval of a consent authority to an activity which also requires the approval of the Heritage Council to be made at any time but prevents the consent authority from giving its approval before the Heritage Council's determination of the application has been notified to it.

Proposed section 68 requires the approval of a consent authority to be consistent with a relevant determination of the Heritage Council.

Proposed section 69 preserves the liability of a consent authority in respect of an approval granted by it.

Schedule 1 (4) makes it clear that no appeal lies to the Minister from the refusal of the Heritage Council to approve an application to wholly demolish a building or work which is subject to an interim conservation order or a permanent conservation order.

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

Schedule 4 (1) (a), (d), (e), (f), (g) and (h) amend interpretation provisions in the Principal Act to bring the definition of "development" into line with the definition of development in the Environmental Planning and Assessment Act 1979.

Schedule 4 (1) (b) substitutes the definition of "relic" so as to include objects which are 50 or more years old.

Schedule 4 (1) (c) and (10) make amendments by way of statute law revision.

Schedule 4 (2) increases the membership of the Heritage Council from 11 to 12 by enabling the appointment of a person having knowledge of the building, development and property industries.

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Schedule 4 (3) increases the quorum at a meeting of the Heritage Council from 6 to 7.

Schedule 4 (4) confers on the Heritage Council additional functions so as to enable it to make submissions in respect of instruments prepared under the Environmental Planning and Assessment Act 1979 and to furnish information relating to the environmental heritage.

Schedule 4 (5) makes an amendment consequential on an amendment made by Schedule 4 (13).

Schedule 4 (6), (7) and (8) provide for certain functions relating to appeals made against decisions of the Heritage Council to be exercised by a Commissioner of Inquiry.

Schedule 4 (9) facilitates the affixing of the seal of the corporation constituted by section 102 of the Principal Act.

Schedule 4 (11) inserts proposed sections 146A–146C into the Principal Act.

Proposed section 146A requires the holder of an excavation permit to notify the Minister of a relic obtained from an excavation carried out by the holder.

Proposed section 146B enables the Minister to direct that such a relic shall be given to an appropriate custodian, such as the Museum of Applied Arts and Sciences.

Proposed section 146C provides that a relic subject to such a direction of the Minister shall, without payment of compensation, be forfeited to the Crown.

Schedule 4 (12) facilitates the service of notices by or upon the Heritage Council.

Schedule 4 (13) increases the maximum penalty for offences against the Principal Act from \$10,000 to \$20,000.

Schedule 4 (14) substitutes section 168 of the Principal Act and inserts proposed sections 169 and 170 into the Principal Act.

Proposed section 168 limits the liability of persons acting under the authority of the Principal Act for actions done in good faith.

Proposed section 169 enables the Minister, the corporation constituted by section 102 of the Principal Act, the Heritage Council and the Chairman of the Heritage Council to delegate their functions.

Proposed section 170 requires government instrumentalities to keep and make publicly available a Heritage and Conservation Register in which they are to record particulars of items of the environmental heritage under their control.

#### SCHEDULE 5—SAVINGS AND TRANSITIONAL PROVISIONS

Schedule 5 contains savings and transitional provisions consequent upon the enactment of the proposed Act.

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