

[Act 2001 No 65]



New South Wales

Heritage Amendment Bill 2001

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Heritage Act 1977* so as:

- (a) to provide for the protection of historic shipwrecks situated within the limits of New South Wales, and
- (b) to allow approval under that Act to be given to the demolition of buildings and works within a place or precinct that is an item of State heritage significance in circumstances in which the heritage significance of the place or precinct will be unaffected by the proposed demolition, and
- (c) to allow approval under that Act to be given in the form of a “deferred commencement” or “partial or conditional” approval, and
- (d) to provide for the modification of approvals granted under that Act, and
- (e) to allow the Heritage Council to except from the requirement for an excavation permit under that Act any excavation of land the subject of an archaeological assessment that indicates that the land is unlikely to contain relics of any heritage significance, and

- (f) to extend the time within which proceedings may be commenced in respect of offences against that Act, and
- (g) to authorise the making of regulations with respect to the fees that may be imposed for the services provided by the Heritage Council, and
- (h) to make other minor, consequential and ancillary amendments to that Act, and
- (i) to enact savings and transitional provisions.

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.

Clause 3 is a formal provision giving effect to the amendments to the *Heritage Act 1977* set out in Schedule 1.

Protection of historic shipwrecks

Schedule 1 [4] inserts a new Part 3C into the Act. The new Part contains the following provisions:

Proposed section 47 defines certain words and expressions for the purposes of the proposed Part, namely, *excavation permit*, *historic shipwreck*, *historic shipwrecks permit*, *historic shipwrecks protection order*, *Register of Shipwrecks*, *ship* and *State waters*.

Proposed section 48 enables the Minister, by means of a historic shipwrecks protection order, to declare the remains of any ship situated in State waters to be a historic shipwreck.

Proposed section 49 requires the Heritage Council to keep a Register of Shipwrecks containing particulars of each historic shipwrecks protection order.

Proposed section 50 confers on the Heritage Council the function of providing advice to the Minister with respect to the making of historic shipwrecks protection orders.

Proposed section 51 prohibits the movement, damage or destruction of any historic shipwreck otherwise than in accordance with a historic shipwrecks permit. It will be a defence to proceedings for an offence under the proposed section if the defendant establishes that the act giving rise to the offence was done for the purpose of saving human life, securing the safety of a ship where the ship was endangered by stress of weather or by navigational hazards or dealing with an emergency involving a serious threat to the environment.

Proposed section 52 excludes from the operation of the proposed Part any waters to which the *Historic Shipwrecks Act 1976* of the Commonwealth applies.

Schedule 1 [3] amends section 23 so as to require the Heritage Council to include in its annual report matters relating to the advice it has given to the Minister with respect to the making of historic shipwrecks protection orders.

Schedule 1 [16] makes a consequential amendment to the heading to Division 9 of Part 6.

Schedule 1 [17], [20] and [21] amend Division 9 of Part 6 so as to provide for the granting, variation and revocation of historic shipwrecks permits.

Schedule 1 [22] substitutes section 146B so as to enable the Minister to direct that historic shipwrecks (or articles associated with them) be given to museums or other conservation bodies.

Demolition of buildings and works in heritage places and precincts

Schedule 1 [6] amends section 63 (3) so as to permit an approval body to approve the demolition of a building or work that is situated in a place or precinct that is an item of State heritage significance (but is not itself such an item) if it is of the opinion that its demolition will not have a materially detrimental effect on the heritage significance of the place or precinct.

“Deferred commencement” and “partial or conditional” approvals

Schedule 1 [7] inserts new sections 63A and 63B into the Act.

Proposed section 63A provides for the granting of deferred commencement approvals, generally along the same lines as deferred commencement consents under section 80 (3) of the *Environmental Planning and Assessment Act 1979* and the regulations under that Act. Operation of such an approval will be deferred until the applicant for the approval demonstrates to the approval body that a condition that must be satisfied before the approval comes into operation has been satisfied.

Proposed section 63B provides for the granting of partial or conditional approvals, generally along the same lines as staged development consents under section 80 (4) and (5) of the *Environmental Planning and Assessment Act 1979* and the regulations under that Act. Such an approval may be granted for limited aspects of the activity for which approval is sought, requiring a further approval for other aspects of the activity.

Schedule 1 [1], [11] and [14] make consequential amendments to sections 4, 70 and 70A of the Act.

Modification of approvals

Schedule 1 [8] inserts new section 65A into the Act.

Proposed section 65A provides for the modification of approvals, generally along the same lines as the modification of development consents under section 96 of the *Environmental Planning and Assessment Act 1979* and the regulations under that Act.

Schedule 1 [9], [10], [12] and [13] make consequential amendments to sections 70 and 70A of the Act.

Exceptions from requirement for excavation permit

Schedule 1 [19] amends section 139 (4) so as to enable an order under that subsection to except, from the requirement for an excavation permit for the excavation of land believed to contain relics, 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 or that any relics in the land are unlikely to have State or local heritage significance.

Extension of time for commencing criminal proceedings

Schedule 1 [24] inserts new section 158A into the Act.

Proposed section 158A enables proceedings for an offence against the Act or the regulations to be commenced up to 12 months after the alleged commission of the offence (rather than 6 months, as is presently the case). The new section will also allow such proceedings to be commenced up to 12 months after evidence of the commission of the offence first came to the attention of the relevant officials. The proposed section generally follows section 216 of the *Protection of the Environment Operations Act 1997*.

Schedule 1 [23] makes a consequential amendment to section 158.

Fees chargeable by the Heritage Council

Schedule 1 [25] inserts proposed section 166A so as to enable the regulations to make provision with respect to the fees that may be imposed in relation to the services provided by the Heritage Council, including the services provided by it in connection with the review of conservation management plans and the handling of applications under the Act.

Minor, consequential and ancillary amendments

Schedule 1 [2] amends section 4 (2A) so as to ensure that any reference in the Act to the excavation of land extends to the excavation of land beneath State waters (as to be defined in proposed Part 3C).

Schedule 1 [5] updates certain references to provisions of the *Environmental Planning and Assessment Act 1979*.

Schedule 1 [15] amends section 137A so as to restore the effect of any notice or order that has become void under that section as a result of the making of an interim heritage order in the event that:

- (a) the interim heritage order lapses, is revoked or otherwise ceases to have effect, or
- (b) an approval is granted under the Act in relation to the building, work, relic or place to which the interim heritage order applies.

Schedule 1 [18] amends section 139 so as to ensure that any order creating exceptions to that section may specify conditions to which such an exception is subject.

Savings and transitional provisions

Schedule 1 [26] amends clause 1 of Schedule 1 so as to provide for the making of savings and transitional regulations in connection with the enactment of the proposed Act.

Schedule 1 [27] inserts a new Part 4 into Schedule 1 so as to enact specific savings and transitional provisions in connection with the enactment of the proposed Act.