



New South Wales

Heritage Amendment Bill 2011

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to reduce the number of members of the Heritage Council from 11 to 9,
- (b) to abolish Ministerial Review Panels,
- (c) to require the Heritage Council, once it makes a decision to recommend the listing of an item on the State Heritage Register under section 33 of the *Heritage Act 1977 (the Act)*, to make the recommendation to the Minister within 14 days of giving of notice of the decision,
- (d) to require the Minister to publish all decisions relating to whether or not to direct the listing of items on the State Heritage Register and the reasons for the decisions,
- (e) to require the publication of certain written submissions made by the Heritage Council to a consent authority in relation to certain State significant development that affects State heritage matters,
- (f) to enable the Heritage Council, rather than the Minister, to approve forms for the purposes of the Act,

(g) to make other minor and consequential amendments.

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.

Schedule 1 Amendment of Heritage Act 1977 No 136

Schedule 1 [1] amends the definition of *approved form* in the Act so that the Heritage Council (rather than the Minister) is responsible for approving forms for the purposes of the Act. **Schedule 1 [12]** inserts a transitional provision which provides that all current approved forms are taken to have been approved by the Heritage Council on the commencement of the amendment.

Schedule 1 [2], [9] and [10] make amendments consequential on the transfer of the allocation of the Act from the Minister for Planning to the Minister for Heritage.

Schedule 1 [3] reduces the number of members of the Heritage Council from 11 to 9. **Schedule 1 [4]** removes 2 of the 3 members who are not appointed members (with the number of appointed members remaining unchanged).

Schedule 1 [5] requires any written submission of the Heritage Council to a consent authority in relation to certain types of State significant development that affect State heritage matters to be published on the internet.

Schedule 1 [6] makes an amendment to section 33 of the Act so that the Heritage Council is required to make a recommendation to the Minister, following a decision to recommend the listing of an item on the State Heritage Register, within 14 days of giving notice of the decision (rather than as soon as possible).

Schedule 1 [7] makes it necessary for the Minister to publish all decisions relating to whether or not to direct the listing of items on the State Heritage Register and the reasons for the decisions (the current requirement relates to decisions not to list an item only).

Schedule 1 [8] abolishes Ministerial Review Panels (being panels of 3 persons appointed to advise the Minister on a recommendation by the Heritage Council for a listing on the State Heritage Register). **Schedule 1 [7]** makes consequential amendments and **Schedule 1 [12]** inserts a transitional provision which provides that the amendments in Schedule 1 [7] and [8] apply only in relation to a recommendation for listing that is made by the Heritage Council after the commencement of those amendments.

Schedule 1 [11] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

First print



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New South Wales

Heritage Amendment Bill 2011

No. , 2011

A Bill for

An Act to amend the *Heritage Act 1977* in relation to the Heritage Council and the listing of items on the State Heritage Register; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Heritage Amendment Act 2011</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5

Schedule 1	Amendment of Heritage Act 1977 No 136	1
[1]	Section 4 Definitions	2
	Omit “Minister” from the definition of <i>approved form</i> in section 4 (1).	3
	Insert instead “Heritage Council”.	4
[2]	Section 4 (1), definition of “Director-General”	5
	Omit the definition.	6
[3]	Section 8 Members of Heritage Council	7
	Omit “11” from section 8 (1). Insert instead “9”.	8
[4]	Section 8 (2)	9
	Omit the subsection. Insert instead:	10
	(2) The other member is to be the Director-General of the Department of Planning and Infrastructure.	11 12
[5]	Section 21B	13
	Insert after section 21A:	14
21B	Publication of certain submissions	15
(1)	Any written submission in relation to State significant development that is made by the Heritage Council to a consent authority, or to any other person or body having functions under the <i>Environmental Planning and Assessment Act 1979</i> with respect to the approval of that development, is to be made publicly available on the internet by the Heritage Council within 14 days after the submission is made.	16 17 18 19 20 21 22
(2)	In this section, <i>State significant development</i> means:	23
(a)	development that, were it not State significant development, State significant infrastructure or a transitional Part 3A project under the <i>Environmental Planning and Assessment Act 1979</i> , would require approval under Part 4 of this Act or an excavation permit under section 139 of this Act, or	24 25 26 27 28 29
(b)	development that is State significant development, State significant infrastructure or a transitional Part 3A project under the <i>Environmental Planning and Assessment Act 1979</i> and that impacts on an item of State heritage significance that is not on the State Heritage Register or the subject of an interim heritage order.	30 31 32 33 34 35

[6] Section 33 Procedure before recommendation for listing	1
Omit “as soon as possible” from section 33 (1) (f).	2
Insert instead “within 14 days”.	3
[7] Section 34	4
Omit the section. Insert instead:	5
34 Action by Minister following recommendation for listing	6
(1) Within 14 days after the Heritage Council makes a recommendation for listing to the Minister, the Minister must:	7
(a) decide whether or not to direct the listing and inform the Heritage Council of that decision, or	8
(b) request the Planning Assessment Commission to review the matter.	9
(2) If the Minister requests a review by the Planning Assessment Commission, the Minister must, within 14 days after the Commission provides its report:	10
(a) consider that report, and	11
(b) decide whether or not to direct the listing, and	12
(c) inform the Heritage Council of that decision.	13
(3) The Minister may make a request under this section on the Minister’s own motion or after a request by an affected owner, mortgagee, lessee or occupier.	14
(4) A decision of the Minister to direct, or not to direct, the listing on the State Heritage Register of an item that the Heritage Council has recommended be listed is to contain the reasons for listing or not listing the item and is to be made publicly available on the internet by the Heritage Council within 7 days after the decision is made.	15
[8] Section 35 Ministerial Review Panel	16
Omit the section.	17
[9] Section 36 Planning Assessment Commission	18
Insert “of the Department of Premier and Cabinet” after “Director-General” where firstly occurring in section 36 (1) (e).	19
[10] Section 121 Failure to comply with order	20
Insert “of the Department of Planning and Infrastructure” after “Director-General” in section 121 (5) (c).	21

[11] Schedule 1 Savings and transitional provisions	1
Insert at the end of clause 1 (1):	2
<i>Heritage Amendment Act 2011</i>	3
[12] Schedule 1, Part 6	4
Insert after clause 18:	5
Part 6 Provisions consequent on enactment of Heritage Amendment Act 2011	6 7
19 Approved forms	8
Any form approved by the Minister, being a form that is an <i>approved form</i> for the purposes of this Act immediately before the amendment of that definition by Schedule 1 [1] to the <i>Heritage Amendment Act 2011</i> , is taken to have been approved by the Heritage Council on the commencement of that amendment.	9 10 11 12 13 14
20 Application of amendments that abolish Ministerial Review Panels	15
The amendments made to this Act by Schedule 1 [7] and [8] to the <i>Heritage Amendment Act 2011</i> apply only in relation to a recommendation for listing that is made by the Heritage Council after the commencement of those amendments.	16 17 18 19