

[Act 1998 No 138]



New South Wales

Heritage Amendment Bill 1998

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*:

- (a) to replace provisions for the making of permanent conservation orders by the Minister with provisions for the listing of items on a new State Heritage Register.
 - (b) to provide for the making of heritage agreements between the Minister and the owner of an item of State heritage significance,
 - (c) to establish the Heritage Incentive Fund to be used to provide financial assistance to the owners of land subject to heritage agreements,
 - (d) to provide for minimum standards of maintenance and repair for items listed on the State Heritage Register and to provide for the enforcement of those minimum standards by the Heritage Council, in place of existing provisions based on an offence of deliberately allowing a building or work to fall into disrepair,
 - (e) to authorise the Minister to restrict future development of land to the envelope occupied by a heritage item when a person has been convicted of certain offences involving the heritage item or has not complied with an order to repair and maintain a heritage item,
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- (f) to replace provisions for the making of interim conservation orders and section 130 (harm prevention) orders with provisions for the making of interim heritage orders and to simplify procedures for the making of those orders,
- (g) to provide for interim heritage orders to be made by the Minister for items of State or local heritage significance and for the Minister to authorise local councils to make interim heritage orders for items of local heritage significance,
- (h) to extend the operation of the Act to include moveable objects of heritage significance,
- (i) to impose further obligations on government instrumentalities in respect of items of the environmental heritage that they own or occupy (with *government instrumentality* being extended to include State owned corporations),
- (j) to alter the circumstances in which an excavation permit will be required to authorise excavation so that such a permit will be required when a person knows or has reasonable cause to suspect that a relic will or is likely to be found,
- (k) to alter provisions that regulate excavations in connection with the protection of relics. to clarify the circumstances in which an excavation permit is required and to extend requirements that relate to the notification of the discovery of a relic and the conservation of relics discovered during excavations,
- (l) to impose specific legislative requirements with respect to the existing administrative obligations of local councils in connection with the preparation of local environmental plans that apply to items of the environmental heritage of local heritage significance,
- (m) to enable the Land and Environment Court to order the rebuilding of a building demolished in contravention of the Act,
- (n) to increase the maximum penalty for an offence against the Act from 200 penalty units to 10,000 penalty units (currently \$1,100,000),
- (o) to increase the maximum penalty for an offence against the regulations from 5 penalty units to 50 penalty units (currently \$5,500)
- (p) to make minor changes to the way in which heritage precincts are dealt with so that the heritage significance of a precinct will be assessed in much the same way as other heritage items,

(q) to make miscellaneous amendments in respect of annual reports, the functions of the Chairperson of the Heritage Council and other minor matters,

(r) to enact consequential savings and transitional provisions.

The Bill also makes consequential amendments to various other Acts.

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 that gives effect to the amendments to the *Heritage Act 1977* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to other Acts that are consequential on the amendments made by Schedule 2.

Schedule 1 Amendment of Heritage Act 1977

Schedule 1 [1] omits various definitions used in the Act and inserts new definitions.

Schedule 1 [2] amends the definition of *conservation* by replacing the concept of "enhancement" with that of "adaptation".

Schedule 1 [3] makes a minor amendment to an interpretation provision and inserts a new interpretation provision that makes it clear that the Act applies to items of the environmental heritage even if they are wholly or partly covered by water.

Schedule 1 [4] inserts a new interpretation provision for the new concepts of State heritage Significance and local heritage significance.

Schedule 1 [5] makes a consequential amendment.

Schedule 1 [6] and **[7]** provide that the Deputy Chairperson of the Heritage Council is to preside at a meeting of the Council if requested to do so by the Chairperson even if the Chairperson is present at the meeting.

Schedule 1 [8] adds 2 new functions to the functions of the Heritage Council. The new functions are to maintain a database of all heritage orders and listings and to conduct community education concerning the State's environmental heritage.

Schedule 1 [9] provides for the establishment of committees by the Heritage Council.

Schedule 1 [10] revises the provision dealing with the keeping of registers by the Heritage Council to include the new heritage agreements and the State Heritage Register provided for in these amendments.

Schedule 1 [11] revises the provision dealing with the contents of the annual report of the Heritage Council to take account of the amendments made by this Bill.

Schedule 1 [21] allows the annual report of the Heritage Office (which is a government department) to include matters that are required to be included in the Heritage Council's annual report.

Schedule 1 [13] replaces Part 3 of the Act (currently providing for interim and permanent conservation orders) with new Parts 3 (Interim heritage orders for items of State or local heritage significance), 3A (State Heritage Register) and 3B (Heritage agreements).

Existing Part 3 Division 1 deals with interim conservation orders which are orders made by the Minister on the recommendation of the Heritage Council. Interim conservation orders generally remain in force for 12 months or until a permanent conservation order is made under existing Part 3 Division 2. A permanent conservation order remains in force indefinitely. A building, work, relic, place or site that is the subject of an interim or permanent conservation order is subject to various restrictions designed to protect and conserve it.

Under the **new Part 3**, interim heritage orders will replace interim conservation orders. The new orders will be capable of application to moveable objects (not just places, buildings, works, relics and sites as at present). Precincts will also be dealt with in a slightly different way, so that their heritage significance will be assessed in the same way as other items of the environmental heritage. Interim heritage orders will be made by the Minister in the case of items of State or local heritage significance and by local councils in the case of items of local heritage significance. Local councils will be able to make those orders under an approval system whereby the Minister can authorise a local council to make the orders for its local heritage. Only councils authorised by the Minister will be able to make the orders.

The procedure for the making of interim heritage orders will be simplified.

The orders will remain in force for up to 12 months unless the item is listed on the State Heritage Register (which replaces the making of a permanent conservation order) in the meantime. The Heritage Council provides advice to the Minister on the making of interim heritage orders.

There will be an appeal to the Land and Environment Court against the making of an interim heritage order by a council. There is no appeal against the making of an interim heritage order by the Minister.

Under **new Part 3A**, a new State Heritage Register (*SHR*) is provided for. The listing of an item on the SHR will have much the same effect as the making of a permanent conservation order does at present. The procedure for listing on the SHR will be simplified. Listing will be at the discretion of the Minister. An item cannot be listed unless the Heritage Council recommends its listing. There is provision for public notification and the making of submissions on a proposed listing. The Minister can refer a recommendation for listing to a new Ministerial Review Panel or (as is the case with permanent conservation orders) to a Commissioner of Inquiry. The procedure for the removal of an item from the SHR is the same as that for listing.

Under **new Part 3B**, the Minister and the owner of an item that is listed on the State Heritage Register will be able to enter into a heritage agreement to provide for the conservation of the item. Among other things, a heritage agreement will be able to provide for the provision of financial, technical and other professional advice and assistance to the owner. Provision is made for the registration on title of a heritage agreement, so that it will bind future owners of land and for the enforcement of the provisions of a heritage agreement by injunction.

Schedule 1 [14] makes a consequential amendment to a Part heading.

Schedule 1 [15] inserts a new definition of *approval body* for the purposes of the development approvals provisions under Part 4 of the Act, with the Minister being the approval body for interim heritage orders made by the Minister and listing on the State Heritage Register and a local council being the approval body for an interim heritage order made by the council.

Schedule 1 [16] makes consequential amendments to the existing provision (section 57) of the Act that imposes restrictions on development and other activities with respect to items of the environmental heritage that are the subject of an interim heritage order or listing on the State Heritage Register. The amendment also inserts new provisions that exempt State significant development (under the *Environmental Planning and Assessment Act 1979*) and development by the Crown from the operation of interim heritage orders

made by a local council, and allows the new heritage agreements provided for by this Bill to create exceptions to the restrictions imposed on development and other activities.

Schedule 1 [17] makes it clear that the existing power of the Minister to grant exemptions from the restrictions imposed by section 57 extends to apply in respect of interim heritage orders made by local councils.

Schedule 1 [18] confers an exemption power on local councils in respect of the restrictions imposed by section 57 in the case of interim heritage orders made by councils.

Schedule 1 [19]–[24] make consequential amendments.

Schedule 1 [25] provides for an appeal to the Land and Environment Court against a decision by a local council on an application for approval for development or other activities restricted by section 57. This right of appeal is in addition to the existing right of appeal against a decision by the Heritage Council on such an application (now to be in the case of an interim heritage order made by the Minister or listing on the State Heritage Register).

Schedule 1 [26] and [27] make consequential amendments.

Schedule 1 [28] imposes requirements on local councils with respect to the preparation of local environmental plans (LEPs) under the *Environmental Planning and Assessment Act 1979*. Councils will be required to ensure that LEPs contain appropriate heritage conservation provisions for items of the environmental heritage to which they apply. The amendment also provides for the Heritage Council to issue guidelines to councils with respect to how councils are to exercise their functions in connection with the preparation of LEPs for the purpose of facilitating the identification of items of the environmental heritage of local heritage significance and their conservation and management. This replaces the current administrative direction given to local councils under section 117 of the *Environmental Planning and Assessment Act 1979*.

Schedule 1 [29] provides that the financial statements of the Heritage Office need not contain matters that are provided for in the financial statements of the Ministerial Corporation established under the Act.

Schedule 1 [30] sets up the Heritage Incentive Fund, which is to be used to provide financial assistance under section 45 to the owner of an item or land that is the subject of a heritage agreement.

Schedule 1 [31]–[34] replace provisions dealing with the obligation to keep a protected item of the environmental heritage in repair. Those provisions

create an offence of allowing a protected item to fall into disrepair for the purpose of effecting its demolition, enabling the redevelopment of the site or enabling the development of adjoining land. The provisions go on to allow the Heritage Council to order the carrying out of repairs in such a case. The new provisions to be inserted by the Bill provide for the regulations to impose minimum standards of maintenance and repair for items that are listed on the State Heritage Register. It will be an offence not to repair and maintain in accordance with those minimum standards and the Heritage Council will have power to order compliance. The Heritage Council will be empowered to carry out and recover for repairs and maintenance where the owner fails to do so in contravention of an order for repairs and maintenance.

Schedule 1 [35] adds to the list of available sanctions against an owner who fails to comply with an order for repairs and maintenance. The new sanction will be an order by the Minister that no development can be carried out on the affected land except within the envelope of the existing development.

Schedule 1 [36]–[39] make consequential amendments.

Schedule 1 [40] provides for the phasing out of a land tax concession, so that the concession will cease in 5 years and during those 5 years will apply only to those heritage items that were subject to a permanent conservation order on commencement of the amendment. The concession currently operates by requiring each heritage affected property to be assessed separately and as if it were the only land owned by the owner.

Schedule 1 [41] and **[42]** make consequential amendments.

Schedule 1 [43] omits provisions that allow the Minister to prevent harm to items that may be found to be heritage items. The provisions are superseded by the new simplified provisions for protection of heritage items by interim heritage order.

Schedule 1 [44]–[49] make consequential amendments.

Schedule 1 [50] replaces the provision that imposes restrictions on excavating for relics. Under the current provision, an excavation permit issued by the Heritage Council is required to excavate for the purpose of discovering a relic. Under the new provision, a person will require an excavation permit to excavate in circumstances where the person knows or has reasonable cause to suspect that the excavation will or is likely to result in a relic being found, or where the person has already found a relic on the land.

Schedule 1 [51] imposes a requirement on a person who finds a relic to provide information about the find to the Heritage Council if the Heritage Council requests it.

Schedule 1 [52] broadens the power of the Minister to give directions for the conservation of a relic discovered in the course of an excavation. Currently the power applies only in the case of a person who recovers a relic when excavating under an excavation permit. The amendment will extend this to a person who should have obtained an excavation permit but did not. The amendment will also broaden the class of persons to whom a relic can be directed to be given for the purposes of its conservation.

Schedule 1 [53]–[62] make consequential amendments.

Schedule 1 [63] broadens the power of the Land and Environment Court to make orders to remedy or restrain a breach of the Act. If the breach comprises the demolition of the whole or part of a building, the amendment will enable the Court to order the rebuilding of the building in accordance with plans and specifications approved by the Heritage Council.

Schedule 1 [64] increases the maximum penalty for an offence against the Act from 200 penalty units to 10,000 penalty units (currently \$1,100,000).

Schedule 1 [65] increases the maximum penalty for an offence against the regulations from 5 penalty units to 50 penalty units (currently \$5,500).

Schedule 1 [66] increases the maximum penalty that can be imposed by a local court for an offence against the Act from 20 to 200 penalty units (currently \$22,000).

Schedule 1 [67] makes a consequential amendment.

Schedule 1 [68] and **[69]** broaden the power of the Minister to make orders against a person who has been convicted of an offence involving the demolition, damaging or despoliation of a heritage item. The amendments will enable the Minister to give an order that restricts future development to the envelope occupied by the heritage item at the time of the offence.

Schedule 1 [70] makes consequential amendments.

Schedule 1 [71] provides for the delegation of functions by the Heritage Council to a committee of the Council.

Schedule 1 [72]–[74] make consequential amendments.

Schedule 1 [75] imposes further obligations on government instrumentalities in respect of items of the environmental heritage that they own or occupy. Those obligations relate to notification of the Heritage Council of certain

proposed dealings with heritage items, compliance with State Owned Heritage Management Principles approved by the Minister, compliance with heritage asset management guidelines issued by the Heritage Council, and reporting requirements. **Schedule 1 [1]** extends the definition of *government instrumentality* to include State owned corporations.

Schedule 1 [76] enacts consequential savings and transitional provisions.

Schedule 2 Consequential amendment of other Acts

Schedule 2 makes consequential amendments to various Acts.