

Heritage Amendment Act 2009 No 34

[2009-34]



New South Wales

Status Information

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Note**

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New South Wales

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Heritage Amendment Act 2009 No 34



New South Wales

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.

1 Name of Act

This Act is the *Heritage Amendment Act 2009*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) Schedule 1 [18]–[23] and Schedule 2 [7]–[9] are taken to have commenced on 3 November 2008.
- (3) Schedule 2 [1] and [2] commence on the commencement of section 23G of the *Environmental Planning and Assessment Act 1979* to be inserted by Schedule 2.1 [13] to the *Environmental Planning and Assessment Amendment Act 2008*.
- (4) Schedule 2 [3] commences on the commencement of section 23H of the *Environmental Planning and Assessment Act 1979* to be inserted by Schedule 2.1 [13] to the *Environmental Planning and Assessment Amendment Act 2008*.

Schedule 1 Amendment of Heritage Act 1977 No 136

[1] Section 3

Insert after section 2:

3 Objects

The objects of this Act are as follows:

- (a) to promote an understanding of the State's heritage,
- (b) to encourage the conservation of the State's heritage,

- (c) to provide for the identification and registration of items of State heritage significance,
- (d) to provide for the interim protection of items of State heritage significance,
- (e) to encourage the adaptive reuse of items of State heritage significance,
- (f) to constitute the Heritage Council of New South Wales and confer on it functions relating to the State's heritage,
- (g) to assist owners with the conservation of items of State heritage significance.

[2] Section 4 Definitions

Omit "section 8 (2) (a) (i)" from the definition of **Chairperson** in section 4 (1).

Insert instead "section 8 (5)".

[3] Section 4 (1), definitions of "Department" and "Director-General"

Omit the definitions. Insert in alphabetical order:

Director-General means the Director-General of the Department of Planning.

[4] Section 4 (1), definition of "Director"

Omit the definition.

[5] Section 4 (1), definition of "relic"

Omit the definition. Insert instead:

relic means any deposit, artefact, object or material evidence that:

- (a) relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and
- (b) is of State or local heritage significance.

[6] Section 4A Heritage significance

Omit section 4A (3). Insert instead:

- (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.

- (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.

[7] Section 6 Definitions

Omit the section.

[8] Section 7 The Council

Insert at the end of the section:

- (2) The Heritage Council is a NSW Government agency.

[9] Sections 8 and 9

Omit sections 8-20. Insert instead:

8 Members of Heritage Council

- (1) The Heritage Council is to consist of 11 members. Of the members, 8 are to be appointed by the Minister (the ***appointed members***).
- (2) The other 3 members are to be:
- (a) the NSW Government Architect, and
 - (b) the Director-General, and
 - (c) the Director-General of the Department of Environment and Climate Change.
- (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:
- (a) Aboriginal heritage,
 - (b) archaeology,
 - (c) architecture,
 - (d) the building, development and property industries,
 - (e) conservation of the environmental heritage,
 - (f) engineering,
 - (g) New South Wales or Australian history,

- (h) local government,
 - (i) moveable heritage,
 - (j) natural heritage,
 - (k) planning,
 - (l) property, planning or environmental law,
 - (m) property economics,
 - (n) rural interests,
 - (o) cultural landscapes.
- (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).
- (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.
- (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.

9 Members and procedure of Heritage Council

Schedule 2 contains provisions relating to the members and procedure of the Heritage Council.

[10] Section 21 Functions of Heritage Council

Omit section 21 (2) (a) (ii). Insert instead:

- (ii) proposed environmental planning instruments, and

[11] Section 23 Annual report

Insert at the end of section 23 (2) (a) (vi):

, and

- (a1) particulars of stop work orders made under section 79C, and

[12] Section 23 (4)

Omit the subsection. Insert instead:

- (4) The report of the Heritage Council under this section may be included in the annual report of the Department of Planning.

[13] Section 32 Minister can direct listing on State Heritage Register

Omit section 32 (1) and (2). Insert instead:

- (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:
- (a) the recommendation of the Heritage Council that the item should be listed,
 - (b) whether the long-term conservation of the item is necessary,
 - (c) whether the listing would render the item incapable of reasonable or economic use,
 - (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.
- (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.

[14] Section 33 Procedure before recommendation for listing

Omit section 33 (1). Insert instead:

- (1) Before making a recommendation for the listing of an item on the State Heritage Register, the Heritage Council must follow this procedure:
- (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 ***notice of intention to consider listing***):
 - (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
 - (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
 - (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
- (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
 - (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
 - (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
 - (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).

[15] Section 33 (2) (d)

Omit “without causing undue financial hardship to the owner, mortgagee or lessee”.

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”.

[16] Section 33 (3) and (4)

Insert after section 33 (2):

- (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:
 - (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
 - (b) if it satisfies only one of those criteria, the item is of such particular significance that it should be listed.
- (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)):
 - (a) whether the long-term conservation of the item is necessary,

(b) whether the listing would render the item incapable of reasonable or economic use,

(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.

[17] Section 34 Action by Minister following recommendation for listing

Insert after section 34 (2):

(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.

(4) If the Minister decides not to direct the listing on the State Heritage Register of an item that the Heritage Council has recommended be listed, the decision is to contain the reasons for not listing the item and is to be made publicly available within 7 days of the decision.

[18]-[23] (Repealed)

[24] Section 37 Action by Heritage Council on Minister's decision

Omit section 37 (1) (a). Insert instead:

(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,

[25] Section 38 Removal of items from State Heritage Register

Omit section 38 (1). Insert instead:

(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:

(a) if the Minister is of the opinion that the item is not of State heritage significance, or

(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:

(i) the listing renders the item incapable of reasonable or economic use,

(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.

[26] Section 38 (3)

Insert “(other than section 33 (3))” after “sections 33–37”.

[27] Section 38A

Insert after section 38:

38A Conservation management plans for State heritage items

- (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.
- (2) The regulations may make provision for or with respect to conservation management plans for items listed on the State Heritage Register.
- (3) In this section:

conservation management plan means a document that:

- (a) identifies the State heritage significance of an item, and
- (b) sets out policies and strategies for the retention of that significance, and
- (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.

[28] Section 57 Effect of interim heritage orders and listing on State Heritage Register

Insert after section 57 (1C):

- (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.

[29] Section 62 Matters for consideration

Insert after section 62 (c):

- (c1) any applicable conservation management plan (within the meaning of section 38A) endorsed by the Heritage Council, and

[30] Section 72 Right of appearance

Insert “, unless otherwise provided by the regulations,” after “personally or”.

[31] Section 79 Right of appearance

Insert “, unless otherwise provided by the regulations,” after “personally or”.

[32] Part 4, Division 5

Insert after Division 4:

Division 5 Stop work orders

79C Order restricting harm to heritage items

- (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.
- (2) A stop work order is an order that:
 - (a) work being carried out on a building, work, relic, moveable object or place cease, and
 - (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.
- (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.
- (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.
- (5) The Minister or Chairperson:
 - (a) may only make a stop work order in relation to work for which approval is required under this Part, and
 - (b) must not make a stop work order in relation to work for which an approval is in force under this Part.
- (6) More than one stop work order may not be made in relation to the same work.
- (7) Nothing in this section prevents a person from seeking, or the Court from granting, an order under section 154 in relation to work.
- (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.

- (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).

[33] Section 139 Excavation permit required in certain circumstances

Omit section 139 (4) (d). Insert instead:

- (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.

[34] Section 151 Evidence

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).

Insert instead “in the custody of the Department of Planning, under the hand of an officer of that Department”.

[35] Section 151 (3)

Omit “Heritage Office” wherever occurring.

Insert instead “Department of Planning”.

[36] Section 169 Delegation of functions

Insert “under this Act” after “functions” in section 169 (1).

[37] Section 169 (5)-(12)

Omit the subsections.

[38] Section 170 Heritage and Conservation Register

Omit section 170 (4) (a). Insert instead:

- (a) which is of a class prescribed by the regulations, and

[39] Section 170A Heritage management by government instrumentalities

Omit section 170A (4).

[40] Section 170B

Insert after section 170A:

170B Referral to panel of submissions relating to items of local heritage significance

- (1) This section applies if a submission is made under Part 3 of the *Environmental Planning and Assessment Act 1979* objecting to the identification of an item as an item of heritage significance (however described) in a proposed local environmental plan.
- (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.
- (3) Nothing in this section affects the operation of Part 3 of the *Environmental Planning and Assessment Act 1979* 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.

[41] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Heritage Amendment Act 2009

[42] Schedule 1

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part Provisions consequent on enactment of *Heritage Amendment Act 2009*

Definition

In this Part, **2009 amending Act** means the *Heritage Amendment Act 2009*.

Determination of heritage significance

- (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.
- (2) The Minister may, by notice published in the Gazette, revoke approval of any criteria taken to be approved and published under subclause (1).

Heritage Council

(1) In this clause:

existing appointed member 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.

- (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.
- (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.
- (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.

Recommendations relating to State heritage listing

- (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.
- (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.

Heritage and Conservation Registers of government instrumentalities

- (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 Heritage and Conservation Register to the Heritage Council before that amendment.
- (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.

[43] Schedule 2

Insert after Schedule 1:

Schedule 2 Members and procedure of Heritage Council

(Section 9)

Part 1 General

1 Definitions

In this Schedule:

appointed member means a member appointed by the Minister under section 8 (1).

Chairperson means the Chairperson of the Heritage Council.

Deputy Chairperson means the Deputy Chairperson of the Heritage Council.

member means any member of the Heritage Council.

Part 2 Constitution

2 Terms of office of members

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.

3 Part-time appointments

Appointed members hold office as part-time members.

4 Remuneration

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.

5 Deputies

(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) 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.

- (3) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (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.
- (5) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.
- (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.

6 Vacancy in office of appointed member

- (1) The office of an appointed member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause, or
 - (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
 - (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
 - (g) becomes a mentally incapacitated person, or
 - (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.
- (2) The Minister may remove an appointed member from office at any time.

7 Filling of vacancy in office of appointed member

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.

8 Chairperson and Deputy Chairperson

- (1) The Chairperson or Deputy Chairperson vacates office as Chairperson or Deputy Chairperson if he or she:
 - (a) is removed from that office by the Minister under this clause, or
 - (b) resigns that office by instrument in writing addressed to the Minister, or
 - (c) ceases to be a member of the Heritage Council.
- (2) The Minister may at any time remove the Chairperson or Deputy Chairperson from office as Chairperson or Deputy Chairperson.

9 Disclosure of pecuniary interests

- (1) If:
 - (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
 - (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,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.
- (2) A disclosure by a member at a meeting of the Heritage Council that the member:
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (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) 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.

- (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:
 - (a) be present during any deliberation of the Heritage Council with respect to the matter, or
 - (b) take part in any decision of the Heritage Council with respect to the matter.
- (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:
 - (a) be present during any deliberation of the Heritage Council for the purpose of making the determination, or
 - (b) take part in the making by the Heritage Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Heritage Council.
- (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.

10 Effect of certain other Acts

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of an appointed member.
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as a member.

Part 3 Procedure

11 General procedure

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

12 Quorum

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

13 Presiding member

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

14 Voting

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

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

- (1) The Heritage Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Heritage Council for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Heritage Council.
- (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) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Heritage Council.
- (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.
- (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 First meeting

The Minister may call the first meeting of the Heritage Council in such manner as the Minister thinks fit.

17 Minutes of meetings

- (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.
- (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.

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

[1] Section 23G Joint regional planning panels

Insert “any of a council’s” before “functions” in section 23G (2) (a).

[2] Section 23G (5A)-(5C)

Insert after section 23G (5):

- (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).
- (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).
- (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).

[3] Section 23H Regulations

Omit section 23H (a). Insert instead:

- (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,

[4] Section 90 Application of this Division

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 *Environmental Planning and Assessment Amendment Act 2008*).

[5] Section 90A Definitions

Insert in alphabetical order:

heritage approval 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 *Heritage Act 1977*.

[6] Section 92

Insert after section 91A:

92 Consent authority may not refuse certain development applications

- (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.
- (2) A consent authority must not refuse development consent on heritage grounds if the same development is the subject of a heritage approval.

[7]-[9] (Repealed)