

# Heritage Act 1977 No 136

[1977-136]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**
  - [Property NSW Amendment Bill 2024](#)
  - [National Parks and Heritage Legislation Amendment Bill 2024](#)

### Responsible Minister

- Minister for Heritage

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Heritage Act 1977 No 136



New South Wales

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# Heritage Act 1977 No 136



New South Wales

An Act to conserve the environmental heritage of the State.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Heritage Act 1977*.

### 2 Commencement

- (1) Section 1 and this section shall commence on the date of assent to this Act.
- (2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

### 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.

### 4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

**affected owner or occupier**, in relation to an interim heritage order or to listing on the State Heritage Register, means—

- (a) in the case of an order or listing applicable to a place—the owner or any occupier of land that comprises the place, or
- (b) in the case of an order or listing applicable to a building, work or relic (being a relic that is attached to or forms part of land)—the owner or any occupier of land on which the building, work or relic is situated, or
- (c) in the case of an order or listing applicable to a relic that is not attached to or does not form part of land or is applicable to a moveable object—the owner of the relic or moveable object, or
- (d) in the case of an order or listing applicable to a precinct—the owners or occupiers of land in the precinct.

**approval** includes an authority or a consent or permission.

**approved form** means a form approved by the Heritage Council.

**area** has the same meaning as it has in the [Local Government Act 1993](#).

**building** includes a part of a building, a structure or a part of a structure.

**Chairperson** means the Chairperson of the Heritage Council, appointed as referred to in section 8 (5).

**consent authority**, in relation to any act, matter or thing specified in or of a kind specified in the [Local Government Act 1993](#), any instruments made under that Act, the [Environmental Planning and Assessment Act 1979](#) or an environmental planning instrument in force thereunder, or the [Strata Schemes Development Act 2015](#) means—

- (a) the person or body with whose approval that act, matter or thing may be done or without whose approval that act, matter or thing may not be done.
- (b) (Repealed)

**conservation** includes preservation, protection, maintenance, restoration and adaptation.

**council** has the same meaning as it has in the [Local Government Act 1993](#).

**Court** means the Land and Environment Court.

**deferred commencement approval** means an approval referred to in section 63A (1).

**development**, in relation to land, means—

- (a) the erection of a building on that land,
- (b) the carrying out of a work in, on, over or under that land,
- (c) the use of that land or of a building or work on that land, and
- (d) the subdivision of that land,

but does not include any development of a class or description prescribed by the regulations for the purposes of this definition.

**environmental heritage** means those places, buildings, works, relics, moveable objects, and precincts, of State or local heritage significance.

**functions** includes powers, authorities and duties.

**government instrumentality** means—

- (a) a government agency that is required to furnish details of land to Government Property NSW under section 21A of the [Government Property NSW Act 2006](#), and
- (b) a State owned corporation.

**harm** means—

- (a) in relation to a building or work—demolish, or
- (b) in relation to a relic or moveable object—damage, despoil, move or alter, or
- (c) in relation to a place or precinct—damage, despoil or develop the land that comprises the place or is within the precinct or damage or destroy any tree or other vegetation on, or remove any tree or other vegetation from, the place or precinct.

**heritage agreement** means a heritage agreement under Part 3B.

**Heritage Council** means the Heritage Council of New South Wales constituted under this Act.

**interim heritage order** means an interim heritage order in force under Part 3.

**item** means a place, building, work, relic, moveable object or precinct.

**list** means list on the State Heritage Register.

**local heritage significance** has the meaning given by section 4A.

**moveable object** means a moveable object that is not a relic.

**owner** has the same meaning as it has in the [Local Government Act 1993](#).

**place** means an area of land, with or without improvements.

**Independent Planning Commission** has the same meaning as it has in the [Environmental Planning and Assessment Act 1979](#).

**precinct** means an area, a part of an area, or any other part of the State.

**regulations** means the regulations made under this Act.

**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.

**State heritage significance** has the meaning given by section 4A.

**State Heritage Register** means the State Heritage Register kept under Part 3A.

**Valuer-General** means the valuer-general appointed under the [Valuation of Land Act 1916](#).

- (2) A reference in this Act to an item of the environmental heritage is a reference to an item that comprises part of the environmental heritage.
- (2A) A reference in this Act to the excavation of land extends to the excavation of any land beneath State waters within the meaning of Part 3C, and includes a reference to the dredging of a body of water or watercourse.
- (3) A reference in this Act to the exercise of a function includes, where that function is a duty, a reference to the performance of that duty.
- (4) Where functions are conferred or imposed by or under this Act on a council, those functions may be exercised in respect of an area by the council of that area.
- (5) A reference in this Act to—
  - (a) the erection of a building includes a reference to the rebuilding, enlargement or extension of a building or the placing or relocating of a building on land,
  - (b) the alteration of a building or work is a reference to the making of changes to the internal or external fabric or appearance of that building or work whether or not involving—
    - (i) the carrying out of structural work, or
    - (ii) the repair or renovation, or the painting, plastering or other decoration, of that

building or work,

(c) the carrying out of a work includes a reference to the rebuilding, enlargement or extension of a work,

(c1) a work includes a reference to any physical activity in relation to land that is specified by a regulation to be a work for the purposes of this Act but does not include a reference to any activity that is specified by a regulation not to be a work for the purposes of this Act,

(d) the subdivision of land is a reference to the subdivision of land as defined by section 4B of the *Environmental Planning and Assessment Act 1979*,

(e) the demolition of a building or work is a reference to the damaging, defacing, destruction, pulling down or removal of that building or work, in whole or in part, and

(f) the carrying out of development includes a reference to the erection of a building, the carrying out of a work, the use of land or of a building or work, or the subdivision of land, as the case may require.

(6) A reference in this Act to a prescribed form includes a reference to a form that is to the effect of that prescribed form.

#### **4A Heritage significance**

(1) In this Act—

**State heritage significance**, in relation to a place, building, work, relic, moveable object or precinct, means significance to the State in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item.

**local heritage significance**, in relation to a place, building, work, relic, moveable object or precinct, means significance to an area in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item.

(2) An item can be both of State heritage significance and local heritage significance. An item that is of local heritage significance may or may not be of State heritage significance.

(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.

## **5 Act binds Crown**

This Act binds the Crown not only in right of New South Wales but also, as far as the legislative power of Parliament permits, the Crown in all its other capacities.

# **Part 2 The Heritage Council of New South Wales**

## **Division 1 Constitution of the Heritage Council**

### **6 (Repealed)**

### **7 The Council**

- (1) There is hereby constituted a Heritage Council of New South Wales.
- (2) The Heritage Council is a NSW Government agency.

### **8 Members of Heritage Council**

- (1) The Heritage Council is to consist of 9 members. Of the members, 8 are to be appointed by the Minister (the ***appointed members***).
- (2) The other member is to be the Secretary of the Department of Planning, Industry and Environment.
- (3) Five 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) (Repealed)
  - (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.

- (3A) One of the other appointed members is to be a person who, in the opinion of the Minister, possesses qualifications, knowledge and skills relating to Aboriginal heritage.
- (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), (3A) 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.

## **10-20 (Repealed)**

## **Division 2 Functions of the Heritage Council**

### **21 Functions of Heritage Council**

- (1) The functions of the Heritage Council are—
- (a) to make recommendations to the Minister for or with respect to the exercise by the Minister of any functions conferred or imposed on the Minister by or under this Act or the regulations,
  - (b) to make recommendations to the Minister relating to the taking of measures for or with respect to—
    - (i) the conservation of,
    - (ii) the exhibition or display of,
    - (iii) the provision of access to, and
    - (iv) the publication of information concerning,



items of the environmental heritage,

- (c) to carry out investigations, research and inquiries relating to the matters referred to in paragraph (b),
- (d) to arrange and co-ordinate consultations, discussions, seminars and conferences relating to the matters referred to in paragraph (b), and
- (e) to maintain a database (to be called the State Heritage Inventory) listing items of State and local heritage significance, and
- (f) to conduct community education concerning the State's environmental heritage, and
- (g) to exercise such other functions as are conferred or imposed on it by or under this or any other Act or the regulations.

(2) Without limiting subsection (1), the Heritage Council may—

- (a) make submissions to persons or bodies in respect of—
  - (i) environmental studies,
  - (ii) proposed environmental planning instruments, and
  - (iii) environmental impact statements,

prepared under the [Environmental Planning and Assessment Act 1979](#) in so far as they relate to the environmental heritage, and

- (b) provide opinions, statements or other information relating to the environmental heritage to persons or bodies if the Heritage Council considers it appropriate to do so.

### **21A Committees of the Heritage Council**

- (1) The Heritage Council may establish committees to assist it in connection with the exercise of any of its functions.
- (2) It does not matter that any or all of the members of a committee are not members of the Heritage Council.
- (3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Heritage Council or (subject to any determination of the Heritage Council) by the committee.

### **21B Publication of certain submissions**

- (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 *Environmental Planning and Assessment Act 1979* 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.

- (2) In this section, **State significant development** means—
- (a) development that, were it not State significant development, State significant infrastructure or a transitional Part 3A project under the *Environmental Planning and Assessment Act 1979*, would require approval under Part 4 of this Act or an excavation permit under section 139 of this Act, or
  - (b) development that is State significant development, State significant infrastructure or a transitional Part 3A project under the *Environmental Planning and Assessment Act 1979* 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.

## 22 Registers

- (1) The Heritage Council is to keep a register of the following—
- (a) items and land that are the subject of interim heritage orders,
  - (b) orders made under this Act,
  - (c) notices served under this Act,
  - (d) heritage agreements entered into under this Act.
- (2) The Heritage Council is also to keep the State Heritage Register under Part 3A.
- (3) The register kept under this section and the State Heritage Register are each to be available for public inspection without charge at the office of the Heritage Council during ordinary office hours.

## 23 Annual report

- (1) As soon as practicable after 30 June in each year, the Heritage Council shall prepare and present to the Minister a report on its operations and activities during the year ending on that day.
- (2) The report shall, in respect of the year for which it is prepared, include—
- (a) a summary of the recommendations, advice and opinions made and given by the Heritage Council to the Minister during the year under the following provisions—
    - (i) section 24 (Minister can make interim heritage orders for items of State or local heritage significance)
    - (ii) section 32 (Minister can direct listing on State Heritage Register)

- (iii) section 38 (Removal of items from State Heritage Register)
  - (iv) section 39 (Minister can enter into heritage agreements)
  - (iva) section 50 (Heritage Council advice on historic shipwrecks protection orders)
  - (v) section 83 (Heritage Council to be consulted in preparation of certain environmental planning instruments)
  - (vi) section 136 (Order restricting harm to buildings etc), and
- (a1) particulars of stop work orders made under section 79C, and
  - (b) particulars of all additions to, deletions from and other amendments to the register kept under this section and the State Heritage Register during that year, and
  - (c) particulars of such financial assistance as is provided under Division 2 of Part 6 during that year.
- (3) The Minister shall lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after its receipt by the Minister.
  - (4) The report of the Heritage Council under this section may be included in the annual report of the Department of Planning and Environment.

### **Part 3 Interim heritage orders for items of State or local heritage significance**

#### **24 Minister can make interim heritage orders for items of State or local heritage significance**

- (1) The Minister may make an interim heritage order for a place, building, work, relic, moveable object or precinct that the Minister considers may, on further inquiry or investigation, be found to be of State or local heritage significance.
- (2) The Heritage Council is to provide advice to the Minister on the making of interim heritage orders, either at the request of the Minister or on its own initiative.

#### **25 Minister can authorise councils to make interim heritage orders for items of local heritage significance**

- (1) The Minister may, by order published in the Gazette, authorise a council to make interim heritage orders for items in the council's area.
- (2) A council authorised under this section may make an interim heritage order for a place, building, work, relic, moveable object or precinct in the council's area that the council considers may, on further inquiry or investigation, be found to be of local heritage significance, and that the council considers is being or is likely to be harmed.

- (3) An interim heritage order made by a council is of no effect in so far as it applies to any of the following items—
  - (a) an item to which an interim heritage order made by the Minister applies,
  - (b) an item listed on the State Heritage Register.
- (4) An authorisation under this section can be given subject to conditions and a council cannot act in contravention of the conditions of its authorisation.
- (5) The Minister may at any time by notice published in the Gazette withdraw a council's authorisation or change the conditions of its authorisation. The withdrawal of a council's authorisation does not of itself affect any interim heritage order made before the authorisation was withdrawn.

## **26 No notice required of intention to make interim heritage order**

The Minister or a council is not required, before making an interim heritage order, to notify any person who will be affected by the order of the intention to make the order.

## **27 Application of interim heritage orders to curtilage and site**

An interim heritage order made in respect of an item may be expressed to apply (and if so expressed does apply) to—

- (a) if the item is a building—the curtilage of that building or the site of that building, being the curtilage or site specified or described in the order, or
- (b) if the item is a work or a relic that is attached to or forms part of land—the site specified or described in the order for that work or relic.

## **28 Procedure for notifying interim heritage orders**

- (1) When an interim heritage order is made, the Minister (in the case of an order made by the Minister) or the council that made the order (in the case of an order made by a council) is to do or cause the following to be done—
  - (a) the order is to be published in the Gazette,
  - (b) as soon as possible after the order is published in the Gazette, notice of the making of the order is to be given to the Chairperson and to each person who appears to the Minister or the council to be an affected owner or occupier,
  - (c) the notice to an affected owner or occupier is to include a statement as to the effect of the order and a statement of the reasons for the making of the order,
  - (d) within 7 days after the order is published in the Gazette, notice of the making of the order is to be published in a manner that the Minister or the council is satisfied is likely to bring the notice to the attention of members of the public in the area in

which the item is situated.

- (2) An interim heritage order is taken to have been published in the Gazette even if any map or plan referred to in the order is not published with it.
- (3) An interim heritage order is not invalid merely because of—
  - (a) any failure to give notice of that order as required by this section, or
  - (b) any failure to include in that notice a statement required by this section to be included in it, or
  - (c) any error in or omission from such a statement included in the notice.

## **29 Commencement, duration and revocation of IHOs**

- (1) An interim heritage order takes effect on the date of publication of the order in the Gazette.
- (2) An interim heritage order remains in force for 12 months or such shorter period as may be specified in the order, unless it is revoked sooner.
- (3) The Minister may revoke an interim heritage order made by the Minister or by a council.
- (4) A council may revoke an interim heritage order that the council has made (but cannot revoke one made by the Minister or by another council).
- (5) When an interim heritage order is revoked, the Minister (in the case of an order revoked by the Minister) or the council that revoked the order (in the case of an order revoked by a council) is to do or cause the following to be done—
  - (a) notice of the revocation of the order is to be published in the Gazette,
  - (b) as soon as possible after the notice of revocation is published in the Gazette, notice of the revocation of the order is to be given to the Chairperson and to each person who appears to the Minister or the council to be an affected owner or occupier,
  - (c) within 7 days after notice of the revocation of the order is published in the Gazette, notice of the revocation of the order is to be published in a manner that the Minister or the council is satisfied is likely to bring the notice to the attention of members of the public in the area in which the item is situated.
- (6) The listing of an item on the State Heritage Register revokes any interim heritage order in respect of that item.

### **30 Appeal against IHO made by council**

- (1) An affected owner or occupier may appeal to the Court against the making of an interim heritage order by a council.
- (2) The appeal must be made within 28 days after the interim heritage order takes effect.
- (3) The appeal does not stay an interim heritage order except to the extent that the Court may otherwise order.

## **Part 3A State Heritage Register**

### **31 State Heritage Register to be kept by Heritage Council**

- (1) There is to be a register called the State Heritage Register kept by the Heritage Council. The Register is to be kept in such form and manner as the Heritage Council determines.
- (2) Items can only be listed on or removed from the State Heritage Register at the direction of the Minister, as provided by this Part.

**Note—**

Schedule 1 (Savings and transitional provisions) provides for the automatic listing of items that were formerly the subject of permanent conservation orders, or that are owned by government instrumentalities and identified as being of State heritage significance.

### **32 Minister can direct listing on State Heritage Register**

- (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.
- (3) A listing in respect of an item can be expressed to apply (and if so expressed does

apply) to—

- (a) if the item is a building—the curtilage of that building or the site of that building, being the curtilage or site specified or described in the listing, or
- (b) if the item is a work or a relic that is attached to or forms part of land—the site specified or described in the listing of that work or relic.

### **33 Procedure before recommendation for listing**

- (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 a manner that the Heritage Council is satisfied is likely to bring the notice to the attention of affected owners or occupiers and of members of the public, 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 a manner that the Heritage Council is satisfied is likely to bring the notice to the attention of members of the public 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 notice under paragraph (a) (ii) or (b) was first published) 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 within 14 days after notice is given of the decision under paragraph (e).

- (2) Without limiting the submissions that can be made for the purposes of this section, any of the following submissions can be made—
  - (a) a submission that the item the subject of the proposed recommendation should not be subject to listing on the State Heritage Register by reason that it is not of State heritage significance,
  - (b) a submission that the item the subject of the proposed recommendation should not be subject to listing on the State Heritage Register by reason that its long-term conservation is not necessary,
  - (c) a submission that the item the subject of the proposed recommendation should not be subject to listing on the State Heritage Register by reason that listing would render the item incapable of reasonable or economic use,
  - (d) a submission that conservation of the item the subject of the proposed recommendation could not be achieved without causing undue financial hardship to the owner, mortgagee or lessee of the item or the land on which the item is situated.
- (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.

#### **34 Action by Minister following recommendation for listing**

- (1) Within 14 days after the Heritage Council makes a recommendation for listing to the Minister, the Minister must—
  - (a) decide whether or not to direct the listing and inform the Heritage Council of that decision, or



(b) request the Independent Planning Commission to review the matter.

- (1A) On receiving a request to review a matter, the Independent Planning Commission is to conduct its review and provide a report to the Minister within the time period specified in the regulations.
- (2) If the Minister requests a review by the Independent Planning Commission, the Minister must, within 14 days after the Commission provides its report—
- (a) consider that report, and
  - (b) decide whether or not to direct the listing, and
  - (c) inform the Heritage Council of that decision.
- (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.
- (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.

### **35 (Repealed)**

### **36 Independent Planning Commission**

- (1) At a review conducted by the Independent Planning Commission each of the following is entitled to appear before the Commission either personally or, unless otherwise provided by the regulations, by an Australian legal practitioner or agent—
- (a) an owner, mortgagee or lessee of land to which the proposed listing will apply or of land on which is situated the building, work or relic (being a relic that is attached to or forms part of land) that will be subject to the proposed listing,
  - (b) an owner of a relic (not being a relic that is attached to or forms part of land) or moveable object that will be subject to the proposed listing,
  - (c) the council of the area in which the item or precinct concerned is situated,
  - (d) the Heritage Council,
  - (e) the Secretary of the Department of Planning and Environment or a nominee of the Secretary,
  - (f) any other person with the leave of the Commission.
- (2) At the conclusion of the review, the Independent Planning Commission is to provide a report in writing to the Minister containing a summary of the submissions made to the

review, the findings of the Commission with respect to those submissions and a recommendation as to how those submissions should be dealt with. The Minister is to make copies of the report available to the public after the Minister decides whether or not to direct the listing.

(3) (Repealed)

### **37 Action by Heritage Council on Minister's decision**

- (1) Within 14 days after being notified of the Minister's decision on a recommendation for listing on the State Heritage Register, the Heritage Council is to do the following—
  - (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,
  - (b) if the Minister's decision is to direct the listing, make the listing in accordance with the Minister's decision and cause notice of the listing to be published in the Gazette.
- (2) A listing takes effect on the date of publication of the notice of listing in the Gazette. That notice need not include any map or plan referred to in the listing.
- (3) A listing is not invalid merely because of any failure to give notice of the Minister's decision as required by this section.
- (4) Publication in the Gazette before 24 March 2012 of the Minister's decision to direct a listing on the State Heritage Register is (for the purposes of this section) deemed to be (and always to have been) publication in the Gazette of notice of the listing.

### **38 Removal of items from State Heritage Register**

- (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.
- (2) The Heritage Council may make such a recommendation to the Minister either at the request of the Minister, or on the Heritage Council's own initiative, or at the request of the owner of the item or of the council of the area in which the item is situated.

- (3) The procedure for the removal of a listing from the State Heritage Register is the same as the procedure for listing on the State Heritage Register and for that purpose the provisions of sections 33–37 (other than section 33 (3)) apply to and in respect of the removal of a listing in the same way as they apply to and in respect of a listing.

### **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.

## **Part 3B Heritage agreements**

### **39 Minister can enter into heritage agreements**

The Minister may enter into a heritage agreement with the owner of an item that is listed on the State Heritage Register with respect to the conservation of the item. The Minister is to obtain and consider the advice of the Heritage Council before entering into a heritage agreement.

### **40 What heritage agreement can provide for**

A heritage agreement in respect of an item can include provisions relating to all or any of the following—

- (a) the conservation of the item,
- (b) the financial, technical or other professional advice or assistance required for the conservation of the item,
- (c) the review of the valuation of the item or the land on which it is situated,
- (d) the restriction on the use of the item or the land on which it is situated,
- (e) requirements for the carrying out of specified works or works of a specified kind,

- (f) the standards in accordance with which the works are to be carried out,
- (g) the restriction on the kind of works that may be carried out,
- (h) the exemption of specified activities or activities of a specified kind from Part 4 (Effect of interim heritage orders and listing on State Heritage Register),
- (i) the repayment of money advanced or loaned by the Minister under section 45 (Financial and other assistance),
- (j) the public appreciation of the State heritage significance of the item,
- (k) the availability of the item for public inspection,
- (l) the charges made for admission,
- (m) such other matters as the Minister considers, on the advice of the Heritage Council, will assist in the conservation of the item,
- (n) such other matters as may be prescribed by the regulations.

#### **41 Variation and termination of heritage agreements**

The Minister may vary or terminate a heritage agreement by a subsequent agreement with the owner of the item concerned or in a manner specified in the original agreement. The Minister is to obtain and consider the advice of the Heritage Council before varying or terminating a heritage agreement.

#### **42 Duration of heritage agreements**

A heritage agreement takes effect on a date specified in the agreement and expires on a date specified in the agreement.

#### **43 Registered heritage agreement to run with land**

- (1) A heritage agreement can be registered under this section if the following persons agree to its registration—
  - (a) if the agreement relates to land under the *Real Property Act 1900*—each person who has an estate or interest in the land registered under that Act, or
  - (b) if the agreement relates to land not under the *Real Property Act 1900*—each person who is seised or possessed of an estate or interest in the land.
- (2) On lodgment by the Minister of an application for registration in a form approved by the Registrar-General, the Registrar-General is to register the agreement—
  - (a) by making an entry in the Register kept under the *Real Property Act 1900* if the agreement relates to land under that Act, or

(b) by registering the agreement in the General Register of Deeds if the agreement relates to land not under the *Real Property Act 1900*.

- (3) A heritage agreement that has been registered by the Registrar-General under this section is binding on, and is enforceable against, the owner of the land from time to time as if each owner for the time being were the owner who entered into the agreement.
- (4) A heritage agreement relating to land under the *Real Property Act 1900* about which an entry is made in a folio is an interest recorded in the folio for the purposes of section 42 of that Act.
- (5) A reference in this section to a heritage agreement includes a reference to any variation or termination of the heritage agreement.

#### **44 Injunction**

- (1) On the application of the Minister, the Court may grant an injunction restraining a threatened or apprehended breach, or the continuation of a breach, of a heritage agreement.
- (2) An injunction may be granted without the Minister being required to show a likelihood of damage.
- (3) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of the application.
- (4) When the Minister makes an application to the Court for the grant of an injunction under this section, the Court is not to require the Minister or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

#### **45 Financial and other assistance**

- (1) The Minister may provide or arrange for the provision of such financial, technical or other assistance to the owner of an item or land that is the subject of a heritage agreement as the Minister considers necessary to ensure the conservation of the item or land.
- (2) The financial assistance provided under this section can only be for the payment of land tax, duty or council rates. The financial assistance is to be provided out of the Heritage Incentive Fund established under section 105A.

#### **46 Heritage agreement cannot be suspended by EPI**

A heritage agreement is not a regulatory instrument for the purposes of section 28 (Suspension of laws etc by environmental planning instruments) of the *Environmental Planning and Assessment Act 1979*.

## Part 3C Protection of historic shipwrecks

### Division 1 Preliminary

#### 47 Definitions

(1) In this Part—

**excavation permit** means an excavation permit referred to in section 139.

**historic shipwreck** means the remains of any ship (including any articles associated with the ship)—

- (a) that have been situated in State waters, or otherwise within the limits of the State, for 75 years or more, or
- (b) that are the subject of a historic shipwrecks protection order.

**historic shipwrecks permit** means a historic shipwrecks permit referred to in section 51.

**historic shipwrecks protection order** means an order referred to in section 48 (1).

**Register of Shipwrecks** means the Register referred to in section 49.

**ship** includes any navigable vessel.

**State waters** means—

- (a) the coastal waters of the State (within the meaning of Part 10 of the [Interpretation Act 1987](#)), or
- (b) any other waters within the limits of the State.

(2) In this Part, a reference to an article being **associated** with a ship includes a reference to—

- (a) any article that appears to have formed part of the ship, and
- (b) any article that appears to have been installed on, or carried in, the ship, and
- (c) any article that appears to have been constructed or used by a person associated with the ship.

(3) In this Part, a reference to any remains of a ship, or any article associated with a ship, being **situated in State waters** includes a reference to any such remains or article—

- (a) being situated in, or forming part of, the land beneath those waters, or
- (b) being situated in, or forming part of, a reef in those waters.

## **Division 2 Historic shipwrecks protection**

### **48 Declaration of historic shipwrecks**

- (1) The Minister, by order published in the Gazette, may declare to be a historic shipwreck the remains of any ship situated in State waters or otherwise within the limits of the State, and may do so regardless of the length of time for which it has been so situated.
- (2) An order under this section may relate to one or more ships or one or more articles, or to both one or more ships and one or more articles.
- (3) An order under this section must identify, in accordance with any requirements imposed by the regulations, the nature and location of the historic shipwreck to which the order relates.

### **49 Register of Shipwrecks**

- (1) There is to be a register called the Register of Shipwrecks kept by the Heritage Council. The Register is to be kept in such form and manner as the Heritage Council determines.
- (2) The Register is to contain particulars of each historic shipwrecks protection order made under this Part.

### **50 Heritage Council advice on historic shipwrecks protection orders**

The Heritage Council is to provide advice to the Minister on the making of historic shipwrecks protection orders, either at the request of the Minister or on its own initiative.

## **Division 3 General**

### **51 Movement, damage or destruction of historic shipwrecks**

- (1) A person must not move, damage or destroy any historic shipwreck otherwise than in accordance with a historic shipwrecks permit.
- (2) This section does not apply to a historic shipwreck that is subject to an interim heritage order made by the Minister or a listing on the State Heritage Register.
- (3) This section does not prevent a person from moving, damaging or destroying a historic shipwreck situated in any land in accordance with an excavation permit in force in respect of that land.
- (4) It is a defence to proceedings for an offence under this section if the defendant establishes that the act giving rise to the offence was done for the purpose of—
  - (a) saving human life, or

(b) securing the safety of a ship where the ship was endangered by stress of weather or by navigational hazards, or

(c) dealing with an emergency involving a serious threat to the environment.

## **52 Part not to apply to certain waters**

This Part does not apply to such of the State waters as are waters to which the *Historic Shipwrecks Act 1976* of the Commonwealth applies.

## **53-55B (Repealed)**

# **Part 4 Effect of interim heritage orders and listing on State Heritage Register**

## **Division 1 Preliminary**

### **56 Definitions**

In this Part—

**approval body** means—

- (a) in respect of an interim heritage order made by the Minister or listing on the State Heritage Register—the Heritage Council, or
- (b) in respect of an interim heritage order made by a council—the council that made the order.

**integrated development** has the same meaning as in section 91 of the *Environmental Planning and Assessment Act 1979*.

**prescribed application** means an application for the approval of a consent authority under any of the following—

- (a) the *Environmental Planning and Assessment Act 1979*, not being an application under Part 3A or Part 5.1 or an application relating to State significant development or integrated development,
- (b) Part 1 of Chapter 7 of the *Local Government Act 1993*,
- (c) any prescribed provision of the *Local Government Act 1993* or any prescribed provision of any instrument made under that Act,
- (d) Part 4 of the *Strata Schemes Development Act 2015*,
- (e) (Repealed)

in respect of the doing or carrying out of an act, matter or thing the doing or carrying out of which requires an approval of the Heritage Council under Subdivision 1 of Division 3 of



this Part.

## Division 2 Controlled activities

### 57 Effect of interim heritage orders and listing on State Heritage Register

- (1) When an interim heritage order or listing on the State Heritage Register applies to a place, building, work, relic, moveable object, precinct, or land, a person must not do any of the following things except in pursuance of an approval granted by the approval body under Subdivision 1 of Division 3—
- (a) demolish the building or work,
  - (b) damage or despoil the place, precinct or land, or any part of the place, precinct or land,
  - (c) move, damage or destroy the relic or moveable object,
  - (d) excavate any land for the purpose of exposing or moving the relic,
  - (e) carry out any development in relation to the land on which the building, work or relic is situated, the land that comprises the place, or land within the precinct,
  - (f) alter the building, work, relic or moveable object,
  - (g) display any notice or advertisement on the place, building, work, relic, moveable object or land, or in the precinct,
  - (h) damage or destroy any tree or other vegetation on or remove any tree or other vegetation from the place, precinct or land.
- (1A) In the case of an interim heritage order made by a council, subsection (1) does not apply to—
- (a) State significant development within the meaning of the *Environmental Planning and Assessment Act 1979*, or
  - (b) development, or demolition of a building or work, carried out by or on behalf of the Crown (with **Crown** including the persons prescribed for the purposes of Division 4 of Part 4 of the *Environmental Planning and Assessment Act 1979* as referred to in section 88 (2) (a) of that Act).
- (1B) Subsection (1) does not apply to anything that is exempted from the operation of this Part by a heritage agreement.
- (1C) Subsection (1) (d) does not apply in the case of a relic to which an interim heritage order made by a council applies.
- (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.

- (2) The Minister, on the recommendation of the Heritage Council, may, by order published in the Gazette, grant an exemption from subsection (1) or such of the provisions of that subsection as are specified in the order in respect of the engaging in or carrying out of such activity or class of activities by such person or class of persons in such circumstances as may be so specified. The Minister's power under this subsection extends to apply in respect of interim heritage orders made by councils.
- (3) A council may, by order published in the Gazette, grant an exemption from subsection (1) or such of the provisions of that subsection as are specified in the order in respect of the engaging in or carrying out of such activity or class of activities by such person or class of persons in such circumstances as may be so specified. Such an exemption has effect only in respect of an interim heritage order made by the council concerned.

## **Division 3 Applications for approval**

### **Subdivision 1 Applications generally**

#### **58 Application of Subdivision**

- (1) This Subdivision applies to an application for approval in respect of the doing or carrying out of an act, matter or thing referred to in section 57 (1).
- (2) This Subdivision applies in addition to, and not in derogation from, the provisions of any other Act or statutory instrument under which an application for approval in respect of the doing or carrying out of an act, matter or thing referred to in section 57 (1) is required to be made.

#### **59 Making of application**

An application for approval may be made by—

- (a) the owner of the item or land the subject of the application, or
- (b) any person with the consent in writing of that owner, or
- (c) if the item or land is situated on or comprises Crown land as defined in the [Crown Land Management Act 2016](#), the lawful occupier of the Crown land.

#### **60 Form of application**

An application for approval shall be made to the approval body in the approved form and shall be accompanied by such fee as may be prescribed.

#### **61 Public notice of certain applications**

- (1) Where an application for approval is made in respect of an item of the environmental

heritage and that application, if approved, would, in the opinion of the approval body, materially affect the significance of that item as an item of the environmental heritage, the approval body shall cause public notice of that application to be given in a manner that the approval body is satisfied is likely to bring the notice to the attention of members of the public.

- (1A) Public notice is not to be given under this section of an application for approval in respect of integrated development of which public notice has been given under the *Environmental Planning and Assessment Act 1979*.
- (2) A notice referred to in subsection (1) shall contain a statement to the effect that the application for approval referred to in that notice and any plans, specifications or similar documents lodged in connection with that application and in the custody of the approval body may be inspected at the office of the approval body by any person during ordinary office hours within a period of 21 days after the day on which that notice is first published in accordance with subsection (1).
- (3) During the period specified in subsection (2), any person may inspect the application and any documents referred to in that subsection which have been lodged in connection with that application at the office of the approval body during ordinary office hours and make representations in writing to the approval body with respect to that application.
- (4) The approval body shall not determine the application until the expiration of the period specified in subsection (2).

## **62 Process for determination of application**

- (1) In determining an application for approval in respect of an item or land, the approval body shall take into consideration—
  - (a) the extent to which that application, if approved, would affect the significance of any item as an item of the environmental heritage,
  - (b) the representations, if any, made with respect to that application under section 61 (3),
  - (c) such matters relating to the conservation of that item or land as to it seem relevant, and
  - (c1) any applicable conservation management plan (within the meaning of section 38A) endorsed by the Heritage Council, and
  - (d) such other matters as to it seem relevant.
- (2) The regulations may make further provision with respect to the process for determining an application.

### **63 Determination of application**

- (1) Except as provided by subsection (2), the approval body may determine an application for approval by granting approval to that application, either unconditionally or subject to conditions, or by refusing approval.
- (1A) The determination of an application for approval in relation to integrated development is subject to Division 5 of Part 4 of the *Environmental Planning and Assessment Act 1979*.
- (2) Where—
  - (a) an application for approval is made to demolish the whole of a building or work, or
  - (b) an application for approval is made which would, if it were approved, necessitate the demolition of the whole of a building or work,the approval body shall determine that application by refusing approval.
- (3) Nothing in subsection (2) prevents the approval body from approving an application referred to in that subsection if—
  - (a) it is of the opinion that the building or work constitutes a danger to the users or occupiers of that building or work, the public or a section of the public, or
  - (b) it is a condition of the approval that the building or work be relocated on other land, or
  - (c) the building or work is situated (whether wholly or partly) in a place or precinct that is an item of State heritage significance, but is not itself such an item, and the approval body is of the opinion that the demolition of the whole of the building or work will not have a materially detrimental effect on the heritage significance of the place or precinct.
- (4) Without limiting or restricting the power of the approval body to impose conditions under subsection (1), it may, in granting approval to an application for approval, impose, as a condition of its approval, a condition—
  - (a) that the applicant give security in such form and such amount as is determined by the approval body having regard to the nature and extent of the work referred to in the approval to ensure the satisfactory completion of that work, and
  - (b) that where the approval is to the demolition, in whole or in part, of a building or work, such measures as are specified in the approval be taken in the interests of public safety and convenience with respect to the demolition.

### **63A Deferred commencement approvals**

- (1) An approval may be granted subject to a condition that it is not to operate until the

applicant for the approval satisfies the approval body as to any matter specified in the condition (a ***deferred commencement approval***).

- (2) Nothing in this Act prevents a person from doing such things as may be necessary to comply with the condition.
- (3) A deferred commencement approval must be clearly identified as a deferred commencement approval (whether by the use of that expression or by reference to this section or otherwise).
- (4) A deferred commencement approval must clearly distinguish conditions concerning matters as to which the approval body must be satisfied before the approval can operate from any other conditions.
- (5) An approval body may specify the period within which the applicant must produce evidence to the approval body sufficient enough to enable it to be satisfied as to those matters.
- (6) The applicant may produce evidence to the approval body sufficient to enable it to be satisfied as to those matters and, if the approval body has specified a period for the purpose, the evidence must be produced within that period.
- (7) If the applicant produces evidence in accordance with this section, the approval body must notify the applicant whether or not it is satisfied as to the relevant matters.
- (8) If the approval body has not notified the applicant within the period of 28 days after the applicant's evidence is produced to it, the approval body is, for the purposes only of sections 70 and 70A, taken to have notified the applicant that it is not satisfied as to those matters on the date on which that period expires.

### **63B Partial and conditional approvals**

- (1) An approval may be granted—
  - (a) for the doing or carrying out of the act, matter or thing for which the approval is sought, or
  - (b) for the doing or carrying out of that act, matter or thing, except for a specified part or aspect of that act, matter or thing, or
  - (c) for the doing or carrying out of a specified part or aspect of that act, matter or thing.
- (2) An approval referred to in subsection (1) may be granted subject to a condition that—
  - (a) the act, matter or thing for which the approval is sought, or
  - (b) the specified part or aspect of that act, matter or thing, or

(c) any thing associated with that act, matter or thing or the doing or carrying out of that act, matter or thing,

must be the subject of another approval.

#### **64 Notice of determination**

- (1) The approval body shall give notice in writing of its determination of an application for approval to the applicant.
- (2) Where the approval body determines an application for approval by granting approval subject to conditions or by refusing approval, the notice shall—
  - (a) indicate the reasons for the determination, and
  - (b) except in relation to the determination of an application referred to in section 63 (2) which is required to be determined by refusing approval, notify the applicant that he or she has a right of appeal under this Act against the determination.

#### **65 Effect of failure to make determination**

- (1) Where the approval body has not determined an application for approval (other than an application for approval in respect of integrated development) within a period of 40 days, or, where public notice of that application has been given under section 61, within a period of 60 days, after service of that application on it, it shall, for the purposes only of section 70, be deemed to have determined that application by refusing approval.
- (2) Nothing in subsection (1) prevents the approval body from determining an application after the expiration of the period referred to in subsection (1) in relation to that application.
- (3) The determination of an application as referred to in subsection (2) shall not, where an appeal in respect of that application has been made under section 70, prejudice or affect the making, continuance or determination of that appeal.
- (4) The regulations may prescribe periods of time that are not to be taken into account in calculating the expiration of the periods referred to in subsection (1) in circumstances where the approval body has requested the applicant to provide it with additional information relating to the application.

#### **65A Modification of approvals**

- (1) On application in the approved form by any person entitled to act on an approval, the approval body may modify the approval—
  - (a) so as to vary any aspect of the original approval, but only if it is satisfied that the act, matter or thing authorised by the modified approval is substantially the same

as the act, matter or thing authorised by the original approval, or

(b) so as to correct a minor error, misdescription or miscalculation.

(2) The provisions of sections 61, 62, 64 and 65 apply to an application under subsection (1) (a) in the same way as they apply to an application for an approval, but do not apply to or in respect of an application under subsection (1) (b).

(3) For the purposes of this section—

(a) the Minister is taken to be the approval body in relation to an approval granted by the Minister as a result of an appeal under Division 4, and

(b) the Court is taken to be the approval body in relation to an approval granted by the Court as a result of an appeal under Division 4,

but, in either case, the application for modification of the approval is to be lodged not with the Minister or Court but with the approval body to whom the application for original approval was made.

(4) Modification of an approval under this section is not to be construed as the granting of an approval, but a reference in this or any other Act to an approval includes a reference to the modified approval.

## **Subdivision 2 Prescribed applications**

### **66 Application of Subdivision**

This Subdivision prevails the extent of any inconsistency between this Subdivision and the [Environmental Planning and Assessment Act 1979](#) (Part 3A, the provisions relating to State significant development or integrated development and Part 5.1 excepted), any environmental planning instrument in force under that Act, the [Local Government Act 1993](#), any instrument made under that Act, or the [Strata Schemes Development Act 2015](#).

### **67 Order of giving of approvals**

An approval given by a consent authority to a prescribed application before the Heritage Council's determination of the application has been notified to the consent authority is void.

### **68 Consistency of approvals**

An approval given by a consent authority to a prescribed application is, to the extent of any inconsistency with the Heritage Council's determination of the application, void.

### **69 Liability of consent authorities**

Nothing in this Subdivision affects the liability of a consent authority in respect of an approval granted by it.

## **Division 4 Appeals**

### **Subdivision 1 Appeals in respect of applications other than prescribed applications**

#### **70 Appeals against certain determinations of the Heritage Council**

- (1) An applicant dissatisfied with a determination of the Heritage Council with respect to an application for approval, or application for modification of an approval, made under Subdivision 1 of Division 3, not being the determination of an application referred to in section 63 (2) or 65A (1) (b), may appeal to the Minister or, in the case of the determination of an application for approval, or application for modification of an approval, in respect of integrated development, to the Court—
  - (a) within 12 months after the date on which the applicant received notice of that determination,
  - (b) within 12 months after the expiration of the period of 40 days or the period of 60 days, as the case may require, referred to in section 65 (1), or
  - (c) within such longer period as the Minister or the Court may in special circumstances allow.
- (2) An applicant who is dissatisfied with a decision by the Heritage Council to the effect that it is not satisfied as to a matter as to which it must be satisfied before a deferred commencement approval can operate may appeal to the Minister or, in the case of a decision concerning an approval in respect of integrated development, to the Court within 12 months after the Heritage Council notifies the applicant of its decision.

#### **70A Appeal to the Court against certain council determinations**

- (1) An applicant dissatisfied with a determination of a council with respect to an application for approval, or application for modification of an approval, made under Subdivision 1 of Division 3, not being the determination of an application referred to in section 63 (2) or 65A (1) (b), may appeal to the Court—
  - (a) within 12 months after the date on which the applicant received notice of that determination, or
  - (b) within 12 months after the expiration of the period of 40 days or the period of 60 days, as the case may require, referred to in section 65 (1), or
  - (c) within such longer period as the Court may in special circumstances allow.
- (2) An applicant who is dissatisfied with a decision by a council to the effect that it is not satisfied as to a matter as to which it must be satisfied before a deferred commencement approval can operate may appeal to the Court within 12 months after



the council notifies the applicant of its decision.

### **71 Independent Planning Commission reports**

Where an appeal is made to the Minister under section 70, the Minister may request the Independent Planning Commission to furnish a report to the Minister with respect to that appeal containing—

- (a) a recommendation as to whether that appeal should, in the opinion of the Commission, be dismissed or allowed either unconditionally or subject to such conditions as may be specified in the report, and
- (b) the reasons for that recommendation.

### **72 Right of appearance**

Before making a report under section 71, the Independent Planning Commission shall, if either the appellant, the Heritage Council or a person who has made representations to the Heritage Council under section 61 (3) with respect to the application for approval from the determination of which the appeal has been made so desires, afford the appellant, the Heritage Council or the person an opportunity of appearing personally or, unless otherwise provided by the regulations, by an Australian legal practitioner or agent.

### **73 Minister's decision**

- (1) The Minister, after considering such report as may be furnished to the Minister pursuant to section 71, may—
  - (a) dismiss the appeal,
  - (b) allow the approval either unconditionally or subject to such conditions as he or she thinks proper to impose,
  - (c) where the appeal is against the imposition of conditions, refuse to approve the application for approval from the determination of which the appeal has been made, or
  - (d) return the report to the Independent Planning Commission and request further consideration of the report.
- (2) Where a report is returned under subsection (1), sections 71 and 72 and subsection (1) apply in respect of the further consideration of the report in the same way as they apply in respect of the furnishing of the report.

### **74 Effect of the Minister's decision**

The decision of the Minister under section 73 (1), other than a decision under section 73 (1) (d), shall be final and shall have effect as if it were a determination of the Heritage Council.

## **Subdivision 2 Appeals in respect of prescribed applications**

### **75 Definition**

In this Subdivision, **appeal** includes objection or reference.

### **76 Appeal to Minister in respect of prescribed applications**

If, under the *Environmental Planning and Assessment Act 1979*, any environmental planning instrument in force under that Act, the *Local Government Act 1993*, any instrument made under that Act, or the *Strata Schemes Development Act 2015*, an applicant has a right of appeal arising from the making of a prescribed application, that right is to be exercised by making that appeal to the Minister, despite those Acts or any such instrument.

### **77 Manner of determining appeal**

- (1) Where an appeal is made to the Minister under section 76—
  - (a) if the Minister is of the opinion that the matter the subject of the appeal has special significance for the conservation of an item of the environmental heritage, he or she shall determine that appeal, or
  - (b) if the Minister is not of that opinion, he or she shall remit that appeal for hearing and determination by the Court.
- (2) The Minister shall cause notice of his or her decision under subsection (1) to be given to the person making the appeal.

### **78 Independent Planning Commission reports**

If the Minister, pursuant to section 77 (1) (a), decides to determine an appeal, the Minister may request the Independent Planning Commission to furnish a report to the Minister with respect to the appeal containing—

- (a) a recommendation as to whether the appeal should, in the opinion of the Commission, be dismissed or allowed either unconditionally or subject to such conditions as may be specified in the report, and
- (b) the reasons for the recommendation.

### **79 Right of appearance**

Before making a report under section 78, the Independent Planning Commission must, if a party, being—

- (a) the appellant, or
- (b) the Heritage Council, or

- (c) a person who has made representations to the Heritage Council under section 61 (3) with respect to the application for approval from the determination of which the appeal has been made, or
- (d) the consent authority from whose determination, or neglect or delay to make a determination, the appeal is made,

so desires, afford the party an opportunity of appearing personally or, unless otherwise provided by the regulations, by an Australian legal practitioner or agent.

#### **79A Minister's decision**

- (1) The Minister, after considering such report as may be furnished to the Minister under section 78, may—
  - (a) dismiss the appeal, or
  - (b) allow the appeal either unconditionally or subject to such conditions as the Minister thinks proper to impose, or
  - (c) if the appeal is against the imposition of conditions, refuse to approve the application for approval from the determination of which the appeal has been made, or
  - (d) return the report to the Independent Planning Commission and request further consideration of the report.
- (2) If a report is returned under subsection (1), sections 78 and 79 and subsection (1) apply in respect of the further consideration of the report in the same way as they apply in respect of the furnishing of the report.

#### **79B Effect of the Minister's decision**

The decision of the Minister under section 79A (1), other than a decision under section 79A (1) (d), is final and has effect as if it were a decision of the consent authority from whose determination, or neglect or delay to make a determination, the appeal is made.

### **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).

## **Part 5**

### **80-100 (Repealed)**

## **Part 6 Other measures for the conservation of the environmental heritage**

### **Division 1 Preliminary**

#### **101 Definitions**

In this Part—

**corporation** means the corporation constituted by section 102.

**Fund** means the Heritage Conservation Fund established under section 103.

## **102 Minister to be corporation sole for certain purposes**

- (1) The Minister is, for the purpose of exercising those functions expressed to be conferred or imposed on the corporation under this Part, hereby incorporated as a corporation sole with the corporate name “Minister administering the Heritage Act 1977”.
- (2) The corporation—
  - (a) has perpetual succession,
  - (b) shall have an official seal,
  - (c) may take proceedings, and be proceeded against, in its corporate name,
  - (d) may do and suffer all other things that a body corporate generally may, by law, do and suffer and that are necessary for or incidental to the purposes for which the corporation is constituted, and
  - (e) is, for the purpose of any Act, a statutory body representing the Crown.
- (3) The seal of the corporation shall not be affixed to any instrument or document except in the presence of the Minister, or a person authorised by the Minister, who shall attest by his or her signature the fact and date of the affixing of the seal.
- (4) All courts and persons acting judicially—
  - (a) shall take judicial notice of the seal of the corporation that has been affixed to any instrument or document, and
  - (b) shall, until the contrary is proved, presume that the seal was properly affixed.
- (5) Financial statements need not be prepared for the Heritage Office in respect of any matters that the financial statements of the corporation contain or provide for.

## **Division 2 Finance**

### **103 Heritage Conservation Fund**

There shall be established in the Special Deposits Account in the Treasury a Heritage Conservation Fund.

### **104 Payments into the Fund**

- (1) There shall be paid into the Fund—
  - (a) any money appropriated by Parliament for the purposes of the Fund,
  - (b) money borrowed by the corporation,

- (c) all money received in respect of—
    - (i) fees and charges under this Act or the regulations,
    - (ii) penalties recovered pursuant to this Act or the regulations, and
    - (iii) policies of insurance under which money is paid to the corporation with respect to any property in the custody or under the control of the corporation,
  - (d) any money acquired by the corporation pursuant to section 115,
  - (e) any money received by the corporation pursuant to section 116, and
  - (f) any other money received in connection with the administration of this Act, other than money received in such circumstances as may be prescribed.
- (2) Where any money acquired by the corporation pursuant to section 115 is subject to any condition to which it has agreed, the money shall be carried to a separate account in the Fund and shall be applied in accordance with the condition.
- (3) Any money referred to in subsection (2) may, pending application in accordance with the condition so referred to, be invested by the corporation with the Treasurer or in any manner in which trustees are for the time being authorised to invest trust funds.

#### **105 Payments out of the Fund**

- (1) There may be paid out of the Fund—
- (a) all charges, costs and expenses incurred by the Minister and the corporation in exercising functions under this Act,
  - (b) the remuneration payable to the members of the Heritage Council under this Act,
  - (c) money required—
    - (i) to repay money borrowed under this Division,
    - (ii) to pay interest on money so borrowed, and
    - (iii) to pay the expenses of the corporation in borrowing money under this Division,
  - (d) the cost of acquiring land under Division 3,
  - (e) the cost of conserving any item of the environmental heritage vested in the corporation,
  - (f) grants or loans for the purpose of promoting and assisting the conservation of items of the environmental heritage,

- (g) money required for the purpose of discharging any liability of the corporation under a guarantee given by the corporation,
- (h) all money which the Minister directs shall be set aside to provide a reserve for insurance, and
- (i) all costs incurred under sections 115 and 116.

(2) Any money set aside, as referred to in subsection (1) (h), may be invested by the corporation with the Treasurer or in any manner in which trustees are for the time being authorised to invest trust funds.

(3) Where—

(a) any lands are purchased under section 112 out of money wholly or partly appropriated by Parliament for the purposes of the Fund, and

(b) those lands, or any part of those lands, are sold under section 116,

there shall be paid from the Fund to the Treasurer, out of the proceeds of sale referred to in paragraph (b), such amounts as the Treasurer may determine.

#### **105A Heritage Incentive Fund**

- (1) There is to be a Fund called the Heritage Incentive Fund, which is to be administered by the Minister.
- (2) There is to be paid into the Heritage Incentive Fund any money appropriated by Parliament for the purposes of that Fund.
- (3) There may be paid out of the Heritage Incentive Fund money required to pay for the financial assistance provided or arranged by the Minister under section 45 (Financial and other assistance).

#### **106 Making of loans and grants by the corporation**

- (1) The corporation may, on the recommendation of the Heritage Council, make a grant or loan for the purpose of promoting and assisting the conservation of an item of the environmental heritage.
- (2) Subject to section 107, the corporation may, in making a grant or loan, impose such conditions as, in its opinion, are appropriate to promote and assist the conservation of the item of the environmental heritage in respect of which the grant or loan is made.

#### **107 Rates of interest on loans, and rental etc on leases by corporation**

- (1) A loan made by the corporation shall be—
  - (a) at the rate of interest for the time being fixed by the Treasurer generally for the

purposes of this Act, or

(b) if the Treasurer so approves—

(i) at such rate of interest as may be fixed by the Treasurer in respect of that loan,  
or

(ii) without interest.

(2) The rental or other consideration to be received by the corporation in respect of a lease of property acquired for the purposes of this Act shall be fixed by the corporation so as to produce an amount not less than such percentage as the Treasurer may direct, in respect of that lease, or of leases of the class to which that lease belongs, of the fair market value of the property leased.

### **108 Execution of guarantees**

(1) The corporation may, with the concurrence of the Treasurer and subject to this section, execute a guarantee, either alone or jointly with some other person, in favour of a bank, building society, credit union or other person for the repayment of any money expended or to be expended on any one or more of the following—

(a) the acquisition of an item of the environmental heritage,

(b) the conservation of an item of the environmental heritage, or

(c) the acquisition of personal property—

(i) which is associated with and contributes to the significance of an item of the environmental heritage as such an item, or

(ii) which is required for the purpose of furnishing or decorating an item of the environmental heritage.

(2) The corporation may, in agreeing to execute a guarantee, impose such conditions as, in the opinion of the corporation, are appropriate.

(3) A guarantee executed by the corporation is not enforceable against the corporation until the creditor has exercised all his or her rights and remedies under all other securities held by or for the creditor in respect of the debt guaranteed, other than the guarantee.

(4) The corporation may, as a condition of a guarantee, require the creditor to obtain, take and hold, or retain and hold, such securities for the payment of the principal debt and interest thereon as the corporation requires.

(5) The corporation may execute a guarantee notwithstanding that it includes any interest (including compound interest), charges and expenses chargeable by the creditor against the principal debtor and the expenses of enforcing or obtaining or



endeavouring to enforce or obtain payment of the debt guaranteed, that interest and those charges and expenses.

- (6) Where the corporation executes a guarantee, any assignment or encumbrance of the guarantee by the creditor without the consent of the corporation has no force or effect.
- (7) The corporation shall not execute a guarantee—
  - (a) if the amount guaranteed would exceed 90 per centum of the estimated cost, ascertained as directed by the corporation, of—
    - (i) the acquisition of the item of the environmental heritage,
    - (ii) the conservation of the item of the environmental heritage, or
    - (iii) the acquisition of the personal property,as the case may be, or
  - (b) if the amount guaranteed would, together with the amounts of all other guarantees executed by the corporation and then in force, or agreed to by the corporation but not then executed, exceed such amount as may be determined from time to time by the Treasurer and notified to the corporation.
- (8) The execution by the corporation of a guarantee referred to in this section is, in favour of the creditor, conclusive evidence that the requirements of this section with respect to the guarantee have been complied with.

#### **109-111 (Repealed)**

### **Division 3 Acquisition and disposal of property**

#### **112 Acquisition of land**

- (1) The corporation may, for the purposes of this Act, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- (2) For the purposes of the [Public Works Act 1912](#), any such acquisition of land is taken to be for an authorised work and the corporation is, in relation to that authorised work, taken to be the Constructing Authority.
- (3) Sections 34, 35, 36 and 37 of the [Public Works Act 1912](#) do not apply in respect of works constructed under this Act.

#### **113 (Repealed)**

#### **114 Acquisition of personal property by corporation**

The corporation may, in respect of an item of the environmental heritage vested in it, acquire, by lease, purchase or exchange, personal property—

- (a) which is associated with and contributes to the significance of that item as an item of the environmental heritage, or
- (b) which is required for the purpose of restoring, enhancing, furnishing or decorating that item.

#### **115 Power of corporation to accept gifts etc**

- (1) The corporation may acquire, by gift inter vivos, devise or bequest, any property for the purposes of this Act and may agree to the condition of any such gift, devise or bequest.
- (2) The rule of law against remoteness of vesting shall not apply to any such condition to which the corporation has agreed.
- (3) Where the corporation acquires property under subsection (1)—
  - (a) neither an instrument that effects the acquisition nor any agreement pursuant to which the property is acquired is chargeable with duty under the [Stamp Duties Act 1920](#), and
  - (b) the property, or the value of the property, shall not be included in the dutiable estate of the donor or testator for the purposes of assessing death duty under that Act.

#### **116 Disposal of lands, gifts etc**

- (1) The corporation, except where it has otherwise agreed, may, in such manner and subject to such terms and conditions as in the opinion of the corporation are appropriate, sell, lease, exchange or otherwise deal with or dispose of any property that has been acquired by the corporation under this Division and grant easements or rights-of-way over any land or any part thereof that has been so acquired by the corporation.
- (2) The functions of the corporation under subsection (1) shall not be exercised in respect of an item of the environmental heritage except upon the recommendation of the Heritage Council.

### **Division 4**

#### **117 (Repealed)**

### **Division 5 Maintenance and repair**

### **118 Minimum standards of maintenance and repair**

- (1) The regulations may impose minimum standards with respect to the maintenance and repair of a building or work (other than a ruin) or a relic that is listed or within a precinct that is listed on the State Heritage Register, but those standards can only relate to the following matters—
  - (a) the protection of the building, work or relic from damage or deterioration due to weather (including such matters as the weatherproofing of roof, doors and windows),
  - (b) the prevention of and the protection of the building, work or relic from damage or destruction by fire,
  - (c) security (including fencing and surveillance measures to prevent vandalism),
  - (d) essential maintenance and repair (being maintenance and repair necessary to prevent serious or irreparable damage or deterioration).
- (2) The regulations may make provision for or with respect to minimum standards that may be listed on the State Heritage Register for the maintenance of a ruin or a moveable object that is listed on that Register, but those standards can only relate to the following matters—
  - (a) the protection of the ruin or moveable object from damage or destruction by fire,
  - (b) security (including fencing and surveillance measures to prevent vandalism),
  - (c) essential maintenance of a moveable object (being maintenance necessary to prevent serious or irreparable damage or deterioration).
- (3) Without limiting subsection (2), the regulations referred to in that subsection may make provision for or with respect to—
  - (a) the means by which the minimum standards may be listed, amended or revoked, and
  - (b) the enforcement of the minimum standards (including by extending the operation of sections 119, 120 and 121 and associated provisions, with any necessary modification, to the minimum standards).
- (4) In this section—

**ruin** means a building or work that is listed, and identified as a ruin, on the State Heritage Register.

### **119 Offence of not maintaining and repairing in accordance with minimum standards**

- (1) The owner of a building, work or relic listed or within a precinct listed on the State

Heritage Register must ensure that the building, work or relic is maintained and repaired to standards that are not less than the minimum standards imposed by the regulations.

- (2) Proceedings for an offence against this Act in respect of a contravention of this section cannot be instituted without the written consent of the Minister.

### **120 Orders to remedy failure to maintain or repair**

- (1) If the Heritage Council is satisfied that a building, work or relic listed or within a precinct listed on the State Heritage Register is not being maintained and repaired to standards that are at least the minimum standards imposed by the regulations, the Heritage Council may give the owner of the building, work or relic an order to do or refrain from doing such things as are specified in the order so as to ensure that the building, work or relic is maintained and repaired to those standards.
- (2) Before such an order is given, the procedures set out in this Division must be complied with. Compliance with those procedures is taken to be compliance with the rules of natural justice (the rules of procedural fairness).
- (3) An order can be given under this Division whether or not the owner of the building, work or relic has been prosecuted for or convicted of an offence in respect of the failure to maintain or repair concerned.

### **120A Notice to be given of proposed order**

- (1) Before giving an order, the Heritage Council must give notice to the person to whom the order is proposed to be given of the intention to give the order, the terms of the proposed order and the period proposed to be specified as the period within which the order is to be complied with.
- (2) The notice must also indicate that the person to whom the order is proposed to be given may make written representations to the Heritage Council as to why the order should not be given or as to the terms of or period for compliance with the order.
- (3) The notice may provide that the representations are to be made to the Heritage Council on or before a specified date.

### **120B Making of representations**

- (1) A person given notice of a proposed order may, in accordance with the notice, make representations concerning the proposed order.
- (2) The Heritage Council is required to consider any representations so made.

### **120C Procedure after consideration of representations**

- (1) After considering any representations made concerning the proposed order, the

Heritage Council may determine—

- (a) to give an order in accordance with the proposed order, or
  - (b) to give an order in accordance with modifications made to the proposed order, or
  - (c) not to give an order.
- (2) If the determination is to give an order in accordance with modifications made to the proposed order, notice under this Division of the proposed order as so modified is not required to be given.

**120D Reasons for orders to be given**

- (1) The Heritage Council must give the person to whom the order is directed the reasons for the order.
- (2) The reasons may be given in the order or in a separate instrument.
- (3) The reasons must be given when the order is given, except in the case of an emergency (in which case the reasons may be given the next working day).

**120E Period for compliance with order**

- (1) An order must specify a reasonable period within which the terms of the order are to be complied with, subject to this section.
- (2) An order may require immediate compliance with its terms in circumstances that the Heritage Council believes constitute a serious risk to the building, work or relic concerned.

**120F Notice of right to appeal against order**

Notice of the giving of an order must—

- (a) state that the owner of the building, work or relic may appeal to the Court against the order or a specified part of the order, and
- (b) specify the period within which an appeal may be made.

**120G Giving and taking effect of orders**

- (1) An order is given by serving a copy of the order on the person to whom it is addressed. The order takes effect from the time of service or a later time specified in the order.
- (2) If a building, work or relic is owned by more than one person—
  - (a) an order in respect of the building, work or relic is not invalid merely because it was not given to all of the owners, and

(b) any of the owners may comply with such an order without affecting the liability of the other owners to pay for or contribute towards the cost of complying with the order.

(3) This Division does not affect the right of an owner to recover from any other person all or any of the expenses incurred by the owner in complying with an order under this Division.

(4) This Division does not entitle a person to recover from the Heritage Council any of the expenses incurred by the owner in complying with an order under this Division.

#### **120H Order binds successors in title**

An order given to a person binds any person claiming through or under or in trust for or in succession to the person or who is a subsequent owner to the person, as if the order had been given to that person.

#### **120I Occupier of land may be required to permit owner to carry out work**

- (1) The Heritage Council may order the occupier of any land to permit the owner of a building, work or relic to carry out such work on the building, work or relic as is specified in the order (being work that is, in the owner's opinion, necessary to enable the requirements of an order given to the owner to be complied with).
- (2) An occupier of land on whom such an order is served must, within 2 days after the order is served, permit the owner to carry out the work specified in the order.
- (3) The owner of the building, work or relic is not guilty of an offence arising from his or her failure to comply with the requirements of an order given to the owner if, while an order under this section is in force, the occupier of the land refuses to permit the owner to carry out the work specified in the order. This subsection applies only if the owner of the building, work or relic satisfies the Court that the owner has, in good faith, tried to comply with the requirements concerned.

#### **120J Modification and revocation of orders**

- (1) The Heritage Council may, at any time, modify an order it has given to a person (including a modification of the period specified for compliance with the order) if the person to whom the order is given agrees to that modification.
- (2) An order may be revoked by the Heritage Council at any time.

#### **120K Failure to comply with order—carrying out of work by Heritage Council**

- (1) If a person fails to comply with the terms of an order given to the person under this Division, the Heritage Council may do all such things as are necessary or convenient to give effect to the terms of the order, including the carrying out of any work required by the order.

- (2) Any expenses incurred under this section by the Heritage Council together with all associated costs may be recovered by the Heritage Council in any court of competent jurisdiction as a debt due to the Heritage Council by the person required to comply with the order.
- (3) This section does not affect the owner's right to recover any amount from any lessee or other person liable for the expenses of repairs.
- (4) A reference in this section to costs is a reference to costs incurred by the Heritage Council in seeking to recover the expenses otherwise than by proceedings in a court, but this section does not prevent the Heritage Council from receiving costs as between party and party in respect of those proceedings.
- (5) The Heritage Council may exercise its functions under this section irrespective of whether the person required to comply with the order has been prosecuted for an offence against this Act.

#### **120L Appeals concerning orders**

- (1) A person on whom an order is served may appeal against the order to the Court.
- (2) The appeal must be made within 28 days after the service of the order on the person.
- (3) On hearing an appeal, the Court may—
  - (a) revoke the order, or
  - (b) modify the order, or
  - (c) substitute for the order any other order that the Heritage Council could have made, or
  - (d) find that the order is sufficiently complied with, or
  - (e) make such order with respect to compliance with the order as the Court thinks fit, or
  - (f) make any other order with respect to the order as the Court thinks fit.
- (4) An appeal to the Court against an order does not operate to stay the order.
- (5) This Division does not limit a power of the Court under the *Land and Environment Court Act 1979*.

#### **120M Certificate as to orders**

- (1) A person may apply to the Heritage Council for a certificate as to whether there are—
  - (a) any outstanding notices of intention to give an order under this Division in respect of a particular building, work or relic, and

- (b) any orders in force under this Division in respect of a particular building, work or relic.
- (2) The application must be in the form determined by the Heritage Council and must be accompanied by the fee determined by the Heritage Council.
- (3) The Heritage Council is to issue a certificate to the applicant stating—
  - (a) whether or not a notice is outstanding or an order is in force in respect of the building, work or relic as at the date of the certificate and, if so, the terms of any such notice or order, and
  - (b) any action proposed to be taken or that may be taken by the Heritage Council or any other person in relation to any such notice or order.
- (4) The production of the certificate is taken for all purposes to be conclusive proof of the existence or otherwise of any outstanding notices and any orders in force.

**120N Chairperson to have Heritage Council functions**

- (1) The Chairperson has the same functions as the Heritage Council under this Division and for that purpose a reference in this Division to the Heritage Council includes a reference to the Chairperson.
- (2) It is permissible for the Chairperson and the Heritage Council to share functions under this Division in respect of any particular building, work or relic, so as to enable the Chairperson to exercise some functions and the Heritage Council to exercise others in respect of that building, work or relic.

**121 Failure to comply with order**

- (1) Where an owner on whom an order under section 120 is served fails to comply with that order within the period specified in that order or any extension, granted by the Heritage Council on application of that owner, of that period—
  - (a) the corporation may, in pursuance of section 113, resume or appropriate the land on which the building or work the subject of that order is situated, or
  - (b) the Minister may, by order published in the Gazette, direct that no development or use of that land, other than the conservation of that building or work, shall be carried out or made during such period, not exceeding 10 years, as is specified in the order, or
  - (c) the Minister may, by order published in the Gazette, direct that no development or use of that land is to be carried out other than development or use of the building envelope (that is, the three dimensional space) occupied by the building or work at the time that the order under section 120 was served.



- (2) In determining the amount of compensation payable in respect of a resumption or an appropriation of land by the corporation under subsection (1) (a), the value of that land shall be—
- (a) the value determined in accordance with section 147, or
  - (b) the value determined on the assumption that no approval may be given under this Act in respect of the building or work situated on that land other than to restore that building or work to a reasonable state of repair,
- whichever is the lesser.
- (3) The Minister may, by order published in the Gazette, at any time at which an order made by the Minister under subsection (1) (b) or (c) remains in force, revoke, alter or vary that order.
- (4) An order made by the Minister under subsection (1) (b) or (c) or (3) shall take effect on and from the date of publication of that order in the Gazette.
- (5) The Minister shall cause notice of an order made by the Minister under subsection (1) (b) or (c) or (3) to be served, as soon as practicable after the date of publication of that order in the Gazette, on—
- (a) the owner or occupier of the land subject to that order,
  - (b) the Heritage Council,
  - (c) the Secretary of the Department of Planning and Environment, and
  - (d) the council of the area, if any, in which that land is situated.

### **122 Failure to comply with order under section 121 (1) (b) or (c)**

A person shall not fail to comply with an order made by the Minister under section 121 (1) (b) or (c), or that order as altered or varied by the Minister under section 121 (3), while that order is in force.

## **Division 6 Rating and taxing**

### **123 Definitions**

In this Division—

**heritage valuation**, in relation to land, means a valuation of that land obtained by adding to or by deducting from a valuation for rating or taxing purposes of that land any allowance determined as a consequence of making the following assumptions with respect to that land, namely—

- (a) that that land may be used only for the purpose, if any, for which it was used at the

relevant date,

- (b) that all improvements on that land as at the relevant date may be continued and maintained in order that the use of that land as referred to in paragraph (a) may be continued,
- (b1) that all improvements referred to in paragraph (b) on that land are new (without any deduction being made because of their actual condition),
- (c) that no improvements, other than those referred to in paragraph (b), may be made to or on that land,
- (d) that the cost of construction of improvements on that land has no effect on its land value, with the result that there is to be no reduction in land value because of any difference between the cost of construction of the improvements referred to in paragraph (b) as new improvements and the cost of construction of other improvements used as a basis for comparison in the determination of land value.

**land** includes stratum within the meaning of the [Valuation of Land Act 1916](#).

**rating or taxing authority** means—

- (a) a council,
- (b) a county council established under the [Local Government Act 1993](#),
- (c) the Sydney Water Corporation referred to in the [Water Board \(Corporatisation\) Act 1994](#),
- (d) the Hunter Water Corporation referred to in the [Hunter Water Board \(Corporatisation\) Act 1991](#),
- (e) a water supply authority within the meaning of the [Water Management Act 2000](#),
- (f) the Chief Commissioner of State Revenue.

**relevant date**, in relation to a heritage valuation, means—

- (a) where that heritage valuation is made pursuant to a request made by the Minister under section 124 (1)—the date determined in accordance with section 124 (1) (a) or (b), or
- (b) where that heritage valuation is made pursuant to section 125—the date on which that heritage valuation is made.

**valuation for rating or taxing purposes**, in relation to land, means a valuation of that land made under a valuing law and which is the valuation on which a rate is made and levied or a tax is levied in respect of that land by a rating or taxing authority.

**valuing law** means the *Valuation of Land Act 1916*.

#### **124 Request to make heritage valuations**

- (1) As soon as practicable after the date on which a listing on the State Heritage Register takes effect with respect to land, the Minister shall, by instrument in writing, request each person by whom a valuation for rating or taxing purposes of that land has been made or caused to be made to make or cause to be made a heritage valuation or heritage valuations of that land as at—
  - (a) except as provided by paragraph (b)—the date on which that listing on the State Heritage Register took effect with respect to that land, or
  - (b) where, immediately before that date, that land was subject to an interim heritage order—the date on which that interim heritage order took effect with respect to that land.
- (2) Where, immediately before the date on which a listing on the State Heritage Register took effect with respect to land the subject of a request by the Minister under subsection (1) that land was subject to an interim heritage order, the Minister shall notify the person to whom that request is made that that land was subject to an interim heritage order and of the date on which that interim heritage order took effect with respect to that land.
- (3) A person to whom a request under subsection (1) is made shall comply with that request as soon as practicable after its receipt.

#### **125 Making of heritage valuations with other valuations**

- (1) Whenever, pursuant to a valuing law, a person makes or causes to be made a valuation for rating or taxing purposes of land, the person shall, in addition, where that land is subject to a listing on the State Heritage Register, make or cause to be made a heritage valuation or heritage valuations of that land.
- (2) When a heritage valuation is made of land, there is to be no allowance made or other adjustment of that valuation on account of the effect on value of any factor concerned with the land being listed on the State Heritage Register, other than an allowance or adjustment resulting from the assumptions required by this Division for a heritage valuation.

#### **126 Application of valuing laws to heritage valuations**

Except to the extent of any inconsistency with this Division—

- (a) the *Valuation of Land Act 1916*, applies to a heritage valuation derived from a valuation for rating or taxing purposes made under that Act in the same way as it applies to that valuation for rating or taxing purposes,

- (b), (c) (Repealed)
- (d) the *Water Board (Corporatisation) Act 1994*, applies to a heritage valuation derived from a valuation for rating or taxing purposes made under that Act in the same way as it applies to that valuation for rating or taxing purposes,
- (e) (Repealed)
- (f) the *Broken Hill Water and Sewerage Act 1938*, applies to a heritage valuation derived from a valuation for rating or taxing purposes made under that Act in the same way as it applies to that valuation for rating or taxing purposes, and
- (g) the *Land Tax Management Act 1956*, applies to a heritage valuation derived from a valuation for rating or taxing purposes made under that Act in the same way as it applies to that valuation for rating or taxing purposes.

### **127 Payment of rates and taxes**

- (1) Where land is subject to a listing on the State Heritage Register, a rating or taxing authority which would, but for this Act, make and levy a rate or levy a tax on a valuation for rating or taxing purposes of that land shall make and levy that rate or levy that tax on the heritage valuation of that land derived from that valuation for rating or taxing purposes.
- (2) Where a heritage valuation is made with respect to land pursuant to a request made by the Minister under section 124 (1), the amount of any rates or taxes payable in respect of that land shall be redetermined on the basis of that heritage valuation as from the date determined in accordance with section 124 (1) (a) or (b), as the case may be, of that heritage valuation and any amount paid in excess shall be refunded and any amount short-paid shall be recoverable as arrears.
- (3) Where land ceases to be subject to a listing on the State Heritage Register, the amount of any rates or taxes levied in respect of that land shall, as from the date on which that land ceases to be subject to that listing on the State Heritage Register, be redetermined on the basis of the valuation for rating or taxing purposes of that land and any amount paid in excess shall be refunded and any amount short-paid shall be recoverable as arrears.

### **128 Calculation of land tax**

- (1) Notwithstanding the *Land Tax Management Act 1956*, where a person is the owner, within the meaning of that Act, of two or more parcels of land, one or more of which is subject to a listing on the State Heritage Register, the amount of land tax, within the meaning of that Act, payable by that person shall, in respect only of such land as is subject to a listing on the State Heritage Register, be—
  - (a) calculated separately in respect of each parcel of that land that is not exempt

from taxation, and

(b) so calculated in the case of each such parcel as if it were the only land owned by that person.

(2) This section applies only in respect of land that was subject to a permanent conservation order immediately before the commencement of this subsection (as inserted by the [Heritage Amendment Act 1998](#)). This section does not apply to the calculation of land tax payable for any land tax year after the 2003 land tax year.

## **Division 7 Curtailment or modification of laws affecting the environmental heritage**

### **129 Making of orders to curtail or modify other laws**

- (1) In this section, **instrument** means any Act (other than this Act), rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument by or under whatever authority made.
- (2) Where the conservation of an item to which an interim heritage order made by the Minister or listing on the State Heritage Register applies is regulated, restricted or prohibited by an instrument, the Minister, if he or she is of the opinion that the conservation of that item is so necessary as to warrant it, may, by order published in the Gazette, declare that the instrument or such part of that instrument as is specified in the order shall not apply to or in respect of that item or shall apply to or in respect of that item subject to such modifications as are so specified in such circumstances, if any, as are so specified.
- (3) Where a Minister is responsible for the administration of an instrument referred to in subsection (2), the Minister shall not make an order with respect to that instrument under that subsection except with the prior concurrence in writing of the first-mentioned Minister.
- (4) The Minister may, by order published in the Gazette, at any time at which an order made by the Minister under subsection (2) remains in force, revoke that order in whole or in part.
- (5) An order made by the Minister under subsection (2) or (4) shall take effect on and from the date of publication of that order in the Gazette.

## **Division 8 Controlling and restricting harm to buildings, works, relics and places not subject to interim heritage orders or State Heritage Register listing**

### **129A-135 (Repealed)**

### **136 Order restricting harm to buildings etc**

- (1) Where the Minister or the Chairperson of the Heritage Council is of the opinion that a building, work, relic or place (not being a building, work, relic or place the subject of an interim heritage order or listing on the State Heritage Register) is being or is about to be harmed, he or she may order that any work being carried out with respect to that building, work, relic or place shall cease and that no work, other than such work as may be specified in his or her order, shall be carried out with respect to that building, work, relic or place within a period of 40 days after the date of his or her order.
- (2) An order made by the Minister or the Chairperson of the Heritage Council under subsection (1) shall take effect on and from the date on which a copy of that order is affixed to the building, work, relic or place the subject of that order.
- (3) Where the Minister makes an order under subsection (1), the Minister shall immediately request the Heritage Council to furnish to him or her, within the period of 40 days after the date of that order, advice with respect to the making of an interim heritage order in respect of the building, work, relic or place the subject of his or her order.
- (4) The Heritage Council shall comply with the Minister's request.
- (5) Where the Chairperson of the Heritage Council makes an order under subsection (1), he or she shall take all such steps as are necessary to enable the Heritage Council to furnish to the Minister, within the period of 40 days after the date of that order, advice with respect to the making of an interim heritage order in respect of the building, work, relic or place the subject of his or her order.
- (6) The Minister may revoke an order made under subsection (1) at any time after the Minister has received the advice or recommendation of the Heritage Council under subsection (3) or (5) but only during the period of 40 days after the date of that order.

### **137 Unlawful work**

A person shall not, while an order made by the Minister or the Chairperson of the Heritage Council under section 136 (1) 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 or place the subject of that order.

### **137A Conflicting orders void**

- (1) If an interim heritage order or order under section 136 (1) is in force in relation to a building, work, relic or place, a notice or order (whether made or issued before or after the interim heritage order or order under section 136 (1)) under any other Act which requires or permits the building, work, relic or place to be harmed, other than—

(a) an order of the kind referred to in Order No 6 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979*, or

(b) a notice or order which is prescribed for the purposes of this section,

is void.

(2) On and from the date on which an interim heritage order ceases to have effect in relation to a building, work, relic or place, whether by lapsing, revocation or otherwise, any notice or order that is void under subsection (1) because of the interim heritage order comes back into force in relation to that building, work, relic or place.

(3) On and from the date on which an approval is granted by an approval body under Division 3 of Part 4 in relation to a building, work, relic or place to which an interim heritage order applies, any notice or order that is void under subsection (1) because of the interim heritage order comes back into force in relation to that building, work, relic or place, but only to the extent to which it is consistent with the terms of the approval.

## Division 9 Protection of certain relics

### 138 Definitions

In this Division—

**excavation permit** means an excavation permit referred to in section 139.

**historic shipwreck** has the same meaning as it has in Part 3C.

**historic shipwrecks permit** means a historic shipwrecks permit referred to in section 51.

**permit** means an excavation permit or historic shipwrecks permit.

**relic** includes a historic shipwreck.

### 139 Excavation permit required in certain circumstances

(1) A person must not disturb or excavate any land knowing or having reasonable cause to suspect that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed unless the disturbance or excavation is carried out in accordance with an excavation permit.

(2) A person must not disturb or excavate any land on which the person has discovered or exposed a relic except in accordance with an excavation permit.

(3) This section does not apply to a relic that is subject to an interim heritage order made by the Minister or a listing on the State Heritage Register.

(4) The Heritage Council may by order published in the Gazette create exceptions to this

section, either unconditionally or subject to conditions, in respect of any of the following—

- (a) any relic of a specified kind or description,
- (b) any disturbance or excavation of a specified kind or description,
- (c) any disturbance or excavation of land in a specified location or having specified features or attributes,
- (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.

(5) This section does not prevent a person from disturbing or excavating land in which a historic shipwreck is situated in accordance with a historic shipwrecks permit in force in respect of that shipwreck.

#### **140 Application for permit**

- (1) A person may make an application to the Heritage Council for the issue to the person of a permit.
- (2) The application shall be in the approved form and shall be accompanied by such fee as may be prescribed.

#### **141 Determination of application**

- (1) The Heritage Council may determine an application for a permit—
  - (a) by issuing a permit, either unconditionally or subject to such conditions as it thinks proper to impose, or
  - (b) by refusing to issue a permit.
- (2) Where the Heritage Council fails to determine an application for a permit within 21 days after the date of that application, it shall, for the purpose only of section 142, be deemed to have determined that application by refusing to issue a permit.
- (3) The regulations may prescribe—
  - (a) the circumstances in which the Heritage Council may request additional information from an applicant, and
  - (b) the periods of time that must not be taken into account in calculating the expiration of the period referred to in subsection (2) if the Heritage Council has requested additional information from the applicant.



#### **142 Appeals arising from applications for permits**

An applicant dissatisfied with a determination of the Heritage Council with respect to his or her application for a permit may appeal to the Minister.

#### **143 Minister's decision**

- (1) The Minister may, with respect to an appeal made under section 142—
  - (a) dismiss the appeal,
  - (b) allow the appeal, either unconditionally or subject to such conditions as the Minister thinks proper to impose, or
  - (c) where the appeal is against the imposition of conditions, refuse to approve the application for a permit from the determination of which the appeal has been made.
- (2) The decision of the Minister under subsection (1) shall be final and shall have effect as if it were a determination of the Heritage Council.

#### **144 Variation or revocation of permit**

The Heritage Council may, by notice in writing to the holder of a permit—

- (a) where that permit has been issued unconditionally, impose conditions to which that permit shall be subject,
- (b) where that permit has been issued subject to conditions, vary the conditions of that permit, or
- (c) revoke that permit.

#### **145 Appeals arising from variation or revocation of permits**

- (1) The holder of a permit dissatisfied with the variation or revocation of that permit may appeal to the Minister.
- (2) Section 143, section 143 (1) (c) excepted, applies in respect of an appeal made under subsection (1) in the same way as it applies in respect of an appeal made under section 142.

#### **146 Notification of discovery of relic**

A person who is aware or believes that he or she has discovered or located a relic (in any circumstances, and whether or not the person has been issued with a permit) must—

- (a) within a reasonable time after he or she first becomes aware or believes that he or she has discovered or located that relic, notify the Heritage Council of the location of the relic, unless he or she believes on reasonable grounds that the Heritage Council is

aware of the location of the relic, and

- (b) within the period required by the Heritage Council, furnish the Heritage Council with such information concerning the relic as the Heritage Council may reasonably require.

**146A Disposition of certain relics**

- (1) As soon as practicable after a relic is obtained from an excavation carried out by the holder of a permit, the holder shall notify the Minister of the existence of the relic.
- (2) The holder shall furnish the Minister with such information concerning the relic as the Minister may reasonably require.

**146B Minister may direct that relic be given to museum or other conservation body**

- (1) The Minister may, by notice in writing, direct any person—
  - (a) who is or has been the holder of a permit, or
  - (b) who, in the Minister's opinion, has obtained a historic shipwreck as a consequence of having removed the relic without a historic shipwrecks permit, in contravention of section 51, or
  - (c) who, in the Minister's opinion, has obtained a relic as a consequence of having excavated land without an excavation permit, in contravention of section 139,to deliver the relic to a specified person or body (such as a museum) who in the opinion of the Minister has the facilities and expertise to conserve the relic.
- (2) Such a direction may be given on the ground that the person has obtained the relic as a consequence of—
  - (a) having removed the relic without a historic shipwrecks permit, in contravention of section 51, or
  - (b) having excavated land without an excavation permit, in contravention of section 139,whether or not the person has been prosecuted or convicted of an offence in respect of the alleged contravention.

**146C Forfeiture of certain relics**

- (1) A relic the subject of a direction under section 146B shall be forfeited to the Crown.
- (2) No compensation is payable to any person as a consequence of the forfeiture of a relic under this section.

## **Part 7 Implementation and enforcement**

### **Division 1 General**

#### **147 Value of land compulsorily acquired**

(1) Where land the subject of an interim heritage order or listing on the State Heritage Register is—

(a) resumed or appropriated under this Act, or

(b) resumed or appropriated under any other Act for a public purpose,

the value of that land shall be determined as if that land were not the subject of that interim heritage order or listing on the State Heritage Register.

(2) (Repealed)

#### **148 Entry and inspection**

(1) Subject to subsection (2) the Minister may authorise a person to carry out inspections, for the purposes of this Act, of buildings, works, relics, moveable objects and places and a person so authorised shall be provided by the Minister with a certificate of his or her authority in the prescribed form.

(2) Where a person authorised under subsection (1) believes on reasonable grounds that a building, work, relic, moveable object or place, is or contains an item of the environmental heritage, the person may—

(a) at any reasonable time after giving reasonable notice of his or her intention to do so to the person apparently in charge of or having the custody of that building, work, relic, moveable object or place, or

(b) at any time with the consent of the person referred to in paragraph (a),

carry out an inspection of that building, work, relic, moveable object or place.

(3) A person authorised under subsection (1), in exercising his or her functions under this section in respect of a building, work, relic, moveable object or place, shall, if so required by a person apparently in charge of that building, work, relic, moveable object or place, produce the certificate of his or her authority to that person.

#### **149 Obstruction of authorised person**

A person shall not obstruct, hinder, prevent or interfere with a person authorised under section 148 (1) in the exercise of his or her functions under section 148.

## **150 Notices**

- (1) Where under this Act any notice or other document is required to be given to or served upon any person, the notice or other document may be given or served—
  - (a) in the case of an individual—
    - (i) by delivering it to the person, or
    - (ii) by sending it by prepaid post addressed to the person at the address, if any, specified by the person for the giving of notices or service of documents under this Act, or, where no such address is specified, at his or her usual or last known place of abode or his or her last known place of business, or
  - (b) in the case of a person not being an individual—
    - (i) by leaving it at that person's place of business, or, if that person is a corporation, at the registered office of that corporation, with a person apparently not less than 16 years of age and apparently in the service of the person to whom the notice or other document is required to be given or on whom the notice or other document is required to be served, or
    - (ii) by sending it by prepaid post addressed to that person at the address, if any, specified by that person for the giving of notices or service of documents under this Act, or, where no such address is specified, at that person's last known place of business.
- (2) A notice or other document shall, in respect of a notice or other document sent by prepaid post in accordance with subsection (1) (a) (ii) or (b) (ii), be deemed to have been given or served at the time at which the notice or other document would be delivered in the ordinary course of post.
- (3) A notice or other document required to be given to or served upon any person by the Heritage Council may be given or served by the Secretary of the Heritage Council.
- (4) A notice or other document required to be given to or served upon the Heritage Council may be given to or served upon the Secretary of the Heritage Council.

## **151 Evidence**

- (1) A document purporting to be an interim heritage order is admissible in evidence in any legal proceedings and is prima facie evidence of the due making of that order and the contents thereof if it purports to be printed by the Government Printer or by the authority of the Government.
- (1A) The Heritage Council may issue a certificate certifying that a particular item or particular land is or is not the subject of a listing on the State Heritage Register, or was or was not the subject of a listing on the State Heritage Register on a particular

date or during a particular period. Such a certificate is prima facie evidence of the matters certified. A certificate purporting to have been issued by the Heritage Council under this section is presumed, unless the contrary is established, to have been so issued.

- (2) A document purporting to be a copy or extract of any document, map or plan embodied, incorporated or referred to in an interim heritage order or a listing on the State Heritage Register is admissible in evidence in any legal proceedings if—
  - (a) it purports to be printed by the Government Printer or by the authority of the Government, or
  - (b) it purports to be certified, where the original document, map or plan is in the custody of the Department of Planning and Environment, under the hand of a person employed in that Department.
- (3) Where the original document, map or plan is in the custody of the Department of Planning and Environment, the Department of Premier and Cabinet shall furnish the certified copy or extract to the person applying for it upon payment of such fee as is determined by the Department of Premier and Cabinet.
- (4) For the purposes of this section, a copy or extract of a map or plan may be to the same scale as the original or may be an enlarged or reduced copy.

## **Division 2 Orders of the Court**

### **152 Definitions**

In this Division—

- (a) a reference to a breach of this Act is a reference to—
  - (i) a contravention of or failure to comply with this Act, and
  - (ii) a threatened or an apprehended contravention of or a threatened or an apprehended failure to comply with this Act, and
- (b) a reference to this Act includes a reference to an approval given under this Act and a condition of any such approval.

### **153 Restraint etc of breaches of this Act**

- (1) Any person may bring proceedings in the Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been infringed by or as a consequence of that breach.
- (2) Proceedings brought under subsection (1) shall be brought in accordance with the rules of Court.

### **154 Order of the Court**

- (1) Where the Court is satisfied that a breach of this Act has been committed or that a breach of this Act will, unless restrained by order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the breach.
- (2) Without limiting the powers of the Court under subsection (1), an order made under that subsection may—
  - (a) where the breach of this Act comprises a use of a building or work or of land—restrain that use, or
  - (b) where the breach of this Act comprises the erection of a building or the carrying out of a work—require the demolition or removal of the building or work, or
  - (c) where the breach of this Act has the effect of altering the appearance of a building or work or the state of land—require the restoration of the building or work or the reinstatement, so far as is practicable, of the land to the condition the building, work or land was in immediately before the breach was committed, or
  - (d) where the breach of this Act comprises the demolition of the whole or part of a building—require the rebuilding of the building, as it was immediately before the breach was committed, in accordance with plans and specifications approved by the Heritage Council.
- (3) (Repealed)

### **155 Application of Division**

The functions of the Court under this Division are in addition to and not in derogation from any other function of the Court.

## **Division 3 Offences**

### **156 Offences against this Act and the regulations**

- (1) Where any matter or thing is by or under this Act, other than by or under the regulations, directed or forbidden to be done, or where the Minister, the Heritage Council or any other person or body is authorised by or under this Act, other than by or under the regulations, to direct any matter or thing to be done, or to forbid any matter or thing to be done, and that matter or thing if so directed to be done remains undone, or if so forbidden to be done is done, a person offending against that direction or prohibition shall be guilty of an offence against this Act.
- (2) Where any matter or thing is by or under the regulations directed or forbidden to be done, or where the Minister, the Heritage Council or any other person or body is authorised by the regulations to direct any matter or thing to be done, or to forbid any matter or thing to be done, and that matter or thing if so directed to be done remains

undone, or if so forbidden to be done is done, a person offending against that direction or prohibition shall be guilty of an offence against the regulations.

- (3) Nothing in subsection (1) or (2) applies in respect of a direction given under this Act by the Minister to the Heritage Council.

### **157 Penalties**

- (1) A person guilty of an offence against this Act shall be liable to a penalty not exceeding 10,000 penalty units or imprisonment for a period not exceeding 6 months, or both.
- (2) A person guilty of an offence against the regulations shall be liable to a penalty not exceeding 50 penalty units.

### **158 Proceedings for offences**

- (1) Proceedings for an offence against this Act may be taken before the Local Court or before the Court in its summary jurisdiction.
- (2) Proceedings for an offence against the regulations may be taken before the Local Court.
- (3) Proceedings for an offence against this Act shall not be instituted in the Court in its summary jurisdiction without the written consent of the Minister or of such prescribed person or person of a class or description of persons prescribed for the purposes of this section.
- (4) If proceedings for an offence against this Act are brought in the Local Court, the maximum penalty that the court may impose is, notwithstanding any other provision of this Act, 200 penalty units or imprisonment for a period not exceeding 3 months, or both.
- (5) If proceedings for an offence against this Act are brought in the Court in its summary jurisdiction, the maximum penalty that the Court may impose is 10,000 penalty units or imprisonment for a period not exceeding 6 months, or both.
- (6) (Repealed)

### **158A Time within which proceedings for offences to be brought**

- (1) Proceedings for an offence against this Act or the regulations may be commenced within, but not later than, 12 months after the date of the alleged commission of the offence.
- (2) Proceedings for an offence against this Act or the regulations may also be commenced within, but not later than, 12 months after the date on which evidence of the alleged offence first came to the attention of an authorised person.

- (3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the information must contain particulars of the date on which evidence of the alleged offence first came to the attention of an authorised person and need not contain particulars of the date on which the offence was committed.
- (4) The date on which evidence first came to the attention of an authorised person is the date specified in the information, unless the contrary is established.
- (5) This section applies despite anything in the *Justices Act 1902* or any other Act.
- (6) In this section—

**authorised person** means a person authorised to exercise functions under section 148 (1).

**evidence** of an offence means evidence of any act or omission constituting the offence.

**159 Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if—
  - (a) a corporation commits a corporate offence, and
  - (b) the person is—
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person—
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or
    - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

**Maximum penalty**—The maximum penalty for the corporate offence if committed by an individual.



- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

**160 Notices to show cause why certain restrictions on development etc should not be imposed**

- (1) If the owner of an item is convicted of an offence against this Act involving the demolition, damaging or despoliation of that item, the Minister may serve written notice on that owner requiring the owner to show cause, within 21 days after the date of that notice, why the Minister should not make one of the following orders (without the need to specify which order is contemplated)—
  - (a) an order directing that no development or use of the land on which that item is or was situated, or, where that item is a place, that place, is to be carried out during such period, not exceeding 10 years, as is specified in the notice other than development or use of that land or place for the purpose of restoring that item to the condition it was in before the demolition, damaging or despoliation took place,
  - (b) an order directing that no development or use of the land on which that item is or was situated is to be carried out other than development or use of the building envelope (that is, the three dimensional space) occupied by the item before the demolition, damaging or despoliation took place.
- (2) A notice referred to in subsection (1) shall inform an owner on whom it is served of the provisions of sections 161 and 162.

**161 Orders restricting development etc**

- (1) If an owner of an item on whom a notice is served under section 160 (1) with respect to that item fails to show cause as referred to in section 160 (1), the Minister may, by order published in the Gazette, direct either of the following—
  - (a) that no development or use of the land on which that item is or was situated, or, where that item is a place, that place, is to be carried out during such period, not exceeding 10 years, as is specified in the order other than development or use of that land or place for the purpose of restoring that item to the condition it was in

before the demolition, damaging or despoliation took place,

- (b) that no development or use of the land on which that item is or was situated is to be carried out other than development or use of the building envelope (that is, the three dimensional space) occupied by the item before the demolition, damaging or despoliation took place.

- (2) An order made by the Minister under subsection (1) shall take effect on and from the date of publication of that order in the Gazette.

#### **162 Notice of order under sec 161 (1)**

The Minister shall, as soon as practicable after the date of publication in the Gazette of an order made under section 161 (1), cause notice of that order to be served on—

- (a) the owner of the land or place the subject of that order, and
- (b) the Heritage Council.

#### **163 Revocation of order under sec 161 (1)**

- (1) The Minister may, at any time during which an order made under section 161 (1) remains in force, revoke that order by notice of revocation.
- (2) A notice of revocation shall take effect on the date of publication of that notice in the Gazette.
- (3) The Minister shall, as soon as practicable after the date of publication in the Gazette of a notice of revocation of an order made under section 161 (1), cause notice of the revocation to be given to the persons referred to in section 162 (a) and (b).

#### **164 Failure to comply with order under sec 161 (1)**

A person shall not fail to comply with an order made by the Minister under section 161 (1) while that order is in force.

### **Division 4 Regulations**

#### **165 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may be made so as to apply differently according to such factors as may be specified in the regulation.
- (3) A regulation may be made so as to authorise any matter or thing to be from time to time determined, applied or regulated by any person or body specified in the

regulation.

## **Part 8 Miscellaneous**

### **166 Submissions by councils to the Heritage Council**

- (1) A council may submit to the Heritage Council particulars of a building, work, relic or place which, in the opinion of the council, is an item of the environmental heritage and worthy of conservation in accordance with this Act.
- (2) The Heritage Council shall consider a submission made to it under subsection (1) and may recommend to the Minister the taking of such action under this Act with respect to that submission as it thinks fit.
- (3) The Heritage Council shall notify the council of any recommendation made by it with respect to the council's submission.

### **166A Heritage Council fees for services**

- (1) The regulations may make provision for or with respect to the fees that may be charged for the services provided by the Heritage Council.
- (2) The services in respect of which such regulations may be made include the following—
  - (a) the supply of a service, product or commodity,
  - (b) the review of a conservation management plan,
  - (c) the provision of a service in connection with the exercise of the Heritage Council's functions with respect to applications under this Act (including the carrying out of inspections).

### **167 Certificates**

- (1) A person may, on payment of the prescribed fee, apply to the Heritage Council for a certificate under this section with respect to land or a relic specified or described in the application.
- (2) The Heritage Council may issue a certificate that on the date specified in the certificate—
  - (a) land or a relic specified or described in the certificate is—
    - (i) land or a relic to which an interim heritage order or listing on the State Heritage Register applies or is not land or a relic to which an interim heritage order or listing on the State Heritage Register applies, or
    - (ii) land or a relic to which an order made under this Act applies or is not land or a

relic to which an order made under this Act applies, and

- (b) a building, work, relic or place specified or described in the certificate is a building, work, relic or place in respect of which a notice has been served under this Act or is not a building, work, relic or place in respect of which a notice has been served under this Act.
- (3) A certificate issued under subsection (2) shall specify such other matters as may be prescribed.
- (4) For the purpose of any proceedings for an offence against this Act or the regulations taken against a person who has obtained a certificate under this section, that certificate shall, in favour of that person, be conclusively presumed to be true and correct.

### **168 Liability of members of Heritage Council etc**

- (1) No matter or thing done by the Heritage Council or a person, being a member of the Heritage Council, a person acting under the direction of the Heritage Council or a person acting as a delegate under section 169, shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the person to any action, liability, claim or demand.
- (2) A person aggrieved as a consequence of the issue to the person of a certificate under section 167 shall be deemed to be a person deeming himself or herself to have a just claim or demand against the Crown within the meaning of the [Crown Proceedings Act 1988](#).

### **169 Delegation of functions**

- (1) The Minister may delegate to a person the exercise of any of the Minister's functions under this Act, other than this power of delegation.
- (2) The corporation constituted by section 102 may delegate to a person the exercise of any of the corporation's functions, other than this power of delegation.
- (3) The Heritage Council may, with the consent of the Minister, delegate to a person, or to a committee established by the Heritage Council, the exercise of any of the Heritage Council's functions, other than this power of delegation.
- (4) The Chairperson of the Heritage Council may—
  - (a) with the consent of the Minister, delegate to a person the exercise of any of the Chairperson's functions, other than this power of delegation, and
  - (b) delegate to a person the exercise of any of the functions delegated to the Chairperson by the Minister or the Heritage Council, unless the Minister or the Heritage Council, as the case requires, otherwise provides in the instrument of

delegation to the Chairperson.

(5)–(12) (Repealed)

### **170 Heritage and Conservation Register**

(1) (Repealed)

(2) Words and expressions used in this section that are defined in the *Government Sector Finance Act 2018* have the same meanings as in that Act.

(3) A government instrumentality shall establish and keep a register entitled the “Heritage and Conservation Register”.

(4) A government instrumentality shall enter in the register details of each item of the environmental heritage—

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

(b) which—

(i) in the case of an accountable authority for a reporting GSF agency that is a Public Service agency—is vested in or owned or occupied by, or subject to the control of, the responsible Minister for the agency or the agency, or

(ii) in the case of any other reporting GSF agency—is owned or occupied by the agency.

(5) A government instrumentality shall review and, if necessary, amend its register not less than once each year.

(6) A government instrumentality shall furnish a copy of its register and of any amendments to its register to the Heritage Council in accordance with such directions as may be given by the Heritage Council.

(7) A person may inspect a government instrumentality’s register or a copy of the register at the office, or principal office, of the government instrumentality or the Heritage Council during the ordinary office hours of the government instrumentality or the Heritage Council.

(8) A register or copy may be inspected free of charge but a fee may be charged for the making of a copy or an extract.

### **170A Heritage management by government instrumentalities**

(1) A government instrumentality must give the Heritage Council not less than 14 days written notice before the government instrumentality—

(a) removes any item from its register under section 170, or

- (b) transfers ownership of any item entered in its register, or
  - (c) ceases to occupy or demolishes any place, building or work entered in its register.
- (2) Each government instrumentality is responsible for ensuring that the items entered on its register under section 170 and items and land to which a listing on the State Heritage Register applies that are under its care, control or management are maintained with due diligence in accordance with State Owned Heritage Management Principles approved by the Minister on the advice of the Heritage Council and notified by the Minister to government instrumentalities from time to time.
- (3) The Heritage Council can from time to time issue heritage asset management guidelines to government instrumentalities, being guidelines with respect to the conservation of the items entered on registers under section 170 and items and land to which a listing on the State Heritage Register applies that are under the care, control or management of the government instrumentality. The guidelines can relate to (but are not limited to) such matters as maintenance, repair, alteration, transfer of ownership and demolition. A government instrumentality must comply with the guidelines.
- (4) (Repealed)

**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.

**171 Savings and transitional provisions**

Schedule 1 has effect.

## Schedule 1 Savings and transitional provisions

(Section 171)

### Part 1 Preliminary

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts—

*Heritage Amendment Act 1996*

*Heritage Amendment Act 1998*

*Heritage Amendment Act 2001*

*Heritage Amendment Act 2009*

*Statute Law (Miscellaneous Provisions) Act (No 2) 2010*, to the extent that it amends this Act

*Heritage Amendment Act 2011*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 1AA Effect of repeal of Act

#### 1AA Repeal of Act does not affect operation of savings and transitional provisions

- (1) Despite the repeal of the *Heritage (Elizabeth Farm) Amendment Act 1985*, section 4 of, and clause 3 of Schedule 3 to, that Act continue to have effect and are taken to have been transferred to this Act.
- (2) Section 4 of, and clause 3 of Schedule 3 to, the *Heritage (Elizabeth Farm) Amendment Act 1985* are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

## **Part 1A Provisions consequent on enactment of [Heritage \(Amendment\) Act 1987](#)**

### **1A Application of amendments**

- (1) Sections 146A–146C, as inserted by the amending Act, do not apply to or in respect of a relic obtained from an excavation carried out pursuant to an excavation permit issued before 3 April 1987.
- (2) This clause is taken to have commenced on 3 April 1987 (the date of commencement of the amending Act).
- (3) Subclause (1) re-enacts (with minor modifications) clause 4 of Schedule 5 to the amending Act. Subclause (1) is a transferred provision to which section 30A of the [Interpretation Act 1987](#) applies.
- (4) In this clause—

**amending Act** means the [Heritage \(Amendment\) Act 1987](#).

## **Part 2 Provisions consequent on enactment of [Heritage Amendment Act 1996](#)**

### **2 Members of Heritage Council**

- (1) A person holding office as a member or alternate member of the Heritage Council appointed by the Minister under section 8 (2) or section 13 (as in force immediately before the amendment of those sections by the [Heritage Amendment Act 1996](#)) ceases to hold that office on that commencement.
- (2) A person who ceases to hold office by virtue of this clause is not entitled to any remuneration or compensation in respect of ceasing to hold office but is eligible (if otherwise qualified) for re-appointment to the Heritage Council.

## **Part 3 Provisions consequent on enactment of [Heritage Amendment Act 1998](#)**

### **3 Existing interim conservation orders and section 130 orders**

- (1) An interim conservation order in force under Part 3 immediately before the commencement of this clause is taken to be an interim heritage order made by the Minister that took effect on the date the interim conservation order took effect. The order continues in force accordingly, subject to this Act.
- (2) This Act continues to apply (as if it had not been amended by the [Heritage Amendment Act 1998](#)) to and in respect of an order in force under section 130 immediately before the repeal of that section by that Act. This subclause ceases to



have effect 3 years after the repeal of section 130, at which time any order under that section still in force ceases to have effect.

- (3) In any instrument, a reference to an interim conservation order under this Act is taken to be a reference to an interim heritage order under this Act.

#### **4 Pending objections under section 29A**

- (1) When an objection is pending under section 29A immediately before the repeal of that section—
- (a) sections 29A–29D and 35A continue to apply in respect of the interim conservation order to which the objection relates as if those sections had not been repealed, and
  - (b) clause 5 applies in respect of any permanent conservation order made under section 35A (as applying under this clause) as if the permanent conservation order had been made immediately before the commencement of clause 5.
- (2) This clause does not apply if the objection is withdrawn within 30 days after the commencement of this clause. An objection cannot be withdrawn after a commission of inquiry is appointed under section 29B in respect of the objection.

#### **5 Permanent conservation orders become listings on State Heritage Register**

- (1) Any item or land that is the subject of a permanent conservation order in force under Part 3 immediately before the commencement of this clause is taken to be listed on the State Heritage Register, and the Heritage Council is to list the item or land accordingly. A listing pursuant to this clause does not prevent the removal of the listing from the State Heritage Register in accordance with this Act.
- (2) In any instrument, a reference to an item or land being subject to a permanent conservation order is taken to be a reference to an item or land being subject to a listing on the State Heritage Register.
- (3) This clause applies to the permanent conservation order validated by section 4 of the repealed Act, and to any item or land the subject of that permanent conservation order, as if it were a permanent conservation order in force under Part 3 of this Act immediately before the commencement of this clause.
- (4) In this clause, **repealed Act** means the *Walsh Bay Development (Special Provisions) Act 1999*, as in force immediately before its repeal.
- (5) Subclauses (3) and (4) re-enact (with minor modifications) section 4 (4) of the repealed Act and are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

## **6 Transfer of items on Heritage and Conservation Register to State Heritage Register**

- (1) As soon as possible after the commencement of this clause, the Heritage Council is to list on the State Heritage Register each item that is entered in a register kept under section 170 (Heritage and Conservation Register) as at that commencement if the Heritage Council—
  - (a) considers that the item is of State heritage significance, and
  - (b) considers that the item should be listed on the State Heritage Register, and
  - (c) is satisfied that the item is owned by a government instrumentality and the government instrumentality has determined that the item is of State heritage significance.
- (2) The listing of an item pursuant to this clause does not prevent the removal of the listing in accordance with this Act.
- (3) For the purposes of this clause, a register of items of the environmental heritage kept by a State owned corporation immediately before the commencement of this clause is taken to be a register kept under section 170.

## **7 Savings for existing exemptions under section 57**

An exemption in force under section 57 (2) on the commencement of this clause has effect on and from that commencement subject to the following—

- (a) a reference to an interim conservation order is to be read as a reference to an interim heritage order,
- (b) a reference to a building, work, relic, place or land being subject to a permanent conservation order is to be read as a reference to its being listed on the State Heritage Register.

## **8 Rating and taxing**

- (1) A reference in Division 6 (Rating and taxing) of Part 6, as amended by the [Heritage Amendment Act 1998](#), to listing on the State Heritage Register includes a reference to a permanent conservation order under this Act as in force before the amendments made by that Act.
- (2) A reference in Division 6 (Rating and taxing) of Part 6, as amended by the [Heritage Amendment Act 1998](#), to an interim heritage order made by the Minister includes a reference to an interim conservation order under this Act as in force before the amendments made by that Act.

## **Part 4 Provisions consequent on enactment of [Heritage Amendment](#)**

## Act 2001

### 9 Definitions

In this Part—

**2001 amending Act** means the *Heritage Amendment Act 2001*.

**amended Act** means this Act, as amended by the 2001 amending Act.

### 10 Demolition of buildings and works in heritage areas

Section 63 of the amended Act extends to any application for an approval made before the commencement of the amendments to that section made by the 2001 amending Act.

### 11 Deferred commencement and partial and conditional approvals

(1) Section 63A of the amended Act extends to any application for an approval made before the commencement of that section.

(2) Section 63B of the amended Act extends to any application for an approval made before the commencement of that section.

### 12 Modification of approvals

Section 65A of the amended Act extends to any approval granted before the commencement of that section.

### 13 Commencement of criminal proceedings

Section 158A does not apply to any offence that is alleged to have been committed before the commencement of that section.

## Part 5 Provisions consequent on enactment of *Heritage Amendment Act 2009*

### 14 Definition

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

### 15 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).

## **16 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.

## **17 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.

## **18 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.

## **Part 6 Provisions consequent on enactment of [Heritage Amendment](#)**

## Act 2011

### 19 Approved forms

Any form approved by the Minister, being a form that is an **approved form** for the purposes of this Act immediately before the amendment of that definition by Schedule 1 [1] to the *Heritage Amendment Act 2011*, is taken to have been approved by the Heritage Council on the commencement of that amendment.

### 20 Application of amendments that abolish Ministerial Review Panels

The amendments made to this Act by Schedule 1 [11] and [12] to the *Heritage Amendment Act 2011* apply only in relation to a recommendation for listing that is made by the Heritage Council after the commencement of those amendments.

## 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) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to 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 3 Transferred provisions—Walsh Bay Development (Special Provisions) Act 1999

### 1 Meaning of “Walsh Bay”

In this Schedule, **Walsh Bay** means the land to which *Sydney Regional Environmental Plan No 16—Walsh Bay* applied immediately before 31 May 1999, or any part of the land, and includes any thing in, on, under or over that land or any part of that land.

### 2 Applicants appeals

- (1) Section 70 does not apply to an applicant who is dissatisfied with a determination of a kind referred to in that section in relation to an application concerning an item at Walsh Bay.
- (2) Section 76 does not apply to an applicant referred to in that section who, but for this subclause, would have a right of appeal arising from the making of a prescribed application (within the meaning of section 56) in respect of the doing or carrying out of an act, matter or thing at Walsh Bay.

### 3 Restraint of breaches

Proceedings under section 153 may not be brought in connection with—

- (a) a determination or decision concerning an item at Walsh Bay, or
- (b) any thing done or omitted to be done in compliance, or purported compliance, with a determination or decision referred to in paragraph (a),

except by the Minister or a person with the consent of the Minister.

### 4 Transferred provisions to which *Interpretation Act 1987* applies

Clauses 1–3 re-enact (with minor modifications) the definition of **Walsh Bay** in section 3,

and sections 10 and 13, of the *Walsh Bay Development (Special Provisions) Act 1999* and are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.