



New South Wales

Heritage Amendment Bill 2001

Explanatory note

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

Overview of Bill

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

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

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

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

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

Protection of historic shipwrecks

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

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

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

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

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

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

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

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

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

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

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

Demolition of buildings and works in heritage places and precincts

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

“Deferred commencement” and “partial or conditional” approvals

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

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

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

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

Modification of approvals

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

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

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

Exceptions from requirement for excavation permit

Schedule 1 [19] amends section 139 (4) so as to enable an order under that subsection to except, from the requirement for an excavation permit for the excavation of land believed to contain relics, any disturbance or excavation of land in respect of which an archaeological assessment approved by the Heritage Council indicates that there is little likelihood of there being any relics in the land or that any relics in the land are unlikely to have State or local heritage significance.

Extension of time for commencing criminal proceedings

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

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

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

Fees chargeable by the Heritage Council

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

Minor, consequential and ancillary amendments

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

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

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

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

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

Savings and transitional provisions

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

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

First print



New South Wales

Heritage Amendment Bill 2001

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New South Wales

Heritage Amendment Bill 2001

No. , 2001

A Bill for

An Act to amend the *Heritage Act 1977* with respect to the protection of shipwrecks, the granting and modification of approvals and the imposition of fees; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Heritage Amendment Act 2001</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Heritage Act 1977 No 136	7
The <i>Heritage Act 1977</i> is amended as set out in Schedule 1.	8

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 4 Definitions	3
	Insert in alphabetical order in section 4 (1):	4
	<i>deferred commencement approval</i> means an approval referred to in section 63A (1).	5 6
[2]	Section 4 (2A)	7
	Insert “extends to the excavation of any land beneath State waters within the meaning of Part 3C, and” after “land”.	8 9
[3]	Section 23 Annual report	10
	Insert after section 23 (2) (a) (iv):	11
	(iva) section 50 (Heritage Council advice on historic shipwrecks protection orders)	12 13
[4]	Part 3C	14
	Insert after Part 3B:	15
	Part 3C Protection of historic shipwrecks	16
	Division 1 Preliminary	17
	47 Definitions	18
	(1) In this Part:	19
	<i>excavation permit</i> means an excavation permit referred to in section 139.	20 21

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	1
48	Declaration of historic shipwrecks	2
	(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.	3 4 5 6 7
	(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.	8 9 10
	(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.	11 12 13
49	Register of Shipwrecks	14
	(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.	15 16 17
	(2) The Register is to contain particulars of each historic shipwrecks protection order made under this Part.	18 19
50	Heritage Council advice on historic shipwrecks protection orders	20 21
	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.	22 23 24
Division 3	General	25
51	Movement, damage or destruction of historic shipwrecks	26
	(1) A person must not move, damage or destroy any historic shipwreck otherwise than in accordance with a historic shipwrecks permit.	27 28 29

(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.	1 2 3
(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 5 6 7
(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:	8 9 10
(a) saving human life, or	11
(b) securing the safety of a ship where the ship was endangered by stress of weather or by navigational hazards, or	12 13 14
(c) dealing with an emergency involving a serious threat to the environment.	15 16
52 Part not to apply to certain waters	17
This Part does not apply to such of the State waters as are waters to which the <i>Historic Shipwrecks Act 1976</i> of the Commonwealth applies.	18 19 20
[5] Section 57 Effect of interim heritage orders and listing on State Heritage Register	21 22
Omit “115F” and “115H (a)” from section 57 (1A) (b).	23
Insert instead “116C” and “116B (a)”, respectively.	24
[6] Section 63 Determination of application	25
Insert at the end of section 63 (3):	26
, or	27
(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.	28 29 30 31 32 33 34

[7] Sections 63A and 63B	1
Insert after section 63:	2
63A Deferred commencement approvals	3
(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 <i>deferred commencement approval</i>).	4 5 6 7
(2) Nothing in this Act prevents a person from doing such things as may be necessary to comply with the condition.	8 9
(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).	10 11 12
(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.	13 14 15 16
(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.	17 18 19
(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.	20 21 22 23
(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.	24 25 26
(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.	27 28 29 30 31 32

63B	Partial and conditional approvals	1
(1)	An approval may be granted:	2
(a)	for the doing or carrying out of the act, matter or thing for which the approval is sought, or	3 4
(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	5 6 7
(c)	for the doing or carrying out of a specified part or aspect of that act, matter or thing.	8 9
(2)	An approval referred to in subsection (1) may be granted subject to a condition that:	10 11
(a)	the act, matter or thing for which the approval is sought, or	12 13
(b)	the specified part or aspect of that act, matter or thing, or	14 15
(c)	any thing associated with that act, matter or thing or the doing or carrying out of that act, matter or thing,	16 17
	must be the subject of another approval.	18
[8]	Section 65A	19
	Insert after section 65:	20
65A	Modification of approvals	21
(1)	On application in the approved form by any person entitled to act on an approval, the approval body may modify the approval:	22 23 24
(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	25 26 27 28 29
(b)	so as to correct a minor error, misdescription or miscalculation.	30 31

(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).	1 2 3 4
(3) For the purposes of this section:	5
(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	6 7 8
(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,	9 10 11
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.	12 13 14 15
(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.	16 17 18 19
[9] Section 70 Appeals against certain determinations of the Heritage Council	20 21
Insert “, or application for modification of an approval,” after “application for approval” wherever occurring.	22 23
[10] Section 70	24
Insert “or 65A (1) (b)” after “section 63 (2)”.	25

[11] Section 70 (2)	1
Insert at the end of section 70:	2
(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.	3 4 5 6 7 8 9 10
[12] Section 70A Appeal to the Court against certain council determinations	11
Insert “, or application for modification of an approval,” after “application for approval”.	12 13
[13] Section 70A	14
Insert “or 65A (1) (b)” after “section 63 (2)”.	15
[14] Section 70A (2)	16
Insert at the end of section 70A:	17
(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.	18 19 20 21 22
[15] Section 137A Conflicting orders void	23
Insert at the end of section 137A:	24
(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.	25 26 27 28 29 30

	(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.	1 2 3 4 5 6 7
[16]	Part 6, Division 9, heading	8
	Omit the heading. Insert instead:	9
	Division 9 Protection of certain relics	10
[17]	Section 138	11
	Omit the section. Insert instead:	12
	138 Definitions	13
	In this Division:	14
	<i>excavation permit</i> means an excavation permit referred to in section 139.	15 16
	<i>historic shipwreck</i> has the same meaning as it has in Part 3C.	17
	<i>historic shipwrecks permit</i> means a historic shipwrecks permit referred to in section 51.	18 19
	<i>permit</i> means an excavation permit or historic shipwrecks permit.	20 21
	<i>relic</i> includes a historic shipwreck.	22
[18]	Section 139 Excavation permit required in certain cases	23
	Insert “, either unconditionally or subject to conditions,” after “this section” in section 139 (4).	24 25

[19] Section 139 (4) (d)	1
Insert at the end of section 139 (4) (c):	2
(d) any disturbance or excavation of land in respect of which an archaeological assessment approved by the Heritage Council indicates:	3
(i) that there is little likelihood of there being any relics in the land, or	4
(ii) that any relics in the land are unlikely to have State or local heritage significance.	5
[20] Section 139 (5)	6
Insert after section 139 (4):	7
(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.	8
[21] Sections 140–146A	9
Omit “an excavation permit”, “excavation permit” and “excavation permits” wherever occurring (including the headings to the sections).	10
Insert instead “a permit”, “permit” and “permits”, respectively.	11
[22] Section 146B	12
Omit the section. Insert instead:	13
146B Minister may direct that relic be given to museum or other conservation body	14
(1) The Minister may, by notice in writing, direct any person:	15
(a) who is or has been the holder of a permit, or	16
(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	17
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	(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,	1 2 3
	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.	4 5 6
	(2) Such a direction may be given on the ground that the person has obtained the relic as a consequence of:	7 8
	(a) having removed the relic without a historic shipwrecks permit, in contravention of section 51, or	9 10
	(b) having excavated land without an excavation permit, in contravention of section 139,	11 12
	whether or not the person has been prosecuted or convicted of an offence in respect of the alleged contravention.	13 14
[23]	Section 158 Proceedings for offences	15
	Omit section 158 (6).	16
[24]	Section 158A	17
	Insert after section 158:	18
158A	Time within which proceedings for offences to be brought	19
	(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.	20 21 22
	(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.	23 24 25 26
	(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.	27 28 29 30 31 32

(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.	1 2 3
(5)	This section applies despite anything in the <i>Justices Act 1902</i> or any other Act.	4 5
(6)	In this section: <i>authorised person</i> means a person authorised to exercise functions under section 148 (1). <i>evidence</i> of an offence means evidence of any act or omission constituting the offence.	6 7 8 9 10
[25]	Section 166A	11
	Insert after section 166:	12
166A	Heritage Council fees for services	13
(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.	14 15 16
(2)	The services in respect of which such regulations may be made include the following:	17 18
(a)	the supply of a service, product or commodity,	19
(b)	the review of a conservation management plan,	20
(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).	21 22 23 24
[26]	Schedule 1 Savings and transitional provisions	25
	Insert at the end of clause 1 (1):	26
	<i>Heritage Amendment Act 2001</i>	27

[27] Schedule 1, Part 4	1
Insert after Part 3 of Schedule 1:	2
Part 4 Provisions consequent on enactment of Heritage Amendment Act 2001	3 4
9 Definitions	5
In this Part:	6
<i>2001 amending Act</i> means the <i>Heritage Amendment Act 2001</i> .	7
<i>amended Act</i> means this Act, as amended by the 2001 amending Act.	8 9
10 Demolition of buildings and works in heritage areas	10
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 that Act.	11 12 13
11 Deferred commencement and partial and conditional approvals	14
(1) Section 63A of the amended Act extends to any application for an approval made before the commencement of that section.	15 16
(2) Section 63B of the amended Act extends to any application for an approval made before the commencement of that section.	17 18
12 Modification of approvals	19
Section 65A of the amended Act extends to any approval granted before the commencement of that section.	20 21

13 Commencement of criminal proceedings

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

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