

Passed by both Houses



New South Wales

# Heritage Amendment Bill 2001

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2001*



New South Wales

## **Heritage Amendment Bill 2001**

Act No , 2001

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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.

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*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

*Chairman of Committees of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Heritage Amendment Act 2001*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Heritage Act 1977 No 136**

The *Heritage Act 1977* is amended as set out in Schedule 1.

## **Schedule 1 Amendments**

(Section 3)

### **[1] Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

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

### **[2] Section 4 (2A)**

Insert “extends to the excavation of any land beneath State waters within the meaning of Part 3C, and” after “land”.

### **[3] Section 23 Annual report**

Insert after section 23 (2) (a) (iv):

(iva) section 50 (Heritage Council advice on historic shipwrecks protection orders)

### **[4] Part 3C**

Insert after Part 3B:

## **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.

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

Omit “115F” and “115H (a)” from section 57 (1A) (b).  
Insert instead “116C” and “116B (a)”, respectively.

**[6] Section 63 Determination of application**

Insert at the end of section 63 (3):

- , 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.

**[7] Sections 63A and 63B**

Insert after section 63:

**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.

**[8] Section 65A**

Insert after section 65:

**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.

**[9] Section 70 Appeals against certain determinations of the Heritage Council**

Insert “, or application for modification of an approval,” after “application for approval” wherever occurring.

**[10] Section 70**

Insert “or 65A (1) (b)” after “section 63 (2)”.

**[11] Section 70 (2)**

Insert at the end of section 70:

- (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.

**[12] Section 70A Appeal to the Court against certain council determinations**

Insert “, or application for modification of an approval,” after “application for approval”.

**[13] Section 70A**

Insert “or 65A (1) (b)” after “section 63 (2)”.

**[14] Section 70A (2)**

Insert at the end of section 70A:

- (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.

**[15] Section 137A Conflicting orders void**

Insert at the end of section 137A:

- (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.

**[16] Part 6, Division 9, heading**

Omit the heading. Insert instead:

**Division 9 Protection of certain relics**

**[17] Section 138**

Omit the section. Insert instead:

**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.

**[18] Section 139 Excavation permit required in certain cases**

Insert “, either unconditionally or subject to conditions,” after “this section” in section 139 (4).

**[19] Section 139 (4) (d)**

Insert at the end of section 139 (4) (c):

- (d) any disturbance or excavation of land in respect of which an archaeological assessment approved by the Heritage Council indicates:
  - (i) that there is little likelihood of there being any relics in the land, or
  - (ii) that any relics in the land are unlikely to have State or local heritage significance.

**[20] Section 139 (5)**

Insert after section 139 (4):

- (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.

**[21] Sections 140–146A**

Omit “an excavation permit”, “excavation permit” and “excavation permits” wherever occurring (including the headings to the sections).

Insert instead “a permit”, “permit” and “permits”, respectively.

**[22] Section 146B**

Omit the section. Insert instead:

**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.

**[23] Section 158 Proceedings for offences**

Omit section 158 (6).

**[24] Section 158A**

Insert after section 158:

**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.

**[25] Section 166A**

Insert after section 166:

**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).

**[26] Schedule 1 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Heritage Amendment Act 2001*

**[27] Schedule 1, Part 4**

Insert after Part 3 of Schedule 1:

**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 that 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.