



New South Wales

Heritage Amendment Bill 1998

Explanatory note

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

Overview of Bill

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

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

- (q) to make miscellaneous amendments in respect of annual reports, the functions of the Chairperson of the Heritage Council and other minor matters.
- (r) to enact consequential savings and transitional provisions.

The Bill also makes consequential amendments to various other Acts.

Outline of provisions

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

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

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

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

Schedule 1 Amendment of Heritage Act 1977

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

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

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

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

Schedule 1 [5] makes a consequential amendment.

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

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

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

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

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

Schedule 1 [12] allows the annual report of the Heritage Office (which is a government department) to include matters that are required to be included in the Heritage Council's annual report.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Schedule 1 [67] makes a consequential amendment.

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

Schedule 1 [70] makes consequential amendments.

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

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

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

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

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

Schedule 2 Consequential amendment of other Acts

Schedule 2 makes consequential amendments to various Acts.

First print



New South Wales

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New South Wales

Heritage Amendment Bill 1998

No. , 1998

A Bill for

An Act to amend the *Heritage Act 1977* to provide for interim heritage orders, the State Heritage Register and heritage agreements and to make further provision with respect to the conservation of items of the environmental heritage, financial incentives, the role of local councils and government instrumentalities, excavation permits, and in other respects; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Heritage Amendment Act 1998*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Heritage Act 1977 No 136

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

4 Consequential amendment of other Acts

Each Act specified in Schedule 2 is amended as set out in that Schedule. 10

Schedule 1 Amendment of Heritage Act 1977

(Section 3)

[1] Section 4 Definitions

Omit the definitions of *affected person*, *conservation instrument*, *environmental heritage*, *heritage precinct*, *interim conservation order*, *permanent conservation order* and *precinct* from section 4 (1). 5

Insert in alphabetical order:

affected owner or occupier, in relation to an interim heritage order or to listing on the State Heritage Register, means: 10

- (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 15
- (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 20
- (d) in the case of an order or listing applicable to a precinct—the owners or occupiers of land in the precinct. 25

Chairperson means the Chairperson of the Heritage Council, appointed as referred to in section 8 (2) (a) (i).

environmental heritage means those places, buildings, works, relics, moveable objects, and precincts, of State or local heritage significance. 30

government instrumentality means:

- (a) a statutory body that, or Department Head who, is required to furnish details of land to the Director-General of the Premier's Department under section 14 of the *Annual Reports (Statutory Bodies) Act 1984* or section 17 of the *Annual Reports (Departments) Act 1985*, and 5
- (b) a State owned corporation.

harm means:

- (a) in relation to a building or work—demolish, or 10
- (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. 15

heritage agreement means a heritage agreement under Part 3B.

interim heritage order means an interim heritage order in force under Part 3. 20

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. 25

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

precinct means an area, a part of an area, or any other part of the State. 30

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

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

[2] Section 4 (1), definition of "conservation"

Omit "enhancement". Insert instead "adaptation".

[3] Section 4 (2) and (2A)

Omit section 4 (2). Insert instead:

- (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. 5
- (2A) A reference in this Act to the excavation of land includes a reference to the dredging of a body of water or watercourse. 10

[4] Section 4A

Insert after section 4:

4A Heritage significance—interpretation

- (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. 15
 - 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. 20
- (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. 25

- (3) The Heritage Council is to notify the Minister of the criteria that it uses for the making of decisions as to whether or not an item is of State heritage significance and is to notify the Minister of any change to those criteria that may occur from time to time. The Minister is to cause notice of the criteria and any such change to the criteria to be published in the Gazette. 5

[5] Section 6 Definitions

Omit the definition of *Chairperson*.

[6] Section 14 Chairperson 10

Insert “, unless the Chairperson requests the Deputy Chairperson to preside” after “present”.

[7] Section 14A Deputy Chairperson

Insert “or when the Chairperson requests the Deputy Chairperson to preside” after “the Chairperson” in section 14A (2). 15

[8] Section 21 Functions of the Heritage Council

Re-number section 21 (1) (e) as section 21 (1) (g) and insert before it:

- (e) to maintain a database (to be called the State Heritage Inventory) listing items of State and local heritage significance, and 20
- (f) to conduct community education concerning the State’s environmental heritage, and

[9] Section 21A

Insert after section 21:

21A Committees of the Heritage Council 25

- (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.

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[10] Section 22

Omit the section. Insert instead:

22 Registers

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(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.

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(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.

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[11] Section 23 Annual report

Omit section 23 (2) (a) and (b). Insert instead:

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(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)

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(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)	5
(v)	section 83 (Heritage Council to be consulted in preparation of certain environmental planning instruments)	
(vi)	section 136 (Order restricting harm to buildings etc)	10
(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	15
[12]	Section 23 (4)	
	Insert after section 23 (3):	
(4)	The annual report of the Heritage Office can include any of the matters that the annual report of the Heritage Council is required to include under this section. The annual report of the Heritage Council is not required to include any matter that is included in the annual report of the Heritage Office.	20
[13]	Parts 3, 3A and 3B	
	Omit Part 3. Insert instead:	25
	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	30

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. 5

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. 10
- (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. 15
- (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: 20
- (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. 25
- (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. 30

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. 5

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: 10

- (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 15
- (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: 20

- (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, 25
- (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, 30

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- (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 newspaper circulating 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. 5
- (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 10
- (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. 15

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. 20
- (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). 25
- (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: 30
- (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. 5
 - (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 newspaper circulating in the area in which the item is situated. 10
- (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. 15
- (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. 20

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. 25
- (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. 30

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. 35

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 recommends the listing. 5
- (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 concerned or of the council of the area in which the item is situated. 10
- (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 15
 - (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. 20

33 Procedure before recommendation for listing

- (1) To recommend the listing of an item on the State Heritage Register, the Heritage Council must follow this procedure:
- (a) the Heritage Council is to give each person that it considers to be an affected owner or occupier written 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*), 25
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- (b) within 14 days after notice of intention to consider listing is given under paragraph (a), the Heritage Council is to cause a notice of intention to consider listing to be published in a newspaper circulating in the area in which the item is situated, 5
 - (c) a notice of intention to consider listing is to invite submissions on the listing and is to specify a date as the closing date for the receipt of submissions (being a date that is at least 14 days after publication of the newspaper notice) and the manner in which submissions may be made, 10
 - (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, 15
 - (e) the Heritage Council is to give notice of its decision to the persons given notice under paragraph (a), to the council of the area in which the item is situated, and to each of the persons who made submissions that were considered, 20
 - (f) if the decision of the Heritage Council is to recommend the listing, the Heritage Council is to make that recommendation to the Minister as soon as possible after notice is given of the decision under paragraph (e). 25
- (2) Without limiting the submissions that can be made for the purposes of this section, any of the following submissions can be made: 30
- (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. 35

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- (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. 5
 - (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.

34 Action by Minister following recommendation for listing 10

- (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 15
 - (b) refer the matter to a Ministerial Review Panel for advice, or
 - (c) appoint a Commissioner of Inquiry to hold an inquiry into the matter.
- (2) If the Minister refers the matter to a Ministerial Review Panel or appoints a Commissioner of Inquiry, the Minister must, within 14 days after the Ministerial Review Panel provides its advice or the Commissioner of Inquiry provides the Commissioner's report: 20
 - (a) consider that advice or report, and 25
 - (b) decide whether or not to direct the listing, and
 - (c) inform the Heritage Council of that decision.

35 Ministerial Review Panel

- (1) The Minister may appoint a panel of 3 persons (a *Ministerial Review Panel*) to advise the Minister on a recommendation by the Heritage Council for a listing on the State Heritage Register. 30
- (2) Appointment of persons to a Ministerial Review Panel is to be made on the basis of such qualifications, expertise and experience as the Minister considers relevant. 35

- (3) The appointment of a person to a Ministerial Review Panel is to be on such terms and conditions (including as to remuneration) as the Minister determines from time to time.
- (4) The procedures of a Ministerial Review Panel are to be as determined by the Minister. 5
- (5) A Ministerial Review Panel is to provide its advice to the Minister within 30 days after the matter concerned is referred to the Panel or within such longer period as the Minister may allow in a particular case. 10

36 Commissioner of Inquiry

- (1) At an inquiry held by a Commissioner of Inquiry each of the following is entitled to appear before the Commissioner either personally or by legal practitioner or agent: 15
 - (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, 20
 - (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, 25
 - (d) the Heritage Council,
 - (e) the Director of the Heritage Office,
 - (f) any other person with the leave of the Commissioner of Inquiry.
- (2) At the conclusion of the inquiry, the Commissioner of Inquiry is to provide a report in writing to the Minister containing a summary of the submissions made at the inquiry, the findings of the Commissioner 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. 30
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- (3) Section 120 (Procedure at inquiries) of the *Environmental Planning and Assessment Act 1979* applies to and in respect of an inquiry by a Commissioner of Inquiry under this Part in the same way as it applies to and in respect of an inquiry by a Commission of Inquiry constituted under section 119 of that Act. 5

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: 10
- (a) give each person that it considers to be an affected owner or occupier written notice of the Minister's decision, 15
 - (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. 20
- (3) A listing is not invalid merely because of any failure to give notice of the Minister's decision as required by this section. 25

38 Removal of items from State Heritage Register

- (1) The Minister may direct the removal of a listing from the State Heritage Register if the Minister considers the item concerned is not of State heritage significance and the Heritage Council recommends its removal. 30
- (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. 35

- (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 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. 5

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. 10

40 What heritage agreement can provide for 15

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, 20
- (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, 25
- (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, 30
- (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), 35

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- (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. 5
 - (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, 10
 - (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. 15

42 Duration of heritage agreements 20

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: 25
 - (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: 5
 - (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*. 10
 - (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. 15
 - (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. 20
 - (5) A reference in this section to a heritage agreement includes a reference to any variation or termination of the heritage agreement.
- 44 Injunction** 25
- (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. 30

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- (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. 5

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. 10
- (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. 15

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*. 20

[14] Part 4, heading

Omit the heading. Insert instead: 25

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

[15] Section 56 Definitions

Insert in alphabetical order:

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 5
- (b) in respect of an interim heritage order made by a council—the council that made the order.

[16] Section 57 Effect of interim heritage orders and listing on State Heritage Register 10

Omit section 57 (1). Insert instead:

- (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: 15
 - (a) demolish the building or work,
 - (b) damage or despoil the place, precinct or land, or any part of the place, precinct or land, 20
 - (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, 25
 - (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, 30

(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: 5

(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 section 115I of the *Environmental Planning and Assessment Act 1979* as referred to in section 115H (a) of that Act). 10

(1B) Subsection (1) does not apply to anything that is exempted from the operation of this Part by a heritage agreement. 15

(1C) Subsection (1) (d) does not apply in the case of a relic to which an interim heritage order made by a council applies. 20

[17] Section 57 (2)

Insert at the end of section 57 (2):

The Minister's power under this subsection extends to apply in respect of interim heritage orders made by councils. 25

[18] Section 57 (3)

Insert after section 57 (2):

(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 30

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. 5

[19] Section 59 Making of application

Omit section 59 (a). Insert instead:

- (a) the owner of the item or land the subject of the application, or

[20] Section 59 (c) 10

Omit the paragraph. Insert instead:

- (c) if the item or land is situated on or comprises Crown land as defined in the *Crown Lands Act 1989*, the lawful occupier of the Crown land.

[21] Sections 60–65 15

Omit “Heritage Council” wherever occurring.
Insert instead “approval body”.

[22] Section 62 Matters for consideration

Omit “a building, work, relic, place or land”.
Insert instead “an item or land”. 20

[23] Section 62 (a)

Omit “building, work, relic or place”.
Insert instead “item”.

[24] Section 62 (c)

Omit "building, work, relic, place or land".
Insert instead "item or land".

[25] Section 70A

Insert after section 70:

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70A Appeal to the Court against certain council determinations

An applicant dissatisfied with a determination of a council with respect to an application for approval made under Subdivision 1 of Division 3, not being the determination of an application referred to in section 63 (2), may appeal to the Court:

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- (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.

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[26] Section 82 Heritage Council may request preparation of an environmental planning instrument

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Omit "heritage precinct" from section 82 (1).
Insert instead "precinct to which an interim heritage order made by the Minister or listing on the State Heritage Register applies".

[27] Section 83 Heritage Council to be consulted in preparation of certain environmental planning instruments

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Omit "a conservation instrument" from section 83 (1).
Insert instead "an interim heritage order made by the Minister or listing on the State Heritage Register".

[28] Section 84

Insert after section 83:

84 Guidelines for preparation of EPs

- (1) When a council prepares a local environmental plan under the *Environmental Planning and Assessment Act 1979* that will apply to land on which a building, work or relic is situated, or that comprises a place or precinct, that is an item of the environmental heritage, the council must ensure that the plan (or some other local environmental plan being amended by the plan) contains provisions to facilitate the conservation of the building, work, relic, place or precinct. 5
- (2) The Heritage Council may from time to time issue guidelines to councils as to how councils are to exercise their functions in connection with the preparation of local environmental plans for the purpose of facilitating the identification of items of the environmental heritage of local heritage significance and their conservation and management by means of the inclusion of appropriate provisions in those instruments. 15
- (3) The guidelines may require the inclusion in an environmental planning instrument for the purposes of subsection (1) of model provisions formulated and notified by the Heritage Council. 20
- (4) Councils must comply with the Heritage Council's guidelines. 25

[29] Section 102 Minister to be corporation sole for certain purposes

Insert after section 102 (4):

- (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. 30

[30] Section 105A

Insert after section 105:

105A Heritage Incentive Fund

- (1) There is to be a Fund called the Heritage Incentive Fund, which is to be administered by the Minister. 5
- (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). 10

[31] Part 6, Division 4 Offence of demolition by wilful neglect

Omit the Division.

[32] Part 6, Division 5, heading 15

Omit the heading. Insert instead:

Division 5 Maintenance and repair

[33] Sections 118–120N

Omit sections 118–120. Insert instead:

118 Minimum standards of maintenance and repair 20

The regulations may impose minimum standards with respect to the maintenance and repair of a building, work or 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: 25

- (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). 5
- (d) essential maintenance and repair (being maintenance and repair necessary to prevent serious or irreparable damage or deterioration).

119 Offence of not maintaining and repairing in accordance with minimum standards 10

- (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. 15
- (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. 20
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- (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). 30

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- (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

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- (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. 10
- (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. 15
- (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

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- (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. 25

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 30
- (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

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- (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).

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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.

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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.

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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.

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- (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 5
 - (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. 10
- (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. 15

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. 20

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). 25
- (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. 30

- (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. 5

120J Modification and revocation of orders 10

- (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. 15
- (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. 20
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- (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. 30
- (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.

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- (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
- (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. 10

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. 15
- (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 20
 - (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. 25
- (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 5
 - (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. 10
- (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 15
 - (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. 20
- (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. 25
- (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. 30

[34] Section 121 Failure to comply with order

Omit "section 119 (1)" from section 121 (1).
Insert instead "section 120".

[35] Section 121 (1) (c)

Insert at the end of section 121 (1) (b):

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, 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.

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[36] Section 121 (3)–(5)

Insert "or (c)" after "(1) (b)" wherever occurring.

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[37] Section 122 Failure to comply with order under section 121 (1) (b) or (c)

Insert "or (c)" after "121 (1) (b)".

[38] Section 124 Request to make heritage valuations

Omit "interim conservation order" wherever occurring in section 124 (1) (b) and (2).

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Insert instead "interim heritage order".

[39] Sections 124, 125, 127 and 128

Omit "permanent conservation order" wherever occurring.
Insert instead "listing on the State Heritage Register".

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[40] Section 128 Calculation of land tax

Insert at the end of the section:

- (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. 5

[41] Section 129 Making of orders to curtail or modify other laws

Omit "item of the environmental heritage to which a conservation instrument applies" from section 129 (2). 10

Insert instead "item to which an interim heritage order made by the Minister or listing on the State Heritage Register applies".

[42] Part 6, Division 8, heading

Omit "subject to conservation instruments". 15

Insert instead "subject to interim heritage orders or State Heritage Register listing".

[43] Sections 129A–135

Omit the sections.

[44] Section 136 Order restricting harm to buildings etc 20

Omit "the subject of a conservation instrument" from section 136 (1).

Insert instead "the subject of an interim heritage order or listing on the State Heritage Register".

[45] Section 136 (3) and (5)

Omit "a recommendation with respect to the making of an interim conservation order and a recommendation with respect to the making of a permanent conservation order" wherever occurring.
Insert instead "advice with respect to the making of an interim heritage order".

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[46] Section 136 (6)

Insert "advice or" before "recommendation" in section 136 (6).

[47] Section 137A Conflicting orders void

Omit "order under section 130 (1) or 136 (1)" wherever occurring.
Insert instead "interim heritage order or order under section 136 (1)".

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[48] Section 137A (a)

Omit the paragraph. Insert instead:

- (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

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[49] Part 6, Division 9, heading

Omit the heading to the Division. Insert instead:

Division 9 Protection of relics not subject to interim or permanent protection

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[50] Section 139

Omit the section. Insert instead:

139 Excavation permit required in certain cases

- (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

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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. 5
- (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 in respect of any of the following: 10
 - (a) any relic of a specified kind or description.
 - (b) any disturbance or excavation of a specified kind or description. 15
 - (c) any disturbance or excavation of land in a specified location or having specified features or attributes.

[51] Section 146

Omit the section. Insert instead: 20

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 an excavation permit) must: 25

- (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 30
- (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. 35

[52] Section 146B

Omit the section. Insert instead:

146B Power of Minister to direct conservation of relic

- (1) The Minister may give a direction in writing to a person who is or was the holder of an excavation permit, or who the Minister is satisfied excavated land in contravention of section 139 (Excavation permit required in certain cases), direct that a relic obtained from an excavation carried out by the person under the permit or in contravention of that section be given to a specified museum, body or person who in the opinion of the Minister is able to conserve the relic. 5 10
- (2) A direction can be given to a person under this section on the ground that the person excavated land in contravention of section 139 whether or not the person has been prosecuted for or convicted of an offence in respect of the alleged contravention. 15

[53] Section 147 Value of land compulsorily acquired

Omit "interim conservation order or a permanent conservation order". 20
Insert instead "interim heritage order or listing on the State Heritage Register".

[54] Section 147

Omit "interim conservation order or permanent conservation order".
Insert instead "interim heritage order or listing on the State Heritage Register". 25

[55] Section 148 Entry and inspection

Insert ", moveable objects" after "relics".

[56] Section 148 (2) and (3)

Insert “. moveable object” after “relic” wherever occurring.

[57] Section 151 Evidence

Omit “a conservation instrument” from section 151 (1).
Insert instead “an interim heritage order”.

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[58] Section 151 (1)

Omit “that instrument”. Insert instead “that order”.

[59] Section 151 (1A)

Insert after section 151 (1):

(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.

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[60] Section 151 (2)

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Omit “a conservation instrument”.
Insert instead “an interim heritage order or a listing on the State Heritage Register”.

[61] Section 152 Definitions

Omit section 152 (b). Insert instead:

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(b) a reference to this Act includes a reference to an approval given under this Act and a condition of any such approval.

[62] Section 154 Order of the Court

Insert "or" at the end of section 154 (2) (a).

[63] Section 154 (2) (d)

Insert at the end of section 154 (2) (c):

, or

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(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.

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[64] Section 157 Penalties

Omit "200 penalty units" from section 157 (1).
Insert instead "10,000 penalty units".

[65] Section 157 (2)

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Omit "5 penalty units". Insert instead "50 penalty units".

[66] Section 158 Proceedings for offences

Omit "20 penalty units" from section 158 (4).
Insert instead "200 penalty units".

[67] Section 158 (5)

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Omit "200 penalty units". Insert instead "10,000 penalty units".

[68] Section 160 Notices to show cause why certain restrictions on development etc should not be imposed

Omit section 160 (1). Insert instead:

- (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.

[69] Section 161 Orders restricting development etc

Omit section 161 (1). Insert instead:

- (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. 5

(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. 10

[70] Section 167 Certificates

Omit "a conservation instrument" from section 167 (2) (a) wherever occurring. 15

Insert instead "an interim heritage order or listing on the State Heritage Register".

[71] Section 169 Delegation of functions

Insert ", or to a committee established by the Heritage Council," after "person" in section 169 (3). 20

[72] Section 170 Heritage and Conservation Register

Omit section 170 (1).

[73] Section 170 (4) (a)

Omit "a conservation instrument" wherever occurring.
Insert instead "an interim heritage order or listing on the State Heritage Register". 25

[74] Section 170 (4) (a) (ia)

Insert after section 170 (4) (a) (i):

- (ia) is listed in an environmental planning instrument under the *Environmental Planning and Assessment Act 1979* as an item of the environmental heritage, or 5

[75] Section 170A

Insert after section 170:

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: 10
 - (a) removes any item from its register under section 170, or
 - (b) transfers ownership of any item entered in its register, or 15
 - (b) 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. 20 25
- (3) The Heritage Council can from time to time issue heritage asset management guidelines to government instrumentalities, being guidelines with respect to the 30

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.

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(4) The annual report of a government instrumentality is to include the following:

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(a) such information with respect to the government instrumentality's register under section 170 and compliance by the government instrumentality with the guidelines under this section as the Heritage Council may direct by notice in writing to government instrumentalities from time to time,

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(b) a statement on the condition of the items entered on the government instrumentality's register 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.

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[76] Schedule 1 Savings and transitional provisions

Insert at the end of the Schedule:

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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.

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- (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. 5
- (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. 10

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 15
 - (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. 20
- (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. 25

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 30

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. 5

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: 10
- (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. 20
- (2) The listing of an item pursuant to this clause does not prevent the removal of the listing in accordance with this Act. 25
- (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. 30

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. 5
- (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. 10

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. 15
- (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. 20

Schedule 2 Consequential amendment of other Acts

(Section 4)

2.1 Electricity Supply Act 1995 No 94

[1] **Section 48 Interference with electricity works by trees** 5

Omit "interim conservation order or a permanent conservation order" from section 48 (7) (a).

Insert instead "interim heritage order, or a listing on the State Heritage Register."

[2] **Section 48 (7) (b)** 10

Omit "130 or".

2.2 Environmental Planning and Assessment Act 1979 No 203

[1] **Section 76A Development that needs consent**

Omit section 76A (6) (f) (i). Insert instead: 15

- (i) that is subject to an interim heritage order under the *Heritage Act 1977*, or that is listed on the State Heritage Register under that Act, or

[2] **Section 91 What is "integrated development"?** 20

Insert after section 91 (3):

- (4) Development is not integrated development in respect of the approval required under section 57 of the *Heritage Act 1977* if the approval that is required is the approval of a council. 25

[3] Section 121S Orders affecting heritage items

Omit section 121S (1) (a). Insert instead:

- (a) to which an interim heritage order or listing on the State Heritage Register under the *Heritage Act 1977* applies or to which an order under section 136 of that Act applies, or 5

2.3 Hunter Water Board (Corporatisation) Act 1991 No 53

Section 27 Interference with works by trees

Omit section 27 (6) (a). Insert instead:

- (a) to which an interim heritage order or listing on the State Heritage Register under the *Heritage Act 1977* applies or to which an order under section 136 of that Act applies, or 10

2.4 Land and Environment Court Act 1979 No 204

[1] Section 17 Class 1—environmental planning and protection appeals 15

Omit “section 70” from section 17 (e).
Insert instead “section 30, 70, or 70A”.

[2] Section 18 Class 2—local government miscellaneous appeals and applications 20

Omit “section 120” from section 18 (e).
Insert instead “section 120L”.

[3] Section 20 Class 4—environmental planning and protection and development contract civil enforcement

Insert “44 or” before “153” in section 20 (1) (a).

2.5 Land Tax Management Act 1956 No 26

[1] Section 59 Valuing land subject to interim conservation order 5

Omit the section.

[2] Section 60 Valuation subject to heritage restrictions under EPI

Omit “an interim conservation order or a permanent conservation order” from section 60 (4).

Insert instead “a listing on the State Heritage Register”. 10

2.6 Local Government Act 1993 No 30

Section 142 Orders affecting heritage items

Omit section 142 (1) (b). Insert instead:

- (b) to which an interim heritage order or listing on the State Heritage Register under the *Heritage Act 1977* applies or to which an order under section 136 of that Act applies, or 15

2.7 Native Vegetation Conservation Act 1997 No 133

Section 9 Land excluded from operation of Act

Omit section 9 (j). Insert instead:

- (j) land to which an interim heritage order or listing on the State Heritage Register under the *Heritage Act 1977* applies, 5

2.8 Timber Plantations (Harvest Guarantee) Act 1995 No 92

Section 9 Harvesting operations not subject to certain provisions of NPW Act, Threatened Species Conservation Act 1995 and Heritage Act 1977 10

Omit section 9 (5). Insert instead:

- (5) An interim heritage order cannot be made under the *Heritage Act 1977*, and listing on the State Heritage Register under that Act cannot be effected, so as to prevent or interfere with the carrying out of harvesting operations on an accredited timber plantation. 15

2.9 Valuation of Land Act 1916 No 2

Section 7F Protected archaeological areas, wildlife districts, wildlife refuges and game reserves

Omit "is subject to a permanent conservation order" from the note to the section. 20

Insert instead "is listed on the State Heritage Register".

2.10 Water Board (Corporatisation) Act 1994 No 88

[1] Section 46 Interference with works by trees

Omit "interim conservation order or a permanent conservation order" from section 46 (7) (a).

Insert instead "interim heritage order, or a listing on the State Heritage Register,". 5

[2] Section 46 (7) (b)

Omit "130 or".