



New South Wales

National Parks and Wildlife Amendment (Aboriginal Cultural Heritage) 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 *National Parks and Wildlife Act 1974* so as:

- (a) to change the nomenclature in the Act for referring to deposits, objects and certain material evidence relating to indigenous and non-European habitation of the area that comprises New South Wales from *relic* to *Aboriginal item*,
 - (b) to enable areas of land on or in which Aboriginal items are situated or within 50 metres of Aboriginal items to be declared to be Aboriginal item protection zones and to enable the use of those areas to be regulated if such action is necessary to preserve, protect and maintain the Aboriginal items or to ensure that the land is used in a way that is consistent with Aboriginal traditions, observances, customs or beliefs or with showing due respect for the cultural significance of the items,
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Explanatory note

- (c) to reconstitute the Aboriginal Cultural Heritage (Interim) Advisory Committee as a council called the Aboriginal Cultural Heritage Advisory Council.
- (d) to require the Australian Museum Trust or any other person who possesses an Aboriginal item that is not the property of the Crown to give the Director-General of National Parks and Wildlife the first option to acquire the object before disposing of or transferring ownership or possession of the item.
- (e) to make it an offence for a person to possess an Aboriginal item that is the property of the Crown unless the person is an Aboriginal who has the item in possession in accordance with Aboriginal tradition or the person is otherwise authorised by or under the Act to possess the item.
- (f) to replace existing offences under section 90 of the Act relating to the destruction, defacement or damage of a relic or Aboriginal place with new offences (with higher maximum penalties) of wilfully, recklessly or negligently doing such things to an Aboriginal item or Aboriginal place.
- (g) to enable a court that convicts a person of certain offences under the Act concerning Aboriginal items, zones or places to order the mitigation of damage to or restoration of, or action to preserve or protect, any item, zone or place affected by such an offence.
- (h) to enable the Director-General and persons authorised by the Director-General to enter and inspect Aboriginal places and to enter and inspect land for the purpose of ascertaining whether land or any thing on land is an Aboriginal item or should be declared to be an Aboriginal place or Aboriginal item protection zone.
- (i) to facilitate the prosecution of directors or persons concerned in the management of corporations for offences relating to contravention of the Act or regulations.

The Bill also:

- (a) amends the *Valuation of Land Act 1916* to make provision with respect to the valuation of land (other than land reserved or dedicated under the *National Parks and Wildlife Act 1974*) comprising an Aboriginal place and makes a related amendment to the latter Act, and
- (b) amends the *Land and Environment Court Act 1979* as a consequence of the amendments described in paragraph (b) above.

Outline of provisions

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

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

Clause 3 is a formal provision giving effect to the amendments to the *National Parks and Wildlife Act 1974* set out in Schedule 1.

A detailed explanation of each of the amendments is set out in Schedules 1 and 2 to the proposed Act.

Clause 4 is a formal provision giving effect to the amendments to the *Valuation of Land Act 1916* and the *Land and Environment Court Act 1979* set out in Schedule 2.

Clause 5 provides that the matter appearing under the heading "Explanatory note" in any of the Schedules does not form part of the proposed Act.

First print



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New South Wales

National Parks and Wildlife Amendment (Aboriginal Cultural Heritage) Bill 1998

No. , 1998

A Bill for

An Act to amend the *National Parks and Wildlife Act 1974* to make further provision with respect to Aboriginal places and provision with respect to Aboriginal items and land on or in which such items are situated or within 50 metres of such items; to reconstitute the Aboriginal Cultural Heritage (Interim) Advisory Committee as the Aboriginal Cultural Heritage Advisory Council; to amend the *Valuation of Land Act 1916* to provide for the valuation of certain land comprising an Aboriginal place; to make a consequential amendment to the *Land and Environment Court Act 1979*; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *National Parks and Wildlife Amendment (Aboriginal Cultural Heritage) Act 1998*.

2 Commencement

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

3 Amendment of National Parks and Wildlife Act 1974 No 80

The *National Parks and Wildlife Act 1974* is amended as set out in Schedule 1.

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4 Amendment of other Acts

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

5 Explanatory notes

The matter appearing under the heading "Explanatory note" in a Schedule to this Act does not form part of this Act.

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Schedule 1 Amendment of National Parks and Wildlife Act 1974

(Section 3)

[1] Long title

Omit "Aboriginal relics".
Insert instead "Aboriginal items".

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Explanatory note

The proposed amendment is consequential on those made by Schedule 1 [2] and [4].

[2] Section 5 Definitions

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Insert in subsection (1) in alphabetical order:

Aboriginal item means any deposit, object or material evidence (not being a handicraft made for sale) relating to indigenous and non-European habitation of the area that comprises New South Wales, being habitation both prior to and concurrent with the occupation of that area by persons of European extraction, and includes Aboriginal remains.

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Aboriginal item protection zone means land that is the subject of an order made under section 84A.

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Explanatory note

Schedule 1 [2] inserts two new definitions into the Act. The proposed definition of *Aboriginal item* replaces the existing definition of *relic* in the Act so as to alter the nomenclature for referring to the deposits, objects and material evidence relating to indigenous and non-European habitation of New South Wales but is otherwise in the same terms as the replaced definition. Consequential amendments are made elsewhere in Schedule 1 to omit the definition of *relic* from section 5, to change references to "relic" to "Aboriginal item" and to include a savings provision relating to relics. The definition of *Aboriginal item protection zone* is consequential on the amendment made by Schedule 1 [13].

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- [3] Section 5 (1), definition of “commencement day”**
Omit the definition.
Explanatory note
Schedule 1 [3] omits the definition of *commencement day*. The term wherever used in the Act is replaced elsewhere in Schedule 1 with a reference to the date described by the definition, 1 January 1975 (see Schedule 1 [9] and [22]). 5
- [4] Section 5 (1), definition of “relic”**
Omit the definition.
Explanatory note
Schedule 1 [4] omits the definition of *relic*, which is to be replaced by Schedule 1 [2] with a definition of *Aboriginal item*. 10
- [5] Section 5 (1), definition of “Relics Committee”**
Omit the definition.
Explanatory note
Schedule 1 [5] is an amendment by way of statute law revision to omit a superfluous definition. The Relics Committee described in the definition was replaced by the Aboriginal Cultural Heritage (Interim) Advisory Committee which is to be re-constituted by this Act (Schedule 1 [8]). 15
- [6] Sections 8 (5), 65 (1), 83 (1) (b) and (3), 85 (2) (b), 86 (a), (c), (d) and (e), 89 (1), 90 (1A) and 91** 20
Omit “a relic”, “the relic” and “any relic” wherever occurring. Insert instead “an Aboriginal item”, “the Aboriginal item” and “any Aboriginal item”, respectively.
- [7] The whole Act (other than where occurring in the long title and sections 8 (5), 65 (1), 83, 85 (2) (b), 86, 88, 89 (1), (2) and (3), 90 (1A) and 91)** 25
Omit “relic” and “relics” wherever occurring. Insert instead “Aboriginal item” and “Aboriginal items”, respectively.
Explanatory note 30
Schedule 1 [6] and [7] contain amendments that are consequential on amendments contained in Schedule 1 [2] and [4] with respect to replacement of the definition of *relic* with a definition of *Aboriginal item*.
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[8] Part 3, Division 3

Omit the Division. Insert instead:

Division 3 Aboriginal Cultural Heritage Advisory Council

27 Aboriginal Cultural Heritage Advisory Council

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- (1) There is to be an Aboriginal Cultural Heritage Advisory Council.
- (2) Schedule 9 has effect.

28 Functions of Aboriginal Cultural Heritage Advisory Council

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- (1) The Aboriginal Cultural Heritage Advisory Council is to exercise such functions as may be conferred on it by or under this Act.
- (2) Without limiting subsection (1), the Council is:
 - (a) to consider and furnish reports to and advise the Minister or the Director-General on any matter relating to the preservation, control of excavation, removal and custody of Aboriginal items or Aboriginal places, whether or not the matter is referred to the Council by the Minister or the Director-General, and
 - (b) to consider and advise the Minister or the Director-General on any matter relating to action or proposed action under Part 4A concerning a national park that is referred to the Council by the Minister or the Director-General.
- (3) The Council is to provide advice on any matter referred to it by the Minister or Director-General within a time frame agreed between the Council and the Director-General.

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Explanatory note

Schedule 1 [8] inserts proposed sections 27 and 28. The sections provide for the constitution of the Aboriginal Cultural Heritage Advisory Council. The Council is a re-constitution of the Aboriginal Cultural Heritage (Interim) Advisory Committee as

explained elsewhere in this Schedule (see Schedule 1 [40]). The Committee currently has the function of furnishing reports and advising the Minister in relation to the preservation, control of excavation, removal and custody of relics or Aboriginal places. The Council will have the additional functions described in proposed section 28.

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[9] Sections 72 (1), 83 (1), 97 (1) (c), 141 (5) and 152 (4) and Schedule 3, Part 2, clauses 2, 3, 6, 7, 11, 13-17 and 22

Omit "the commencement day" wherever occurring.
Insert instead "1 January 1975".

Explanatory note

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Schedule 1 [9] contains amendments as described in the explanatory note in relation to Schedule 1 [3].

[10] Part 6, heading

Omit the heading. Insert instead:

Part 6 Aboriginal items, item protection zones and places

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[11] Section 83 Certain relics to be Crown property

Insert "an Aboriginal item and the" after "been," in section 83 (1).

Explanatory note

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Schedule 1 [10] and [11] contain amendments that are consequential on amendments contained in Schedule 1 [2] and [4] with respect to replacement of the definition of *relic* with a definition of *Aboriginal item*.

[12] Section 84 Aboriginal places

Insert at the end of the section:

- (2) The Minister must forward a copy of an order under this section in respect of land other than land reserved or dedicated under this Act to the Valuer-General as soon as practicable after the order is published in the Gazette.

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Explanatory note

Schedule 1 [12] inserts proposed section 84 (2). The subsection requires the Minister to forward a copy of certain orders declaring places to be Aboriginal places for the purposes of the *National Parks and Wildlife Act 1974* to the Valuer-General. The amendment is consequential on the amendments to the *Valuation of Land Act 1916* contained in Schedule 2.2.

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[13] Section 84A–84H

Insert after section 84:

84A Aboriginal item protection zones

- (1) The Minister may, by order published in the Gazette:
- (a) declare an area of land in or on which an Aboriginal item is situated, or that is in the vicinity of an Aboriginal item, and that is specified or described in the order to be an Aboriginal item protection zone, and 5
 - (b) set out requirements (being requirements relating to entry on, the carrying out of any activity on or use of the land declared to be an Aboriginal item protection zone) with which any person entering the land, carrying out any activity on or using the land must comply. 10
- (2) An order may be made in respect of land under this section only if the Minister considers that the order is necessary:
- (a) to preserve, protect or maintain the Aboriginal item concerned, or 20
 - (b) to ensure that the land is used in a way that is consistent with Aboriginal traditions, observances, customs or beliefs or with showing due respect for the cultural significance of the item.
- (3) An order may not be made under this section declaring any land in the vicinity of an Aboriginal item to be an Aboriginal item protection zone if any part of the land is more than 50 metres from the land in or on which the Aboriginal item concerned is situated. 25
- (4) An order under this section takes effect on the day of its publication in the Gazette or on a later day specified in the order. 30
- (5) An order under this section may be made so as:
- (a) to apply generally or be limited in its application by reference to specified exceptions or factors, or 35
 - (b) to apply differently according to different factors of a specified kind.

84B Notice of intention to make order not required

The Minister is not required, before making an order under section 84A, to notify any person who will be affected by the order of the intention to make the order.

84C Duration of order

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- (1) An order under section 84A has effect for such period as is specified in the order.
- (2) An order ceases to have effect in respect of any of the area of land it declares to be an Aboriginal item protection zone if the land is reserved or dedicated under this Act or is declared to be an Aboriginal place or the order is revoked.

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84D Revocation of order

- (1) The Minister may revoke an order under section 84A by notice of revocation.
- (2) A notice of revocation takes effect on the date of its publication in the Gazette or on a later date specified in the notice.

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84E Notice of making of order

- (1) The Minister is to cause notice of an order under section 84A and its requirements, or of the revocation of such an order, to be given:
 - (a) to any person who appears to the Minister to be an owner or occupier of the area of land the order declares to be an Aboriginal item protection zone, and
 - (b) to any other person the Minister thinks fit.
- (2) The notice is to be given as soon as practicable after the order is published in the Gazette.

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84F Offence

A person who enters or carries out any activity on or uses an area of land that is declared to be an Aboriginal item protection zone by an order under section 84A must comply with any requirements relating to entry, carrying out of activities on or use of the land set out in the order. 5

Maximum penalty: 100 penalty units or 6 months imprisonment, or both.

84G Appeal against order

- (1) Any person affected by an order that declares land to be an Aboriginal item protection zone may appeal to the Land and Environment Court against the making of the order or any of the requirements set out in it. 10
- (2) Such an appeal is to be made within the time and in the manner provided by the rules of the Court. 15
- (3) In deciding an appeal, the Court may have regard:
 - (a) to any hardship caused to the person by the making of the order or the requirements, and
 - (b) to the purposes of the order.
- (4) In deciding such an appeal, the Court has all the functions and discretions of the Minister under section 84A–84D and may make such order as it thinks fit. 20
- (5) A decision of the Court on an appeal is final and is to be given effect to as if it were the decision of the Minister.

84H Register of orders

- (1) The Director-General is to keep a register containing copies of orders made under section 84A as in force from time to time. 25
- (2) The register is to be open for public inspection during ordinary business hours, and copies of or extracts from the register are to be available, on payment of the fee fixed by the Director-General. 30

Explanatory note

Schedule 1 [13] confers on the Minister the power to declare areas of land in or on which Aboriginal items are situated or in the vicinity of such items to be 35

Aboriginal item protection zones and for the regulation of the use of the land in order to preserve, protect or maintain the Aboriginal item concerned or to ensure that its use is consistent with Aboriginal traditions, observances, customs or beliefs or with showing due respect for the cultural significance of the item.

[14] Section 86 Offences relating to Aboriginal items 5

Omit section 86 (b). Insert instead:

- (b) disturbs or moves on any land an Aboriginal item that is the property of the Crown.

[15] Section 86 (2)-(4)

Insert at the end of section 86: 10

- (2) Nothing in this section makes it an offence for a person acting for or on behalf of the Australian Museum Trust to disturb or move on any land, or take possession of, an Aboriginal item that is the property of the Crown and that is in the custody or under the control of the Australian Museum Trust. 15
- (3) This section does not apply to or in respect of an Aboriginal item deposited or exhibited in a building or structure in a national park, historic site, nature reserve, state game reserve, karst conservation reserve, Aboriginal area, state recreation area or regional park in accordance with an arrangement made by the Director-General with the Australian Museum Trust. 20
- (4) A person who takes possession or custody or control of an Aboriginal item that is the property of the Crown is guilty of an offence against this Act unless the person is an Aboriginal person who has the Aboriginal item in his or her possession in accordance with Aboriginal tradition or possession or custody or control of the Aboriginal item is otherwise authorised by or under this Act. 25
Maximum penalty: 40 penalty units. 30

Explanatory note

Schedule 1 [15] inserts proposed section 86 (4) and includes provisions (proposed section 86 (2) and (3)) that are consequential on the clarification of section 88 contained in Schedule 1 [17]. The subsection makes it an offence to have possession of an Aboriginal object that is the property of the Crown except in specified circumstances. 35

[16] Section 87 Permits relating to Aboriginal items

Omit "section 86 (a), (b), (c), (d) or (e)" from section 87 (1).
Insert instead "section 86 (1) (a), (b), (c), (d) or (e) and to take possession or custody or control of the Aboriginal item to enable the person to do that act or thing or anything ancillary, supplementary or related to doing that act or thing".

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Explanatory note

Item [16] contains an amendment that is consequential on the amendment contained in item [15].

[17] Section 88 Australian Museum Trust to have custody of certain Aboriginal items

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Omit section 88 (1). Insert instead:

- (1) A permit must not be issued to a person under section 86 (1) (d) to remove an Aboriginal item from a national park, historic site, nature reserve, state game reserve, karst conservation reserve, Aboriginal area, state recreation area or regional park unless:
- (a) the Aboriginal item is being removed to the custody or control of the Australian Museum Trust, or
- (b) the Aboriginal item is being moved to another national park, historic site, nature reserve, state game reserve, karst conservation reserve, Aboriginal area, state recreation area or regional park, or
- (c) the Aboriginal item is to be removed to another place, or placed in the possession of another person, but is to remain in the custody or under the control of the Director-General.

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Explanatory note

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Schedule 1 [17] rewords section 88 (1) to clarify the effect of that provision. Schedule 1 [19] omits section 88 (3). The substance of that subsection is transferred to section 86 (see proposed section 86 (2) and (3)—Schedule 1 [15]).

[18] Sections 88 (2) and 89 (2) and (3)

Omit "A relic" and "a relic" wherever occurring.
Insert instead "An Aboriginal item" and "an Aboriginal item",
respectively.

Explanatory note

Schedule 1 [18], [21] and [27] contain amendments that are consequential on amendments contained in Schedule 1 [2] and [4] with respect to replacement of a definition of *relic* with a definition of *Aboriginal item*.

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[19] Section 88 (3)

Omit the subsection.

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[20] Section 88A

Insert after section 88:

88A Disposal of Aboriginal items that are not property of the Crown

- (1) This section applies to any Aboriginal item that was not the property of the Crown on 1 January 1975. 15
- (2) The Australian Museum Trust and any other person (whether an individual or body corporate) in possession of an Aboriginal item to which this section applies must not dispose of or transfer the ownership or possession of the Aboriginal item to a person other than the Crown unless:
 - (a) the person notifies the Director-General in writing of the person's intention to dispose of or transfer the ownership or possession of the Aboriginal item, and 25
 - (b) the person gives the Director-General the opportunity to acquire the Aboriginal item in accordance with section 89, and
 - (c) the Director-General advises the person that he or she does not intend to acquire the Aboriginal item. 30

Maximum penalty: 40 penalty units.

(3) The Director-General is to consult with the nominated authorities as to whether an Aboriginal item should be acquired before deciding whether or not to acquire the item.

(4) In this section: 5

nominated authorities means the following:

(a) the Director-General of the Department of Aboriginal Affairs,

(b) the Australian Museum Trust,

(c) the New South Wales Aboriginal Land Council, 10

(d) the Aboriginal and Torres Strait Islander Commission.

Explanatory note

Schedule 1 [20] inserts proposed section 88A. The section requires persons in possession of certain Aboriginal items that are not the property of the Crown to give the Director-General the opportunity to acquire the items under section 89 of the Act before disposing or transferring ownership or possession of the items. An Aboriginal item that is acquired under section 89 is property of the Crown and may be returned to the possession, custody or control of an Aboriginal owner or owners under section 85A of the Act. 15
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[21] Section 89 (1)

Omit "the relic" wherever occurring.
Insert instead "the Aboriginal item".

[22] Section 89 (4)

Omit "prior to the commencement day". 25
Insert instead "before 1 January 1975".

Explanatory note

Schedule 1 [22] contains an amendment that replaces the term "commencement date" as described in the explanatory note to Schedule 1 [3].

[23] Section 90 Destruction of Aboriginal items and Aboriginal places

Omit section 90 (1). Insert instead:

- (1) A person is guilty of an offence against this Act if the person wilfully, negligently or recklessly destroys, defaces or damages, or wilfully, negligently or recklessly causes or permits the destruction or defacement of or damage to, an Aboriginal item or Aboriginal place. 5

Maximum penalty (subsection (1)): 200 penalty units or imprisonment for 12 months, or both (or 1,000 penalty units in the case of a corporation). 10

[24] Section 90 (1B)

Insert after section 90 (1A):

- (1B) It is a defence in any proceeding against a person for an offence under this section if the person establishes that the Aboriginal item or Aboriginal place was destroyed, defaced or damaged with the consent of the Director-General and in accordance with any conditions or restrictions specified in the instrument of consent. 15

[25] Section 90 (2) 20

Omit "subsection (1)". Insert instead "subsection (1B)".

Explanatory note

Schedule 1 [23] replaces the offence of knowingly destroying, defacing or damaging (or knowingly causing or permitting the destruction or defacement of or damage to) a relic or Aboriginal place under section 90 (1) of the Act with a new offence (with higher maximum penalties) of wilfully, negligently or recklessly destroying or defacing or damaging (or wilfully, negligently or recklessly causing or permitting destruction, damage or defacement of) an Aboriginal item or Aboriginal place. Proposed section 90 (1B) (Schedule 1 [24]) makes it a defence in any proceeding against a person for such an offence to establish that the Aboriginal item or place was destroyed, defaced or damaged with the consent of the Director-General. Schedule 1 [25] contains a consequential amendment. 25 30

[26] Section 90A

Insert after section 90:

90A Court may order offender to restore defaced or damaged item, zone or place

- (1) If a court convicts a person of an offence under section 84F or 90 concerning an Aboriginal item, Aboriginal item protection zone or Aboriginal place, the court may, in addition to or in substitution for any pecuniary penalty for the offence, direct the person convicted of the offence to take any action to mitigate any damage to or to restore, preserve or protect that Aboriginal item, zone or place. 5
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- (2) The court may specify the action to be taken to mitigate the damage, restore, preserve or protect the Aboriginal item, Aboriginal item protection zone or Aboriginal place and may order the person convicted of the offence to maintain the item, zone or place until the actions ordered to be done to mitigate the damage or restore, preserve or protect the item, zone or place have been fully performed. 15
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- (3) The court may order the person to provide security for the performance of any obligation imposed under this section.

Note. Section 5 (2A) provides for references to a person convicted of an offence to include a person in respect of whom an order is made under section 556A of the *Crimes Act 1900*. 25

Explanatory note

Schedule 1 [26] inserts proposed section 90A. The section enables a court, on finding an offence under proposed section 84F or section 90 relating to an Aboriginal item, Aboriginal item protection zone or Aboriginal place proven, to order an accused in addition to or in substitution for the payment of any pecuniary penalty for the offence, to mitigate the damage or restore or take other specified action to preserve or protect the Aboriginal item, Aboriginal item protection zone or Aboriginal place concerned. 30

[27] Section 91

Omit "that relic" wherever occurring.
Insert instead "that Aboriginal item".

[28] Section 154 Regulations

Omit "Relics Committee" wherever occurring. 5
Insert instead "Aboriginal Cultural Heritage Advisory Council".

Explanatory note

Schedule 1 [28] is an amendment by way of statute law revision similar to that made by Schedule 1 [5].

[29] Section 164 Powers of entry and seizure 10

Insert at the end of section 164 (1) (b1) (iv):

and

(v) inspecting any Aboriginal place for the purpose of ascertaining whether it is being properly cared for, preserved and protected, and 15

(vi) inspecting any land for the purpose of ascertaining whether the land or any thing on it is an Aboriginal item or should be declared to be an Aboriginal item protection zone or Aboriginal place, 20

Explanatory note

Schedule 1 [29] inserts proposed section 164 (1) (b1) (v) and (vi). Proposed section 164 (1) (b1) (v) enables the Director-General and persons authorised by the Director-General to at any time enter and inspect Aboriginal places. Proposed section 164 (1) (b1) (vi) enables the Director-General and persons authorised by the Director-General to at any time enter and inspect land for the purpose of ascertaining whether the land or anything on it is an Aboriginal item or such land should be declared to be an Aboriginal item protection zone or Aboriginal place. Entry to any premises (or part of premises) that is used for residential purposes may be made only if authorised by a search warrant. 25 30

[30] Section 175B Offences by corporations

Omit section 175B (1). Insert instead:

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision unless the person satisfies the court that:
- (a) the corporation contravened the provision without the knowledge actual, imputed or constructive of the person, or
- (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
- (c) the person, if in such a position, used all due diligence to prevent the contravention by the corporation.

[31] Section 175B (4)

Insert after section 175B (3):

- (4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular intention, is evidence that the corporation had that intention at that time.

Explanatory note

Under section 175B (1) of the Act, a person who is the director of a corporation or who is concerned in the management of a corporation is taken to have contravened any provision of the Act or the regulations that is contravened by the corporation only if the prosecution proves that the person knowingly authorised or permitted the contravention. Schedule 1 [30] replaces that subsection with a new subsection that instead provides that such a person is to be taken to have contravened such a provision unless the person satisfies the court that the corporation contravened the provision without the knowledge actual, imputed or

constructive of the person or that the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision or used all due diligence to prevent the contravention. Schedule 1 [31] is a provision that facilitates proof of a corporation's intentions.

[32] Schedule 3 Savings, transitional and other provisions 5

Insert at the end of clause 1 (1):

National Parks and Wildlife Amendment (Aboriginal Cultural Heritage) Act 1998

Explanatory note

Schedule 1 [32] enables the making of savings or transitional regulations consequent on the enactment of this Act. 10

[33] Schedule 3, clause 4

Omit the clause.

Explanatory note

Schedule 1 [33] is an amendment by way of statute law revision to omit a superfluous savings and transitional provision relating to the former Aboriginal Relics Advisory Committee. 15

[34] Schedule 3, clauses 27 and 28

Insert at the end of the Schedule:

27 Change in nomenclature 20

A relic within the meaning of this Act as in force immediately before the commencement of Schedule 1 [4] to the *National Parks and Wildlife Amendment (Aboriginal Cultural Heritage) Act 1998* is taken to be an Aboriginal item within the meaning of this Act as amended by that Act. 25

28 Dissolution of Aboriginal Cultural Heritage (Interim) Advisory Committee

- (1) On the commencement of this clause, the Aboriginal Cultural Heritage (Interim) Advisory Committee is dissolved. 5
- (2) A person who, immediately before the commencement of this clause, held office as a member of the Aboriginal Cultural Heritage (Interim) Advisory Committee:
- (a) ceases to hold that office, and
- (b) is eligible (if otherwise qualified) to be appointed as a member of the Aboriginal Cultural Heritage Advisory Council. 10
- (3) A person who so ceases to hold office is not entitled to any remuneration or compensation because of that loss of office. 15
- (4) A reference in any other Act, in any statutory instrument or in any other document to the Aboriginal Cultural Heritage (Interim) Advisory Committee is to be read as a reference to the Aboriginal Cultural Heritage Advisory Council. 20

Explanatory note

Schedule 1 [34] contains savings and other provisions relating to the amendments contained in Schedule 1 [2], [4], [6] and [36].

[35] Schedule 9, heading

Omit the heading to Schedule 9. Insert instead: 25

Schedule 9 Aboriginal Cultural Heritage Advisory Council

(Section 27 (2))

[36] Schedule 9, clauses 1 and 1A

Omit clause 1. Insert instead: 30

1 Composition

- (1) The Aboriginal Cultural Heritage Advisory Council is to consist of 11 members appointed by the Minister.

- (2) Of the members of the Aboriginal Cultural Heritage Advisory Council:
- (a) 6 are to be Aboriginal persons who represent the community selected by the Minister, and
 - (b) one person is to be selected by the Minister from 3 nominees of the New South Wales Aboriginal Land Council constituted under the *Aboriginal Land Rights Act 1983*, and 5
 - (c) one is to be an officer of the Service, and
 - (d) one is to be an officer of the Department of Aboriginal Affairs, and 10
 - (e) one is to be an officer of the Australian Museum nominated by the Minister administering the *Australian Museum Trust Act 1975*, and
 - (f) one is to be an officer of the Heritage Office. 15

1A Chairperson and Deputy Chairperson

- (1) The members are to elect a Chairperson and a Deputy Chairperson from the members.
- (2) The Chairperson is to be elected from the members referred to in clause 1 (2) (a). 20
- (3) The Chairperson and Deputy Chairperson hold office for such period, not exceeding 3 years, as is determined by the Minister but are eligible (if otherwise qualified) for re-election.
- (4) The Chairperson, or in the absence of the Chairperson the Deputy Chairperson or a member elected to chair the meeting by the members present, is to preside at a meeting of the Council. 25

[37] Schedule 9

- Omit "Aboriginal Cultural Heritage (Interim) Advisory Committee" wherever occurring. 30
Insert instead "Aboriginal Cultural Heritage Advisory Council".

[38] Schedule 9, clause 7

Omit "Five" from clause 7 (1). Insert instead "Seven".

[39] Schedule 9, clause 7 (1)

Omit "the Committee".

Insert instead "the Aboriginal Cultural Heritage Advisory Council".

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[40] Schedule 9, clause 10

Omit "The Chairperson is to be elected from the members referred to in clause 1 (2) (a)".

Explanatory note

Schedule 1 [36] provides for the reconstitution of the Aboriginal Cultural Heritage (Interim) Advisory Committee as a council called the Aboriginal Cultural Heritage Advisory Council. The Committee consists of 8 members, 5 Aboriginal persons selected by the Minister from nominees of the New South Wales Aboriginal Land Council, one person selected by the Minister from 3 nominees of the Nature Conservation Council, an officer of the National Parks and Wildlife Service and an appointee of the Minister. The Council is to consist of 11 members and is to be more representative of the Aboriginal community and persons with expertise and knowledge of the Aboriginal cultural heritage. Schedule 1 [35] and [37]–[40] make consequential amendments.

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Schedule 2 Amendment of other Acts

(Section 4)

2.1 Land and Environment Court Act 1979 No 204

Section 20 Class 4—environmental planning and protection and development contract civil enforcement 5

Insert after section 20 (1) (cm):

- (cn) proceedings under section 84G of the *National Parks and Wildlife Act 1974*.

Explanatory note

Schedule 2.1 makes an amendment to section 20 that is consequential on proposed section 84G (Schedule 1 [13]). The amendment confers jurisdiction on the Land and Environment Court to hear appeals under that section relating to orders declaring land to be an Aboriginal item protection zone. 10

2.2 Valuation of Land Act 1916 No 2

[1] Section 7F Protected archaeological areas, wildlife districts, wildlife refuges and games reserves 15

Insert "or 84" after "section 65" in section 7F (1).

[2] Section 7F (2) (e)

Insert after section 7F (2) (d):

, or 20

- (e) an Aboriginal place within the meaning of that Act that the land so comprised may be used only for the purposes of such an Aboriginal place as at the date to which the valuation relates.

Explanatory note

Schedule 2.2 [1] amends section 7F (1) so as to require the Valuer-General to make a valuation of land determined to be an Aboriginal place by an order under section 84 of the *National Parks and Wildlife Act 1974* on receipt of a copy of the order. 25

Schedule 2.2 [2] inserts proposed section 7F (2) (e). It provides that in valuing such land, the Valuer-General is to assume the land may be used only for the purposes of an Aboriginal place. (Section 7F already provides for the Valuer-General to take such action in respect of protected archaeological areas, wildlife districts, wildlife refuges and game reserves.)

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