

TASMANIA

HISTORIC CULTURAL HERITAGE AMENDMENT BILL 2024

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HISTORIC CULTURAL HERITAGE AMENDMENT BILL 2024

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

LAURA ROSS, *Clerk of the House*
6 August 2024

*(Brought in by the Minister for the Arts, the Honourable
Madeleine Ruth Ogilvie)*

A BILL FOR

An Act to amend the *Historic Cultural Heritage Act 1995*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Historic Cultural Heritage Amendment Act 2024*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

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3. Principal Act

In this Act, the *Historic Cultural Heritage Act 1995** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by omitting the definition of *building* and substituting the following definition:

building has the same meaning as in the Planning Act;

- (b) by omitting paragraph (a) from the definition of *land* and substituting the following paragraph:

- (a) buildings and other structures permanently fixed to land; and

- (c) by inserting the following definition after the definition of *notify*:

object, in relation to a place, includes fittings, artifacts, tools, implements and other items, other than fixtures, in or on the place that contribute to the historic cultural heritage significance of the place;

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- (d) by inserting “, including fixtures” after “a building” in paragraph (b) of the definition of *place*;
- (e) by omitting paragraphs (d) and (e) from the definition of *place* and substituting the following paragraphs:
 - (d) any objects related to the place;
and
 - (e) any open outdoor spaces, built landscape features, gardens or plants on the place that contribute to the historic cultural heritage significance of the place;

5. Section 4A amended (Matters to be regarded)

Section 4A of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) Nothing in this Act is to be taken to prevent any person having regard to an object in determining the historical cultural heritage significance of a place.

6. Section 7 amended (General functions and powers of Heritage Council)

Section 7(1)(h) of the Principal Act is amended by inserting “including records of objects relating to those places” after “significance”.

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7. Section 21 amended (Permanent entry in Register)

Section 21(3) of the Principal Act is amended by omitting “120 days” and substituting “180 days”.

8. Section 25A inserted

After section 25 of the Principal Act, the following section is inserted in Part 4:

25A. Removal of duplicate entries

- (1) The Heritage Council may remove an entry relating to a place from the Heritage Register if –
 - (a) the Heritage Council is satisfied that the entry duplicates, or substantially duplicates, another entry in the Heritage Register; and
 - (b) the Heritage Council notifies each of the following persons, by written notice, of the removal of the entry from the register:
 - (i) the owner of the place to which the entry relates;
 - (ii) the planning authority.
- (2) If the Heritage Council removes an entry in the Heritage Register under subsection (1), section 22(5) and (6) and sections 23, 24, 25, 26 and 27 do not

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apply in relation to the removal of that entry from the Heritage Register.

9. Section 32 amended (Interpretation of Part)

Section 32(1) of the Principal Act is amended as follows:

- (a) by omitting the definition of *certificate of exemption*;
- (b) by omitting the definition of *exemption certificate application*;
- (c) by inserting the following definition after the definition of *heritage works*:

minor works approval means a minor works approval issued under section 42;

10. Section 32A inserted

After section 32 of the Principal Act, the following section is inserted in Part 6:

32A. Application of Part

For the avoidance of doubt –

- (a) this Part applies in relation to a permit application, or an application under this Part for minor works approval, even though some or all of the heritage works to which the application

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relates have been carried out before the application is made; and

- (b) the Heritage Council may perform a function, or exercise a power, under this Act in relation to an application referred to in paragraph (a).

11. Section 34 amended (Legal status of heritage works if no minor works approval)

Section 34(1) of the Principal Act is amended by omitting “certificate of exemption” and substituting “minor works approval”.

12. Section 35 amended (Heritage works require heritage approval)

Section 35 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(a) “certificate of exemption” first occurring and substituting “minor works approval”;
- (b) by omitting from subsection (2)(a)(i) “certificate of exemption” and substituting “minor works approval”;
- (c) by omitting from subsection (2)(b) “certificate of exemption” and substituting “minor works approval”;

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- (d) by omitting from subsection (3)(c) “certificate of exemption” and substituting “minor works approval”.

13. Section 39 amended (Procedure if Heritage Council wishes to be involved in determining discretionary permit application)

Section 39 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(a) “proposed” and substituting “relevant”;
- (b) by inserting in subsection (2)(a) “and any registered place that adjoins the relevant registered place or heritage area” after “area”;
- (c) by inserting in subsection (7)(a) “or are to be rectified” after “out”.

14. Section 39A amended (Procedure if Heritage Council wishes to be involved in determining combined permit application)

Section 39A of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(a) “proposed” and substituting “relevant”;
- (b) by inserting in subsection (2)(a) “and any registered place that adjoins the relevant registered place or heritage area” after “area”;

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- (c) by inserting in subsection (7)(a) “or are to be rectified” after “out”.

15. Section 39C amended (Substantial changes to proposed heritage works)

Section 39C(1)(b) of the Principal Act is amended by omitting “proposed to be carried out in the permit application” and substituting “to which the permit application relates”.

16. Section 42 amended (Minor works approval)

Section 42 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “a certificate of exemption” and substituting “a minor works approval”;
- (b) by omitting from subsection (2) “exemption certificate”;
- (c) by omitting from subsection (3)(a) “exemption certificate”;
- (d) by omitting from subsection (3)(b) “exemption certificate”;
- (e) by omitting from subsection (4) “exemption certificate”;
- (f) by inserting in subsection (4)(a) “and any registered place that adjoins the relevant registered place or heritage area” after “area”;

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- (g) by omitting from subsection (6)(a) “the certificate of exemption” and substituting “a minor works approval”;
- (h) by omitting from subsection (6)(b) “certificate of exemption” and substituting “minor works approval”;
- (i) by omitting from subsection (7) “the certificate of exemption” and substituting “a minor works approval”.

17. Section 43 substituted

Section 43 of the Principal Act is repealed and the following section is substituted:

43. Effect of minor works approval

- (1) Subject to subsection (2), a minor works approval allows –
 - (a) the heritage works identified in the approval to be carried out in relation to the registered place or heritage area identified in the approval; and
 - (b) the heritage works identified in the approval, that were carried out in relation to the registered place or heritage area identified in the approval before the approval was issued, to remain or continue, as specified in the approval.

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- (2) This section is in addition to, and not in substitution of, any requirement under the Planning Act for a discretionary permit, or other permit, in respect of heritage works identified in a minor works approval.

18. Section 60 amended (Notice to take or stop action)

Section 60 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

- (3) A notice must –
- (a) if it includes a requirement under subsection (2)(a) to take specified action to repair any damage, specify the period within which the action must be taken; or
 - (b) if it includes a requirement under subsection (2)(b) to cease any specified action, state when the specified action is to cease; or
 - (c) if it includes a requirement under subsection (2)(c) to commence or complete, or both, any specified works, specify –
 - (i) the period within which the specified works are to be commenced; or

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- (ii) the period within which the specified works are to be completed; or
- (iii) the period within which the specified works are to be commenced and completed.

19. Section 88 substituted

Section 88 of the Principal Act is repealed and the following section is substituted:

88. Certificate as evidence

- (1) A certificate under this Part that states any matter and that is signed by the chairperson, or a person to whom the power of the Heritage Council under section 87 has been delegated, is evidence of that matter and, in the absence of evidence to the contrary, is proof of that matter.
- (2) For the avoidance of doubt, a signature on a certificate under this Part, as referred to in subsection (1), may be an electronic signature.

20. Section 94 amended (Amendment of Register)

Section 94 of the Principal Act is amended by inserting after subsection (3) the following subsection:

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- (4) If a person is aggrieved by the decision of the Heritage Council to include, or remove, an object from an entry in the Heritage Register –
 - (a) within 30 days after the person receives notice of the decision, the person may appeal the decision to the Appeal Tribunal; and
 - (b) the Appeal Tribunal is to hear and determine the appeal under the *Tasmanian Civil and Administrative Tribunal Act 2020*.

21. Section 100A inserted

After section 100 of the Principal Act, the following section is inserted in Part 12:

100A. Transitional provisions consequent on *Historic Cultural Heritage Amendment Act 2024*

- (1) In this section –

amending Act means the *Historic Cultural Heritage Amendment Act 2024*.

- (2) A certificate of exemption that was issued under this Act and is in force immediately before the day on which this subsection commences is taken, on and

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from that day, to be a minor works approval, issued under this Act, on the same terms.

- (3) An application that was made under section 42(1), but has not been approved, or refused, before the day on which this subsection commences is taken, on and from that day, to be an application for a minor works approval on the same terms.
- (4) The amendments made, by the amending Act, to sections 19(2)(b), 20(2)(a) and 21(3) do not apply in relation to a notice given or published under section 18 of this Act if the notice is given or published under that section before the day on which this subsection commences.

22. Repeal of Act

This Act is repealed on the first anniversary of the day on which the last uncommenced provision of this Act commenced.