

**TASMANIA**

---

**HISTORIC CULTURAL HERITAGE AMENDMENT  
BILL 2023**

---

**CONTENTS**

1. Short title
2. Commencement
3. Principal Act
4. Section 3 amended (Interpretation)
5. Section 4A amended (Matters to be regarded)
6. Section 7 amended (General functions and powers of Heritage Council)
7. Section 19 amended (Objection to permanent entry in Register)
8. Section 20 amended (Submission relating to permanent entry in Register)
9. Section 21 amended (Permanent entry in Register)
10. Section 25A inserted  
25A. Removal of duplicate entries
11. Section 26 amended (Notice of entry in or removal from Register)
12. Section 27 amended (Appeal against Heritage Council's decision)
13. Section 32 amended (Interpretation of Part)
14. Section 32A inserted  
32A. Application of Part
15. Section 34 amended (Legal status of heritage works if no certificate of exemption, &c.)
16. Section 35 amended (Heritage works require heritage approval)

17. Section 39 amended (Procedure if Heritage Council wishes to be involved in determining discretionary permit application)
18. Section 39A amended (Procedure if Heritage Council wishes to be involved in determining combined permit application)
19. Section 39C amended (Substantial changes to proposed heritage works)
20. Section 42 amended (Certificates of exemption for heritage works)
21. Section 43 substituted
  43. Effect of minor works approval
22. Section 60 amended (Notice to take or stop action)
23. Part 8A inserted
  - PART 8A – Heritage Objects
  - 63A. Objects may be registered in Heritage Register
  - 63B. Certain actions, in relation to heritage objects, prohibited without handling approval
  - 63C. Approval to handle heritage objects
  - 63D. Heritage object orders
  - 63E. Revocation of heritage object orders
  - 63F. Appeals under this Part
24. Section 88 substituted
  88. Certificate as evidence
25. Section 90A amended (Guidelines)
26. Section 94 amended (Amendment of Register)
27. Section 100A inserted
  - 100A. Transitional provisions consequent on *Historic Cultural Heritage Amendment Act 2023*
28. Repeal of Act

**HISTORIC CULTURAL HERITAGE AMENDMENT  
BILL 2023**

*(Brought in by the Minister for Heritage, 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 2023*.

**2. Commencement**

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

**3. Principal Act**

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

---

\*No. 117 of 1995

*Historic Cultural Heritage Amendment Act 2023*  
*Act No. of 2023*

s. 4

---

**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*** includes –

- (a) land; and
- (b) any structure in or on the land; and
- (c) any fixture in or on the land or structure;

- (b) by inserting the following definition after the definition of *guidelines*:

***handling approval***, in relation to a heritage object, means a handling approval issued under section 63C(3)(a) in respect of the object;

- (c) by inserting the following definitions after the definition of *Heritage Council*:

***heritage object*** means an object that –

- (a) is registered, in accordance with section 63A(1), in an entry in the Heritage Register in relation to a place; and

*Historic Cultural Heritage Amendment Act 2023*  
*Act No. of 2023*

s. 5

---

- (b) has not been removed, in accordance with section 63A(2), from that entry in the Heritage Register;

***heritage object order*** means an order made under section 63D(1);

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

***object***, in relation to a place, includes fittings, artifacts and other objects in or on the place other than a fixture in or on the place;

- (e) by omitting “shipwreck; and” from paragraph (c) of the definition of *place* and substituting “shipwreck –”;

- (f) by omitting paragraphs (d) and (e) from the definition of *place* and substituting the following text:

“and also includes objects in, or on, a 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:

*Historic Cultural Heritage Amendment Act 2023*  
*Act No. of 2023*

s. 6

---

(3) Nothing in this Act is to be taken to prevent a 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 heritage objects relating to those places” after “significance”.

**7. Section 19 amended (Objection to permanent entry in Register)**

Section 19(2)(b)(i) of the Principal Act is amended by omitting “60 days” and substituting “30 days”.

**8. Section 20 amended (Submission relating to permanent entry in Register)**

Section 20(2)(a) of the Principal Act is amended by omitting “60 days” and substituting “30 days”.

**9. Section 21 amended (Permanent entry in Register)**

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

**10. 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 the Heritage Council is satisfied that the entry duplicates, or substantially duplicates, another entry in the Heritage Register.
- (2) If the Heritage Council removes an entry in the Heritage Register under subsection (1), section 22(5) and (6) and sections 23, 24, and 25 do not apply in relation to the removal of that entry from the Heritage Register.

**11. Section 26 amended (Notice of entry in or removal from Register)**

Section 26(b) of the Principal Act is amended by inserting “or if the removal occurs under section 25A,” after “Part,”.

**12. Section 27 amended (Appeal against Heritage Council’s decision)**

Section 27(1) of the Principal Act is amended by omitting “under section 21 or 25” and substituting “under section 21, 25 or 25A”.

*Historic Cultural Heritage Amendment Act 2023*  
*Act No. of 2023*

s. 13

---

**13. 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;

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



*Historic Cultural Heritage Amendment Act 2023*  
*Act No. of 2023*

s. 15

---

- (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).

**15. Section 34 amended (Legal status of heritage works if no certificate of exemption, &c.)**

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

**16. 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”;
- (d) by omitting from subsection (3)(c) “certificate of exemption” and substituting “minor works approval”.

*Historic Cultural Heritage Amendment Act 2023*  
*Act No. of 2023*

s. 17

---

**17. 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) “or of another 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”.

**18. 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) “or of another 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”.

**19. 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”.

**20. Section 42 amended (Certificates of exemption for heritage works)**

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) “or of another registered place that adjoins the relevant registered place or heritage area” after “area”;

*Historic Cultural Heritage Amendment Act 2023*  
*Act No. of 2023*

s. 21

---

- (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”.

**21. 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, subject to the conditions in the approval.

- (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.

**22. 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

*Historic Cultural Heritage Amendment Act 2023*  
*Act No. of 2023*

s. 23

---

- (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.

**23. Part 8A inserted**

After section 63 of the Principal Act, the following Part is inserted:

**PART 8A – HERITAGE OBJECTS**

**63A. Objects may be registered in Heritage Register**

- (1) The Heritage Council may register an object in an entry in the Heritage Register in relation to a place if –
  - (a) the object is located in, or on, the place; and
  - (b) the Heritage Council is satisfied that the object contributes to the historic cultural heritage significance of the place.
- (2) The Heritage Council may remove an object from an entry in the Heritage Register in relation to a place if –

- (a) the Heritage Council is satisfied that the object no longer contributes to the historic cultural heritage significance of the place; or
- (b) the place ceases to have an entry in the Heritage Register.

**63B. Certain actions, in relation to heritage objects, prohibited without handling approval**

- (1) Subject to subsections (2) and (3), a person must not cause or permit –
  - (a) the removal of a heritage object from the place where it is located; or
  - (b) damage to, or the alteration of, a heritage object.

Penalty: Fine not exceeding –

- (a) 1 000 penalty units for a body corporate; or
  - (b) 500 penalty units for an individual.
- (2) It is a defence in proceedings for an offence under subsection (1) in relation to a heritage object if the defendant establishes that –

*Historic Cultural Heritage Amendment Act 2023*  
*Act No. of 2023*

s. 23

---

- (a) the object was at risk or the safety of persons, or property, were at risk; and
- (b) the removal, damage or alteration of the object occurred as a result of the defendant taking actions taken to remove, or minimise, a risk referred to in paragraph (a); and
- (c) there was insufficient time for the defendant to seek a handling approval in respect of the object before the relevant risk specified in paragraph (a) occurred; and
- (d) the defendant ensured that the Heritage Council was notified, in writing, of the removal, damage or alteration of the object, and the circumstances in which it occurred –
  - (i) if reasonable in the circumstances, before, or while, the defendant was taking actions referred to in paragraph (b); or
  - (ii) in any other case, as soon as practicable after the object was removed, damaged or altered; and
- (e) after notifying the Heritage Council under paragraph (d), the



*Historic Cultural Heritage Amendment Act 2023*  
*Act No. of 2023*

s. 23

---

defendant complied with any requirements made by the Heritage Council in respect of the object.

- (3) Subsection (1) does not apply in relation to the removal, damage or alteration of a heritage object that occurs –
- (a) in accordance with a handling approval issued in respect of the object under section 63C; or
  - (b) in the course of the carrying out of heritage works, within the meaning of Part 6 –
    - (i) that have heritage approval within the meaning of section 35(2), if the removal, damage or alteration occurs as a necessary consequence of carrying out the works; or
    - (ii) in relation to which a defendant in respect of an offence against section 35(1) has a defence under section 35(3); or
    - (iii) to which section 35(4) applies.

**63C. Approval to handle heritage objects**

- (1) A person with care or charge of a heritage object may apply to the Heritage Council for approval –
  - (a) to move the object, whether temporarily or permanently, from the place in respect of which the object is a heritage object; or
  - (b) to alter the object as specified in the application.
- (2) An application under subsection (1) –
  - (a) is to be in a form approved by the Heritage Council; and
  - (b) is to include such information as is specified by the Heritage Council.
- (3) After considering an application under subsection (1) –
  - (a) the Heritage Council may –
    - (i) approve the application subject to such conditions, if any, as the Heritage Council considers reasonable; and
    - (ii) issue a handling approval, in a form determined by the Heritage Council, to the applicant; or

- (b) the Heritage Council may –
    - (i) refuse to approve the application; and
    - (ii) notify the applicant in writing of that refusal and the reasons for the refusal; or
  - (c) the Heritage Council may seek further information from the applicant and, after considering the further information provided –
    - (i) approve the application under paragraph (a); or
    - (ii) refuse to approve the application under paragraph (b).
- (4) A person must not contravene a condition of a handling approval.

Penalty: Fine not exceeding –

- (a) 1 000 penalty units for a body corporate; or
- (b) 500 penalty units for an individual.

**63D. Heritage object orders**

- (1) The Heritage Council, or the Minister on the advice of the Heritage Council, may make an order, in relation to a heritage object.
- (2) An order under subsection (1) in relation to a heritage object may require a person –
  - (a) to take, or cause to be taken, an action specified in the order; or
  - (b) not to take, or to cease to take, an action specified in the order.
- (3) A heritage object order may only be made under subsection (1) in relation to a heritage object if –
  - (a) the person making the order considers that the order is necessary for –
    - (i) the immediate protection of the object; or
    - (ii) the immediate protection of the historic cultural heritage significance of the place in which the object is located; and
  - (b) if the order is made by the Minister, the Minister has received a written request from

the chairperson of the Heritage Council for the Minister to make an order under subsection (1) in respect of the object.

- (4) Without limiting the generality of subsection (1), a heritage object order may be made for the purpose of ensuring that the heritage object specified in the order remains at, or is returned to, the place in respect of which the object has been entered in the Heritage Register.
- (5) The person who makes a heritage object order under subsection (1) is to cause a copy of the order to be served on each person to whom a requirement specified in the order relates.
- (6) A heritage object order –
- (a) takes effect in relation to a person once the person is served with the order in accordance with subsection (5); and
  - (b) remains in force until the first of the following occurs:
    - (i) the order is fully complied with;
    - (ii) the order is revoked under section 63E or 63F;
    - (iii) the object to which the order relates ceases to be

*Historic Cultural Heritage Amendment Act 2023*  
*Act No. of 2023*

s. 23

---

a heritage object in  
accordance with  
section 63A(2).

- (7) A person must comply with a heritage object order.

Penalty: Fine not exceeding 10 000  
penalty units.

**63E. Revocation of heritage object orders**

- (1) The person who has made a heritage object order under section 63D may, at any time, revoke the order.
- (2) If the Minister revokes a heritage object order, the Minister is to notify the Heritage Council of the revocation.
- (3) If the Heritage Council revokes a heritage object order, or receives notification under subsection (2) that the Minister has revoked a heritage object order, the Heritage Council must ensure that written notice of the revocation of the order is given to each person on whom the order was served in accordance with section 63D(5).

**63F. Appeals under this Part**

- (1) A person who has received notice under section 63C(3)(b) that the person's application for a handling approval has been refused may, within 30 days after

receiving the notice, appeal to the Appeal Tribunal against the decision to refuse the application.

- (2) A person aggrieved by a heritage object order served on the person under section 63D(5) may, within 30 days after being so served, appeal to the Appeal Tribunal in relation to the order, on the following grounds:
  - (a) that compliance with the order would not assist with –
    - (i) the protection of the object; or
    - (ii) the retention of the historic cultural heritage significance of the place in which the object is ordinarily located;
  - (b) that it is unreasonable, in all the circumstances, to comply with the order.
- (3) The Appeal Tribunal is to hear and determine an appeal under the *Tasmanian Civil and Administrative Tribunal Act 2020*.
- (4) The Appeal Tribunal may, on an appeal under this section –
  - (a) if the appeal relates to a decision to refuse an application under

*Historic Cultural Heritage Amendment Act 2023*  
*Act No. of 2023*

s. 24

---

- section 63C, confirm the decision; or
- (b) if the appeal relates to a heritage object order, confirm, vary, amend or revoke –
    - (i) the order; or
    - (ii) a condition of the order; or
  - (c) in either case, remit the matter to which the appeal relates to the Heritage Council for reconsideration.
- (5) If the Appeal Tribunal revokes a heritage object order under this section, the Appeal Tribunal may order the Heritage Council to pay for –
- (a) any costs relating to the making and hearing of the appeal; and
  - (b) any reasonable costs incurred by the appellant as a result of complying with the heritage object order.

**24. 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.

**25. Section 90A amended (Guidelines)**

Section 90A(1) of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

- (ba) guidelines for the purposes of Part 8A;  
and

**26. Section 94 amended (Amendment of Register)**

Section 94 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (b) in subsection (1):
  - (ba) to include, or remove, an object from the entry; or

*Historic Cultural Heritage Amendment Act 2023*  
*Act No. of 2023*

s. 27

---

(b) by inserting the following subsection after subsection (3):

(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*.

**27. 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 2023***

(1) In this section –

*Historic Cultural Heritage Amendment Act 2023*  
*Act No. of 2023*

s. 28

---

*amending Act* means the *Historic Cultural Heritage Amendment Act 2023*.

- (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 from that day, to be a minor works approval, issued under this Act, on the same terms and conditions.
- (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 certificate on the same terms and conditions.
- (4) The amendments made, by the amending Act, to section 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.

**28. Repeal of Act**

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