

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

HERITAGE BILL 2001

EXPLANATORY MEMORANDUM

Circulated with the authority of
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Minister for Urban Services

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Outline

This Bill sets out new provisions for protection of heritage in the Territory. The current provisions relating to heritage are in Part 3 of the *Land (Planning and Environment) Act 1991* (the Land Act) and numerous other provisions in that Act. A consequential amendments Bill will deal with removal of these provisions, and provide for amendments to tie this Bill in to the development application and planning process. This consequential amendments Bill is not complete at the time this Bill is being presented in the Legislative Assembly.

This Bill contains provisions for the establishment of the Heritage Council; mechanisms for registration of heritage places and objects; offences relating to damaging heritage; stop work orders and action notices; enforcement; obligations of public authorities; and incentives for heritage protection. It covers natural and cultural heritage (including Aboriginal heritage) and deals with both heritage places and objects.

Revenue/Cost Implications

There is no additional cost involved in the Bill as all infrastructure is in place under existing arrangements.

Formal Clauses

Part 1- Preliminary:

Clauses 1 and 2 are formal requirements. They deal with the short title of the Bill, commencement provisions.

Clause 3 provides for a dictionary of terms used within the Bill and notifies that the dictionary is located at the end of the Bill.

Clause 4 advises that the notes included within the Bill are explanatory and do not form part of the Act.

Part 2 – Important Concepts

This part defines the major concepts used in the Bill. Many other definitions are included in the dictionary.

Clause 5 defines “place.” Most of the entries in the ACT Heritage Register will be places.

Clause 6 defines “Aboriginal object.” A person who discovers an unregistered Aboriginal object has obligations as set out in Division 4.4 of the Bill.

Clause 7 defines “heritage significance”.

Clause 8 establishes the heritage significance criteria, a document written by the Heritage Council, but disallowable in the Assembly.

Clause 9 defines “registered” to include places and objects provisionally registered.

Clause 10 defines unregistered to mean places that have never been registered. The term unregistered is used in Division 4.4 and Part 5 in relation to Aboriginal places and objects when establishing offences. It is not intended to be an offence in the circumstances covered there if the place or object was registered, but has been removed from the Register.

Clause 11 defines “interested person.” This term is used in relation to the registration process, for various stages when information is to be provided and opportunity is to be provided for comment.

Clause 12 establishes an arrangement where the Minister can set criteria to assess whether an organisation is a representative Aboriginal organisation, and make determinations in accordance with those criteria. The criteria are to be disallowable in the Legislative Assembly.

Part 3 – The Heritage Council

Clause 13 establishes the ACT Heritage Council (the Council).

Clause 14 establishes the composition of the Council.

Clause 15 defines the functions of the Council, and provides examples that do not limit the power of the Council.

Clause 16 allows for the procedures of the Council and establishment of office holders (such as the chair and deputy chair) to be set by regulation.

Part 4 – Registration and Aboriginal Heritage

Division 4.1 Heritage Register

Clause 17 establishes the Heritage Register (the Register), and empowers the Council to make technical amendments to it.

Clause 18 sets the content of the Register. Sub-clauses 1 and 2 point to the sections dealing with how details of registered places and objects and stop work orders are included. Sub-clause 3 lists the other information that may be included.

Clause 19 provides that the Register must be publicly available.

Division 4.2 Registration and Removal from the Heritage Register

Clause 20 provides that anyone may nominate a place or object.

Clause 21 empowers the Minister to provisionally Register a nominated place or object (or one reported under Division 4.4.) The Minister must seek and consider the advice of the Council prior to making a provisional registration.

Clause 22 provides the mechanism for provisional removal of a place from the Register.

Clause 23 provides for “interested people” to be notified of proposed entry in or removal from the Register. “Interested people” is defined in Part 2. It is intended that the interested people are provided with notice of the proposal.

Clause 24 provides for public notification of a proposed change to the Register, including the length of time to be allowed for submissions. The submission period is defined to be 6 weeks, or longer if extended by the Minister (see the dictionary.)

Clause 25 provides that written submissions can be made on proposed registrations or removals from the Register. Objections to registration can only be made on the grounds that the heritage significance criteria are not met.

Clause 26 provides for final registration or removal from the Register by the Minister. The Minister must consider submissions received and the advice of the Heritage Council. The declaration that gives effect to the decision of the Minister is disallowable in the Assembly. The time limit for making a decision is 5 months from the date of provisional registration, or the date the intention to remove the entry was notified.

Clause 27 provides for inclusion of a place or object in the Register if it is found to have heritage significance, and removal if it does not.

Clause 28 sets out the information that must be included in an entry in the Register. The information identifying the place or object can be limited if it is Aboriginal, or if it has been declared to be restricted.

An entry in the Register may also include details of any development control in the Territory Plan in relation to the place or object.

Clause 29 provides for notification of the decision to add or remove a place or object from the Register. It must be given to the interested people, people who made submissions and published in the newspaper.

Division 4.3 Restricted Information

Clause 30 provides a mechanism for information about non-Aboriginal places and objects to be restricted if the Heritage Council considers that public disclosure of the information will adversely affect them. The lessee and occupier of land affected by the declaration must be informed of the declaration.

Clause 31 prohibits publication of restricted information by public officials. Provision is made for the Minister to allow the information to be published if satisfied the publication causes no real threat to the heritage significance of the place or object.

Clause 32 provides a mechanism for the Council to restrict publication of information about Aboriginal places and objects. A declaration doing so can only be made after consulting with each representative Aboriginal organisation.

Clause 33 prohibits public officials from publishing information restricted under clause 32, except where sanctioned by the Land Act or this Act. Sub-clause 2 allows publication where the Minister is satisfied that publication would not adversely affect the Aboriginal tradition or the heritage significance of the place or object.

Clause 34 establishes an offence for publication of restricted information about Aboriginal places and objects. Sub-clause 2 establishes a procedure for making application to the Council to approve publication, which must be granted if the Council is satisfied that publication would not adversely affect the Aboriginal tradition or the heritage significance of the place or object.

Clause 35 makes provision for the lessee, the occupier and persons who are considering buying the land to get access to restricted information.

Division 4.4 Reporting Discovery of Unregistered Aboriginal Places and Objects

Clause 36 obliges a person who discovers an unregistered Aboriginal place or object to make a written report of it to the Council. Failure to do so without a reasonable excuse is an offence.

Clause 37 provides for exceptions to clause 36. An Aboriginal person with traditional affiliations with a place or object need not report it. A person who reasonably believes that the place or object has been considered for registration and rejected need not report it. A person who believes on reasonable grounds that the place or object has previously been registered need not report it. The clause also gives an example of a reasonable excuse for not complying with clause 36, namely that the person was in a remote area when they found the place or object, and reported the discovery within 7 days of returning.

Part 5 Protection of registered places and objects

This part establishes the offences that will protect registered places and objects, and unregistered Aboriginal places and objects.

Clause 38 makes it an offence to deal with registered objects and unregistered Aboriginal objects in a way that diminishes their heritage significance.

Clause 39 establishes the principal offence for protecting heritage. It will be an offence to carry out work (as defined in sub-clauses 3 and 4) that is likely to affect the heritage significance of a registered place or object, or an unregistered Aboriginal place or object. The penalty is higher if the person knew that the place was registered, or was an unregistered Aboriginal place or object. (These penalties are comparable to those in other heritage legislation nationally, and to environmental harm offences in the *Environment Protection Act 1997*.) This clause prevents the undertaking of work except in accordance with an approval under the Land Act.

Clause 40 establishes an offence of disturbing, damaging or destroying Aboriginal places or objects (registered or unregistered). It will also be an offence to allow such an action (which will make lessee and occupiers liable for the actions of contractors on their property.) As with clause 39, an approval can be obtained under the Land Act.

Part 6 Stop Work Orders and Action Notices

Clause 41 makes it an offence to breach a stop-work order. The penalty for this offence is the same as for the offences in part 5.

Clause 42 empowers the Minister to make a stop work order when satisfied it is necessary to protect the heritage significance of a place or object. The place or object need not be registered for the order to be made. The order can require a person to stop or not start any stated work.

The order must be served on the owner of the land, and attached to the land. **Clause 43** provides that the order commences when the order is served or attached to the land, and remains in force for 14 days. Provision is made for the Minister to apply to seek extension of an order from the Supreme Court.

Clause 44 allows the Minister to revoke a stop work order.

Clause 45 empowers the Minister to issue a notice to take or stop action where, by action or inaction, a person is affecting or is likely to affect the heritage significance of a place or object. This order can only be issued in relation to registered places and objects. It can require a person to stop a given action, or to take specified action to repair damage or otherwise carry out work. At least a month must be allowed for work to be carried out.

Clause 46 establishes the offence of contravening an action notice.

Clause 47 provides for appeal to the AAT for review of the decision to issue a notice. The owner of the land, the owner of an object and the person with possession of the object have standing to appeal. The AAT may consider the heritage significance, financial hardship issues, and whether compliance with the notice is reasonable in all the circumstances.

Clause 48 empowers the Heritage Council to arrange for the work mentioned in a notice to be done at the owners expense if the owner fails to have it done and has not applied to the AAT for a review of the notice within the period prescribed in the *Administrative Appeals Tribunal Act 1989*.

Clause 49 applies when a person has an order revoked on financial hardship grounds in the AAT. This allows the Council to have the work done at the expense of the Territory.

Part 7 Civil Enforcement

Clause 50 gives standing to the Council (on behalf of the Territory) and anyone else with the leave of the Court to bring an application to enforce contravention of the offence provisions of the Act, stop work orders, action notices and heritage agreements. A person other than the Council can only get standing if they have asked the Council to act on a given breach, and the Council has failed to provide information detailing the appropriate action that the Council has taken.

Clause 51 empowers the Court to make an order if one of the listed items has been, is being or is likely to be contravened and harm to the heritage significance of a place is likely. The Court can make any orders it considers appropriate to require remedy of the contravention and to restrain future contravention.

Clause 52 empowers the Court to make interim orders where an application for an order has not been decided, but it is necessary to make the order to protect the heritage significance of a place or object. Such an order remains in force until the Court otherwise orders, but will only last for 14 days if the application is not served.

Clause 53 makes the public interest a relevant consideration in deciding any costs order for proceedings brought under the previous two clauses. The effect is that a person who fails in an application for an order may avoid having to pay the costs of the respondent to the order if they can persuade the Court that there was a strong enough public interest in bringing the application.

Clause 54 empowers the Court to require security for costs from an applicant for an order, and to make an undertaking as to damages that may be payable under clause 55.

Clause 55 empowers the Court to award damages against an applicant for orders under this part where it is satisfied that there was no relevant contravention, the respondent suffered loss as a result of the order being applied for, and it is otherwise appropriate to do so.

Part 8 Authorised Officers

Clause 56 empowers the chief executive to appoint authorised officers for the Act.

Clause 57 empowers an authorised officer to enter premises with consent, under a warrant, or in emergency situations where entry without warrant is justified.

Clause 58 provides that an authorised officer may only remain on premises if he or she produces an identity card when asked to do so.

Clause 59 establishes the procedure required for an authorised officer to obtain consent to entry, and the requirement for giving acknowledgement of that consent.

Clause 60 makes provision for authorised officers to apply for a warrant.

Clause 61 sets out the power for a Magistrate to issue a warrant.

Clause 62 empowers an authorised officer to seek a warrant by phone, fax, radio or other form of distant communication if the circumstances require it.

Clause 63 sets out the procedure for recording a warrant issued by a distant application.

Clause 64 empowers the Council to give an order to a person requiring the provision of information that is reasonably required for the administration of the Act.

Clause 65 makes contravening such an order an offence.

Clause 66 provides legal immunity for the members of the Council and authorised officers who act in good faith in the exercise of their powers.

Part 9 Public Authorities

Clause 67 defines public authority for this part, using the definition from the *Annual Reports (Government Agencies) Act 1995*.

Clause 68 defines heritage place and object in relation to a public authority. Places and objects controlled, owned or occupied by an authority that are registered, meet the significance criteria or are Aboriginal places and objects meet the definition.

Clause 69 obliges public authorities to give an report each year as to what heritage places and objects they have held during the course of the year. The report will not need to be given in the first year after the provision commences (allowing time for an audit) and after the first report, subsequent reports need only be on changes to what is held.

Clause 70 empowers the Council to require public authorities to prepare conservation management plans for places and objects held by the authority.

Part 10 Heritage Agreements

Clause 71 allows the Minister to enter into a heritage agreement with the owner of a registered place or object, on the advice of the Council, and to make regulations exempting that place (or land where a place or object is located) from specified provisions of a Territory law.

Clause 72 sets out what may be included in the agreement.

Clause 73 provides that the agreement may be amended by consent of the parties, or as provided in the agreement.

Clause 74 provides that heritage agreements last for the time stated in the agreement.

Clause 75 provides that a heritage agreement will also bind future owners of the land.

Clause 76 allows a party to an agreement to seek Court orders to require the other party to comply with the agreement.

Clause 77 empowers the Council to provide financial, technical or other assistance to owners of heritage places and objects, as it considers necessary.

Part 11 Liability

Clauses 78 and 79 make the directors and officers of a corporation or their agent liable for the acts done in contravention of the Act by others in the company, if the person had actual or apparent authority over the actions that breached the Act. The same liability applies to the owners of non-incorporated businesses.

It is a defence if the person being charged took reasonable precautions and exercised due diligence to prevent the breach, however.

Part 12 Miscellaneous

Clause 80 allows the Council to delegate its powers to the chief executive (of the Department administering the Act), and for the chief executive to further delegate these powers to a public servant. This makes the delegation accountable to the chief executive.

Clause 81 provides the standard power to determine fees.

Clause 82 empowers the Council to approve forms for the Act. This will include forms for nomination of places and objects, if it becomes necessary.

Clause 83 establishes a general regulation making power for the Act. Specific issues to be dealt with by regulation are dealt with in the body of the Act:

Clause 84 establishes a requirement for review of the Act in 5 years, with a report to be made to the Assembly in 6 years.

Part 13 Transitional Provisions

Clause 85 defines Land Act, and commencement day.

Clause 86 brings over the significance criteria in the Land Act to this Act.

Clause 87 brings over the heritage places Register into the heritage Register, and specific requirements in the heritage places Register will become development controls for that place.

Clause 88 brings over the heritage objects registered under the *Heritage Objects Act 1991*

Clause 89 gives a power to make regulations to modify the transitional provisions to ensure that all transitional issues are adequately dealt with. This is largely to allow something to be done if a mistake has been made in relation to this Part.

Clause 90 makes this Part expire after one year. Its effect will be exhausted by then in any event.

The Dictionary sets out the definitions for the Bill.