Australian Capital Territory

Heritage Act 2004

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Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

About this republication

The republished law

This is a republication of the *Heritage Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 16 November 2025. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 16 November 2025.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
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The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is $160 for an individual and $810 for a corporation (see *Legislation Act 2001*, s 133).

Australian Capital Territory

Heritage Act 2004

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Australian Capital Territory

Heritage Act 2004

An Act to provide for the recognition, registration and conservation of places and objects of natural and cultural significance, and for other purposes

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Part 1 Preliminary

1 Name of Act

This Act is the *Heritage Act 2004*.

3 Objects of Act

The main objects of this Act are as follows:

(a) to establish a system for the recognition, registration and conservation of the following:

(i) places and objects that have natural heritage significance;

(ii) places and objects that have cultural heritage significance;

(iii) Aboriginal places and objects;

(b) to establish the heritage council;

(c) to provide for heritage agreements to encourage the conservation of heritage places and objects;

(d) to establish enforcement and offence provisions to provide greater protection for heritage places and objects;

(e) to provide a system integrated with land planning and development to consider development applications having regard to the heritage significance of places and heritage guidelines.

3A Exercise of functions under Act

(1) A function under this Act must be exercised in a way that, as far as practicable, achieves the following:

(a) the conservation of—

(i) places and objects with heritage significance; and

(ii) Aboriginal places and objects;

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(b) the maximisation of the community's ability to benefit from the places and objects, without adversely affecting—

(i) the ongoing conservation of the places and objects; and

(ii) any thing that forms an important part of the heritage significance of the place or thing.

(2) However, if the exercise of a function would result in harm to a place or object with heritage significance, or an Aboriginal place or object, the function may be exercised only if the entity or person exercising the function—

(a) is satisfied that it is not reasonably practicable to exercise the function in a way that avoids the harm; and

(b) identifies all reasonable steps that must be taken to minimise the extent of the harm.

3B Registration of urban tree

(1) This section applies if—

(a) an urban tree forms part of a place; and

(b) the council decides to register the place.

(2) The council may also register the tree.

(3) To remove any doubt, an urban tree must not be registered under this Act unless the tree forms part of a place that is registered.

(4) In this section:

urban forest—see the *Urban Forest Act 2023*, section 7.

urban tree means a tree in the urban forest.

Note In addition to the protections under this Act, the *Urban Forest Act 2023* also protects trees of heritage significance, including Aboriginal cultural trees, in the urban forest (see that Act, pt 3 and pt 4).

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4 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (***signpost definitions***) to other terms defined elsewhere in this Act.

For example, the signpost definition '***Aboriginal place***—see section 9.' means that the term 'Aboriginal place' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

5 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

6 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg ***conduct***, ***intention***, ***recklessness*** and ***strict liability***).

Note 2 *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

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7 Application of Act to Emergencies Act 2004

(1) This Act does not apply to the exercise or purported exercise by a relevant person of a function under the *Emergencies Act 2004* for the purpose of—

(a) protecting life or property; or

(b) controlling, extinguishing or preventing the spread of a fire.

(2) In this section:

emergency controller—see the *Emergencies Act 2004*, dictionary.

relevant person means—

(a) an emergency controller; or

(b) a member of the ambulance service; or

(c) a member of the fire and rescue service; or

(d) a member of the rural fire service; or

(e) a member of the SES; or

(f) any other person under the control of—

(i) an emergency controller; or

(ii) the chief officer (ambulance service); or

(iii) the chief officer (fire and rescue service); or

(iv) the chief officer (rural fire service); or

(v) the chief officer (SES); or

(g) a police officer.

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Part 2 Important concepts

8 Meaning of *object* and *place*

In this Act:

object means a natural or manufactured object, but does not include a building or any other man-made structure.

place includes the following:

(a) a site, precinct or parcel of land;

(b) a building or structure, or part of a building or structure;

(c) the curtilage, or setting, of a building or structure, or part of a building or structure;

(d) an object or feature historically associated with, and located at, the place.

Examples—things that site or parcel of land includes

- landforms
- plantings
- animal habitats

Examples—object or feature historically associated with, and located at, a place

- furniture
- fittings
- view to or from the place, including visible landscapes

Note Words in the singular number include the plural (see Legislation Act, s 145 (b)).

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9 Meaning of *Aboriginal object* and *Aboriginal place*

(1) In this Act:

Aboriginal object means an object associated with Aboriginal people because of Aboriginal tradition.

Aboriginal place means a place associated with Aboriginal people because of Aboriginal tradition.

(2) In this section:

Aboriginal tradition means the customs, rituals, institutions, beliefs or general way of life of Aboriginal people.

Note Words in the singular number include the plural (see Legislation Act, s 145 (b)).

10 Meaning of *heritage significance*

A place or object has ***heritage significance*** if the place or object meets 1 or more of the following criteria (the ***heritage significance criteria***):

(a) importance to the course or pattern of the ACT's cultural or natural history;

(b) has uncommon, rare or endangered aspects of the ACT's cultural or natural history;

(c) potential to yield important information that will contribute to an understanding of the ACT's cultural or natural history;

(d) importance in demonstrating the principal characteristics of a class of cultural or natural places or objects;

(e) importance in exhibiting particular aesthetic characteristics valued by the ACT community or a cultural group in the ACT;

(f) importance in demonstrating a high degree of creative or technical achievement for a particular period;

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(g) has a strong or special association with the ACT community, or a cultural group in the ACT for social, cultural or spiritual reasons;

Example

a place or object that has a strong or special association for Aboriginal people in the ACT because it is part of their continuing or developing cultural tradition

(h) has a special association with the life or work of a person, or people, important to the history of the ACT.

10A Meaning of *natural heritage significance*

(1) For this Act, a place or object has ***natural heritage significance*** if it—

(a) forms part of the natural environment; and

(b) has heritage significance primarily because of the scientific value of its biodiversity, geology, landform or other naturally occurring elements.

(2) In this section:

natural environment means the native flora, native fauna, geological formations or any other naturally occurring element at a particular location.

10B Meaning of *cultural heritage significance*

A place or object has ***cultural heritage significance*** if it—

(a) is—

(i) created or modified by human action; or

(ii) associated with human activity or a human event; and

(b) has heritage significance.

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11 Meaning of *registered*

A place or object is ***registered*** if it is—

(a) provisionally registered under division 6.1; or

(b) registered under division 6.2.

12 Meaning of *registration details*

The ***registration details*** for a registered place or object are as follows:

(a) its name;

(b) its location or address;

(c) a description of it, including (if relevant) its extent or boundary;

(d) a statement about its heritage significance, including the reasons for the registration and an assessment of the place or object against the heritage significance criteria;

(e) whether it is registered or provisionally registered;

(f) the date it was registered or provisionally registered;

(g) if it is provisionally registered—the period of provisional registration.

Note The registration details for a place or object may be cancelled under s 48 (Cancellation of registration of place or object).

13 Meaning of *interested person*

(1) In this Act:

interested person means the following:

(a) for a place or object on territory land—the territory planning authority;

(b) for a place or object that affects the conservation of flora or fauna—the conservator;

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(c) for a place or object the council considers may be relevant to the Commonwealth—the national capital authority;

(d) for a place—the following:

(i) the owner of the place;

(ii) the occupier of the place;

(iii) the lessee or sublessee of the place;

(iv) the architect or designer of a building, structure or landscape at the place;

(v) any person who made a nomination application for the place;

(vi) any person who made an urgent provisional registration application for the place;

(vii) any person who made a cancellation proposal for the place;

(viii) any person who made a register amendment application for the place;

(e) for an object—the following:

(i) the owner of the object;

(ii) the person in possession of the object;

(iii) the designer of the object;

(iv) if the object is an artwork—the artist who created the object;

(v) any person who made a nomination application for the object;

(vi) any person who made an urgent provisional registration application for the object;

(vii) any person who made a cancellation proposal for the object;

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(viii) any person who made a register amendment application for the object;

(f) for a place or object that is also an Aboriginal place or Aboriginal object—the following:

(i) for an Aboriginal place—a person (or entity) mentioned in paragraphs (a) to (d);

(ii) for an Aboriginal object—a person (or entity) mentioned in paragraphs (a) to (c), and paragraph (e);

(iii) a representative Aboriginal organisation;

(iv) if the discovery of the place or object was reported under section 51—the person who reported the discovery;

(g) for a decision under section 40 (Decision about registration)—anyone who made comments, in writing, to the council about the decision before the end of the public consultation period for the decision;

(h) for a decision under section 49 (Decision about cancellation proposal)—anyone who made comments, in writing, to the council about the decision before the end of the public consultation period for the decision.

(2) However, a person is an ***interested person*** for part 17 (Notification and review of decisions) only if the person is 1 of the following:

(a) for a decision under section 40 (Decision about registration)—the following:

(i) a person mentioned in subsection (1) (g);

(ii) if the decision relates to a place—a person mentioned in subsection (1) (d) (i) to (iii);

(iii) if the decision relates to an object—a person mentioned in subsection (1) (e) (i) and (ii);

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(b) for a decision under section 49 (Decision about cancellation proposal)—the following:

(i) a person mentioned in subsection (1) (h);

(ii) if the decision relates to a place—a person mentioned in subsection (1) (d) (i) to (iii);

(iii) if the decision relates to an object—a person mentioned in subsection (1) (e) (i) and (ii);

(c) for a decision under section 56 (Approval to publish restricted information)—the applicant for approval;

(d) for a decision under section 62 (Heritage direction by council)—the person to whom the direction is given;

(e) for a decision under section 67A (Repair damage direction by council)—the following:

(i) the person to whom the direction is given;

(ii) if the decision relates to a place—a person mentioned in subsection (1) (d) (i);

(iii) if the decision relates to an object—a person mentioned in subsection (1) (e) (i);

(f) for a decision under section 67B (Extension of repair damage direction)—the person who applied for the extension;

(g) for a decision under section 95 (Information discovery order)—the person to whom the order is given.

Note An interested person for a reviewable decision is entitled to—

(a) be given a reviewable decision notice (see s 113); and

(b) apply to the ACAT for a review of the decision (see s 114).

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14 Meaning of *representative Aboriginal organisation*

(1) In this Act:

representative Aboriginal organisation means an entity declared under subsection (8).

(2) Before declaring criteria under subsection (3), the Minister must consult—

(a) Aboriginal people whom the Minister is satisfied have a traditional affiliation with land; and

(b) the council.

(3) The Minister may declare criteria for deciding whether an entity should be declared to be a representative Aboriginal organisation.

(4) A declaration under subsection (3) is a disallowable instrument.

(5) For this section, the Minister must invite expressions of interest from entities willing to be declared under subsection (8).

(6) The notice under subsection (5) is a notifiable instrument.

(7) The Minister must give additional public notice of the notice under subsection (5).

Note ***Public notice*** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see Legislation Act, dict, pt 1). The requirement in s (7) is in addition to the requirement for notification on the legislation register as a notifiable instrument.

(8) The Minister may declare an entity to be a representative Aboriginal organisation.

(9) However, the Minister may make a declaration under subsection (8) only if satisfied that the entity satisfies the criteria (if any) declared under subsection (3).

(10) A declaration under subsection (8) is a notifiable instrument.

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Part 3 Heritage council

16 Establishment of heritage council

The Australian Capital Territory Heritage Council is established.

17 Members of council

(1) The members of the council are as follows:

(a) the conservator of flora and fauna;

(b) the chief planner;

(c) 4 people appointed by the Minister as public representatives (see subsection (3));

(d) 6 people appointed by the Minister as experts (see subsection (4)).

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

(2) The Minister must appoint a chairperson and deputy chairperson of the council from the members appointed under subsection (1) (c) and (d).

(3) For subsection (1) (c), the Minister must appoint the following public representatives who, in the Minister's opinion, adequately represent the group for which they are appointed:

(a) 1 public representative from the community;

(b) 2 public representatives from the Aboriginal community;

(c) 1 public representative from the property ownership, management and development sector.

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(4) Each expert must, in the Minister's opinion, adequately represent 1 or more of the following disciplines:

(a) Aboriginal culture;

(b) Aboriginal history;

(c) archaeology;

(d) architecture;

(e) engineering;

(f) history, other than Aboriginal history;

(g) landscape architecture;

(h) nature conservation;

(i) object conservation;

(j) town planning;

(k) urban design;

(l) any other discipline if, in the Minister's opinion, a person representing the discipline would have knowledge, skills or experience beneficial to, or necessary for, the exercise of the council's functions.

(5) However, only 1 expert may represent the discipline mentioned in subsection (4) (l) without representing any other discipline.

(6) A person may be appointed under subsection (1) (c) or (d) for no longer than 3 years.

18 Functions of council

The council has the following functions:

(a) to identify, assess, conserve and promote places and objects in the ACT with natural and cultural heritage significance;

(b) to encourage the registration of heritage places and objects;

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(c) to work within the land planning system to achieve appropriate conservation of the ACT's natural and cultural heritage places and objects, including Aboriginal places and objects;

(d) to advise the Minister about issues affecting the management and promotion of heritage;

(e) to encourage and assist in appropriate management of heritage places and objects;

(f) to encourage public interest in, and understanding of, issues relevant to the conservation of heritage places and objects;

(g) to encourage and provide public education about heritage places and objects;

(h) to assist in the promotion of tourism in relation to heritage places and objects;

(i) to keep adequate records, and encourage others to keep adequate records, in relation to heritage places and objects;

(j) any other function given to it under this Act or another territory law.

Examples—other council functions

1 making recommendations and submissions to the territory planning authority about draft major plan amendments (see *Planning Act 2023*, s 62 (d))

2 giving advice to the territory planning authority about development applications (see *Planning Act 2023*, div 7.5.3, s 186 (i), s 189 and s 190)

Note A provision of a law that gives an entity (including a person) a function also gives the entity the powers necessary and convenient to exercise the function (see Legislation Act, s 196 (1) and dict, pt 1, defs ***entity*** and ***function***).

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18A Ministerial statement of priorities

(1) The Minister may make a statement setting out the government's priorities in relation to heritage in the ACT (a ***statement of priorities***).

(2) The Minister must consult the council before making a statement of priorities.

(3) The statement of priorities—

(a) must include information about how the council must or may report about the action taken by the council to respond to the statement of priorities; and

(b) may include any information the Minister believes will assist the council in responding to the statement of priorities; but

(c) must not include a direction about the way in which a function of the council is exercised.

(4) The Minister must give the statement of priorities to the council.

(5) A statement of priorities is a notifiable instrument.

19 Procedures of council

(1) The regulations may prescribe the procedures of the council, including its decision-making procedures.

(2) However, the conservator of flora and fauna and the chief planner are not eligible to vote on questions being decided by the council.

Examples of what regulations may prescribe

1 the number of members required to be at meetings of the council

2 what happens when votes are tied at meetings of the council

3 who is to preside at meetings of the council

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19A Council must consult scientific committee on matters affecting natural heritage significance

The council must—

(a) consult the scientific committee before making any decision that may affect a place or object that has natural heritage significance; and

(b) tell the scientific committee about the decision the council makes.

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Part 4 Heritage register

20 Establishment of heritage register

(1) The council must keep a register of heritage places and heritage objects (the ***heritage register***).

(2) The heritage register must include the registration details for each registered place or object.

(3) For each place or object nominated for provisional registration, the heritage register must include the following:

(a) details of the place or object;

(b) the date the nomination application was given to the council; and

(c) if an application for an urgent decision on the nomination application has been made under section 30—

(i) a statement to that effect; and

(ii) the date the application was given to the council.

(4) In addition, the heritage register must include the following:

(a) each heritage guideline;

(b) each heritage direction;

(c) each repair damage direction;

(d) each heritage agreement;

(e) each enforcement order.

(5) The heritage register may also include any other material the council considers appropriate.

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21 Public access to heritage register

(1) The council may—

(a) approve an internet site for this Act; and

(b) publish a copy of the register (other than restricted information) on the internet site.

(2) An instrument under subsection (1) (a) is a notifiable instrument.

(3) A person may inspect the heritage register during ordinary office hours at a place named under subsection (4).

(4) The council must name a place where the register may be inspected.

(5) An instrument under subsection (4) is a notifiable instrument.

(6) On application, the council must give a person a copy of all, or any part, of the heritage register.

22 Restricted information on heritage register

(1) This section applies if the registration details for a place or object include restricted information.

(2) The council must include a statement in the register about the effect of subsections (3) and (4).

(3) The restricted information must not be disclosed under section 21, except in accordance with subsection (4).

(4) The restricted information may be made available for inspection or copying only if approved under section 56 (Approval to publish restricted information).

23 Judicial notice of matters on heritage register

(1) Proof is not required about a matter mentioned in section 20 (2) to (4) if the matter is published on the internet site approved under section 21.

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(2) A court or tribunal may inform itself about the matter by examining the approved internet site.

Note Section 21 provides for the council to approve an internet site by a notifiable instrument under the Legislation Act.

24 Heritage register corrections and changes

(1) The council may, on application or its own initiative, correct a mistake or omission in the heritage register subject to any requirements prescribed by regulation.

(2) The council may, on application or its own initiative, change a registration detail included in the heritage register only if—

(a) for a change to a registration detail mentioned in section 12 (a), (c) or (d) for a place registered under division 6.2—the council makes a further heritage decision that changes the detail; or

(b) in any other case—the council is satisfied that the change is in the interests of maintaining up-to-date, comprehensive and accurate information in the register.

(3) An application (a ***register amendment application***) must—

(a) be in writing; and

(b) briefly state the proposed correction or change to the register; and

(c) be given to the council; and

(d) include the following information about the place or object to which the correction or change relates:

(i) its name;

(ii) its location or address;

(iii) a statement by the applicant about the reasons for the proposed correction or change.

Note Section 117 deals with giving documents to the council.

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(4) As soon as practicable after receiving a register amendment application, the council must assess the merit of the application received and—

(a) dismiss the application if—

(i) the council is satisfied on reasonable grounds that the application is frivolous, vexatious, misconceived, lacking in substance or not made honestly; or

(ii) the council has previously decided not to correct or change the register in the way proposed in the application, and is satisfied that the application shows no substantial new reasons for correction or change; or

(b) if the application is not dismissed under paragraph (a)—accept the application and exercise the council's functions under this section.

(5) The council must—

(a) if the council dismisses a register amendment application—give the person who made the application written notice of the dismissal and reasons for the dismissal as far as practicable within 15 working days after the dismissal; and

(b) if the council accepts a register amendment application—tell each interested person about the decision as far as practicable within 15 working days after the day the decision is made.

Note ***Interested person***—see s 13.

(6) In this section:

change, of a registration detail, includes add extra information to the detail.

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24A Effect of further registration decision about registered place or object

(1) If the council makes a registration decision about a place or object that is already registered (a ***further decision***), the further decision—

(a) does not affect the operation of the registration for the place or object as in force before the further decision is notified; and

(b) if the further decision is a decision under section 40—amends the place or object's registration details to include the further decision.

(2) In this section:

registration decision means a decision under—

(a) section 32 (Decision about provisional registration); or

(b) section 40 (Decision about registration).

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Part 5 Heritage guidelines

25 Guidelines about conserving heritage significance

(1) The council may make guidelines (***heritage guidelines***) in relation to the conservation of the following:

(a) a place or object registered under division 6.2;

(b) an Aboriginal place or Aboriginal object.

Examples of matters about which guidelines may be made

1 demolition of registered structures
2 alterations and additions to registered buildings
3 residential heritage precincts
4 rural heritage places
5 new buildings in heritage precincts
6 Aboriginal heritage places and objects
7 working with heritage places
8 developing heritage places
9 when, and when not, to undertake a development affecting the heritage significance of a place

(2) However, the council may make heritage guidelines only—

(a) if the Minister has given the council a direction under section 26C—after the council complies with the Minister's direction; and

(b) if satisfied on reasonable grounds that making the guidelines promotes the effective conservation of—

(i) places or objects that have heritage significance; or

(ii) Aboriginal places or Aboriginal objects.

(3) A guideline is a disallowable instrument.

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26 Public consultation about heritage guidelines

(1) Before making heritage guidelines, the council must prepare a written notice (a ***consultation notice***) about the proposed guidelines.

(2) The council must, as soon as practicable, give additional public notice of the consultation notice.

Note ***Public notice*** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see Legislation Act, dict, pt 1). The requirement in s (2) is in addition to the requirement for notification on the legislation register as a notifiable instrument.

(3) The consultation notice must include the following:

(a) a statement about the effect of the proposed guidelines and the places or objects to which the guidelines would apply;

(b) details of how to obtain further information about the proposed guidelines;

(c) an invitation to make comments, in writing, about the proposed guidelines to the council within 4 weeks after the day the notice is notified under the Legislation Act (the ***public consultation period***).

(4) The council may give public notice to extend the consultation period (an ***extension notice***).

Note 1 ***Public notice*** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see Legislation Act, dict, pt 1).

Note 2 The council may extend the consultation period after it has ended (see Legislation Act, s 151C).

(5) If the proposed guidelines relate to an Aboriginal place or object, the council must give a copy of the consultation notice to each representative Aboriginal organisation in relation to the proposed guidelines.

Note Section 14 defines ***representative Aboriginal organisation***.

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(6) In making heritage guidelines, the council—

(a) must consider any written comments about the proposed guidelines made to the council before the end of the public consultation period; and

(b) may consider any written comments about the guidelines made to the council after the end of the consultation period.

(7) The following are notifiable instruments:

(a) the consultation notice;

(b) any extension notice.

26A Period for making heritage guidelines

(1) Heritage guidelines must—

(a) be made within—

(i) if the guidelines are for a place or object (other than a place or object that forms part of a precinct)—5 months after the day the consultation notice for the guidelines is notified under the Legislation Act, unless the period is extended under this section; or

(ii) if the guidelines are for a precinct—9 months after the day the consultation notice for the guidelines is notified under the Legislation Act, unless the period is extended under this section; and

(b) not be made before the precinct, place or object is registered under division 6.2.

(2) However, this section does not apply to heritage guidelines for an Aboriginal place or an Aboriginal object.

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(3) A period mentioned in subsection (1) (the ***initial period***) is extended for an additional period (an ***extension***) if any of the following apply:

(a) the guidelines are for a precinct, place or object that is provisionally registered, and the period of its provisional registration is extended under section 35 (Period of provisional registration);

(b) the—

(i) council is satisfied that making the guidelines requires consideration of complex issues that cannot be satisfactorily examined before the end of the initial period; and

(ii) council, at least 25 working days before the end of the initial period, takes reasonable steps to tell each interested person for the place or object that the council seeks an extension of time to make the guidelines; and

(iii) council, at least 25 working days before the end of the initial period, gives the Minister written notice (an ***extension notice***) stating—

(A) that the council seeks an extension of time to make the guidelines; and

(B) the reasons for the extension; and

(iv) Minister does not, within 10 working days after receiving an extension notice, tell the council in writing that the extension notice is opposed;

(c) the Minister gives the council a direction under section 26C.

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(4) An extension is—

(a) if subsection (3) (a) applies—the period of extended provisional registration; or

(b) if subsection (3) (b) applies—3 months beginning on the day after the end of the initial period; or

(c) if subsection (3) (c) applies—3 months beginning on the day after the end of the initial period; or

(d) if subsection (3) (a) and (b) apply—the period in paragraph (a) only; or

(e) if subsection (3) (a) and (c) apply—the period in paragraph (a) plus the period in paragraph (c); or

(f) if subsection (3) (b) and (c) apply—the period in paragraph (b) plus the period in paragraph (c); or

(g) if subsection (3) (a), (b) and (c) apply—the period in paragraph (a) plus the period in paragraph (c).

(5) An extension notice that is not opposed by the Minister—

(a) is a notifiable instrument; and

(b) must be notified under the Legislation Act within 5 working days of the last day on which the Minister could have opposed the extension notice.

(6) The council must, as soon as practicable, give additional public notice of the extension notice under subsection (5).

Note ***Public notice*** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see Legislation Act, dict, pt 1). The requirement in s (6) is in addition to the requirement for notification on the legislation register as a notifiable instrument.

(7) If the council has not made the guidelines by the end of the period allowed under this section—

(a) the proposal for the guidelines lapses; and

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(b) if the council wishes to make the guidelines—the council must comply with the requirements under section 26 (Public consultation about heritage guidelines) again.

26B Report to Minister about public consultation on heritage guidelines

As soon as practicable after the end of the public consultation period in relation to heritage guidelines, the council must give the Minister a written report that—

(a) identifies the guidelines the council proposes to make; and

(b) gives the council's view about the need for the proposed guidelines; and

(c) identifies any issues raised in written comments made to the council before the end of the public consultation period; and

(d) includes a copy of the written comments (if any); and

(e) identifies any other change the council proposes to make to the guidelines taking into account the issues raised in the written comments.

26C Minister may require further consideration by council on heritage guidelines

(1) The Minister may direct the council to give further consideration to—

(a) issues raised in, or arising from, its report to the Minister under section 26B; or

(b) any other matter the Minister considers—

(i) relevant to the proposed guidelines; and

(ii) related to the functions of the council.

(2) The Minister must give the direction to the council in writing within 15 working days after the day the report is given to the Minister.

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26D Heritage guidelines revocation

The heritage guidelines for a particular place or object are revoked if the place or object ceases to be registered.

Note A registered place or object includes a provisionally registered place or object (see s 11).

26E Notification about heritage guidelines

The council must, as far as practicable, give each interested person for a place or object written notice about the following:

(a) proposed heritage guidelines for the place or object;

(b) notification of the guidelines;

(c) revocation of the guidelines.

Note If a provision of a law requires something to be done but does not provide a time for doing the thing, the thing must or may be done as soon as possible and as often as needed (see Legislation Act, s 151B).

27 Application of heritage guidelines

(1) A function under this Act that relates, directly or indirectly, to the conservation of a place or object must be exercised in accordance with any applicable heritage guidelines.

(2) Subsection (1) applies, in particular, to the following functions:

(a) the giving of advice to the territory planning authority under section 60 (Advice about effect of development on heritage significance), particularly in relation to ways of avoiding or minimising the effect of a development on the heritage significance of a place or object;

(b) the giving of a heritage direction;

(c) the giving of a repair damage direction;

(d) the making of a heritage order;

(e) the making of a heritage agreement.

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Part 6 Registration of places and objects

Division 6.1 Provisional registration

28 Application for provisional registration of place or object—nomination application

(1) A person may make an application (a ***nomination application***) requesting that the council provisionally register a place or object under section 33.

(2) A nomination application must—

(a) be in writing; and

(b) be given to the council; and

(c) include the following details about the place or object to which the nomination relates:

(i) its name;

(ii) its location or address;

(iii) a statement by the applicant about why the place or object has heritage significance.

Note Section 117 deals with giving documents to the council.

(3) The council may reject a nomination application if it is not made in accordance with subsection (2).

Note If particular information is to be included in the form for a nomination application, or a particular document must be attached to or given with the form, the form is properly completed only if the requirement is complied with (see Legislation Act, s 255 (5)).

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29 Decision about nomination application

(1) This section applies if the council—

(a) receives a nomination application; and

(b) does not reject it under section 28 (3).

(2) The council must, as soon as practicable—

(a) assess the merit of the nomination application; and

(b) either—

(i) dismiss the application; or

(ii) accept the application and consider whether to provisionally register the place or object the subject of the application under section 32.

(3) The council must dismiss the nomination application if—

(a) the council is satisfied on reasonable grounds that the application is frivolous, vexatious, misconceived, lacking in substance or not made honestly; or

(b) the council believes on reasonable grounds that accepting the application is unlikely to result in registration of the place or object; or

(c) the council—

(i) knows, or believes on reasonable grounds, the application contains incorrect, insufficient or outdated information about the place or object the subject of the application; and

(ii) is satisfied on reasonable grounds that, because of the incorrect, insufficient or outdated information, accepting the application is unlikely to result in registration of the place or object; or

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(d) after the application is made—

(i) something happens to the place or object the subject of the application that changes any of the details about the place or object provided in the application; and

(ii) the council is satisfied there are no longer any grounds for accepting the application; or

(e) the council—

(i) has previously decided not to register the place or object the subject of the application; and

(ii) is satisfied that the application shows no substantial new grounds for registration.

(4) The council must, as far as practicable within 15 working days after making a decision under subsection (2) (b)—

(a) if the council dismisses the application—give the applicant written notice of the dismissal and the reasons for the dismissal; or

(b) if the council accepts the application—tell each interested person about the decision.

Note ***Interested person***—see s 13.

(5) In this section:

lacking in substance—a nomination application is ***lacking in substance*** if the council is satisfied on reasonable grounds that the application contains insufficient information for the council to make a decision about provisional registration.

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30 Request for urgent provisional registration

(1) A person may make an application (an ***urgent provisional registration application***) requesting that the council urgently decide whether to provisionally register a place or object.

(2) An urgent provisional registration application—

(a) must be in writing; and

(b) must be given to the council; and

(c) may be made—

(i) at the same time as a nomination application for the place or object to which the urgent provisional registration application relates is given to the council, or a later time; and

(ii) by the same person who made the nomination application, or someone else; and

(d) must explain the circumstances that require an urgent decision to be made.

Examples—urgent provisional registration applications

1 a member of the Legislative Assembly applies for urgent provisional registration to protect a place or object under imminent threat

2 a developer applies for urgent provisional registration to avoid delay in a development project

Note Section 117 deals with giving documents to the council.

(3) The council must accept the application only if—

(a) the place or object mentioned in the application is a nominated place or object; and

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(b) either—

(i) the application complies with subsection (2); or

(ii) if the application does not comply with subsection (2)—the council agrees to accept the application; and

(c) the council is satisfied an urgent decision must be made because—

(i) if the heritage council believes on reasonable grounds that the place or object is likely to have heritage significance—1 or more of the following is reasonably likely to occur if the decision is not made:

(A) the likely heritage significance of the place or object will be diminished or damaged;

(B) if a development application applies to the place or object—approval of the development proposal will authorise action that will diminish or damage the place or object; or

(ii) the heritage council believes on reasonable grounds that the application is reasonable in the circumstances.

(4) If the council accepts the application, the council must—

(a) as far as practicable, make a decision under section 32 about the place or object—

(i) if the place is a precinct—within 60 working days after the day the council receives the application; or

(ii) in any other case—within 20 working days after the day the council receives the application; and

(b) notify each interested person of the decision.

(5) If the council dismisses the application the council must notify the applicant of the dismissal as far as practicable within 15 working days of the decision.

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30A Change to nominated place or object before provisional registration decision

(1) This section applies if, before the council makes a decision under section 32 in relation to a nominated place or object—

(a) the council knows, or believes on reasonable grounds, that information in the nomination application for the place or object is now incorrect, insufficient or outdated; or

(b) since the nomination application for the place or object was made or accepted, something has happened to the place or object that changes a detail about the place or object mentioned in the application.

(2) The council may reassess the merit of the nomination application.

(3) If the council reassesses the merit of the nomination application, it must—

(a) dismiss the application; or

(b) accept the application and consider whether to provisionally register the place or object the subject of the application under section 32.

Note If a nomination application is dismissed under s (3) (a), the place or object the subject of the application is no longer a nominated place or object (see dict, def ***nominated***, par (b)).

(4) The council must dismiss the application if a circumstance mentioned in section 29 (3) applies.

(5) The council must, as far as practicable within 15 working days after making a decision under subsection (3)—

(a) if the council dismisses the application—give the applicant written notice of the dismissal and the reasons for the dismissal; or

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(b) if the council accepts the application—tell each interested person about the decision.

Note ***Interested person***—see s 13.

31 Council must consult representative Aboriginal organisation

The council must consult each representative Aboriginal organisation about an Aboriginal place or an Aboriginal object before making a decision about registration under division 6.1 (Provisional registration) for the place or object.

31A Consultation with scientific committee about provisional registration

The council must consult the scientific committee before making a decision about registration under division 6.1 (Provisional registration) for a place or object that forms part of the natural environment.

32 Decision about provisional registration

(1) The council—

(a) must decide whether or not to provisionally register a nominated place or object; and

(b) may decide to provisionally register a place or object that is not a nominated place or object.

(2) However, the council may provisionally register a place or object only if satisfied on reasonable grounds that the place or object is likely to have heritage significance.

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33 Provisional registration of place or object

To provisionally register a place or object, the council must enter in the register—

(a) the registration details for the place or object; and

(b) an indication that the registration is provisional.

34 Notice of decision about provisional registration

(1) The council must prepare a written notice about a decision made under section 32 (1).

(2) A notice under subsection (1)—

(a) is a notifiable instrument; and

(b) must be notified under the Legislation Act within 5 working days after the day the decision under section 32 (1) is made.

(3) The council must, as soon as practicable, give additional public notice of the notice under subsection (1).

Note ***Public notice*** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see Legislation Act, dict, pt 1). The requirement in s (3) is in addition to the requirement for notification on the legislation register as a notifiable instrument.

(4) The council must use its best endeavours to give a copy of the notice to each interested person within 15 working days after the day the decision is made.

Note Section 13 defines ***interested person***.

(5) The notice must include—

(a) for a decision to provisionally register the place or object—the following:

(i) the registration details of the place or object;

(ii) the council's reasons for its decision;

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(iii) the date of provisional registration;

(iv) an indication of the council's intention to decide whether to register the place or object under division 6.2; and

(b) for a decision not to provisionally register the place or object—the following:

(i) the name of the place or object;

(ii) the location or address of the place or object;

(iii) a description of the place or object, including (if relevant) its extent or boundary;

(iv) the council's reasons for its decision;

(v) if an assessment of the place or object has been made against the heritage significance criteria—the assessment;

(vi) the date the decision takes effect.

(6) The notice must not include restricted information.

35 Period of provisional registration

(1) The period of provisional registration of a place or object begins on the day the place or object is provisionally registered under section 33 (the ***provisional registration day***) and ends—

(a) for a precinct—9 months after the provisional registration day; or

(b) in any other case—5 months after the provisional registration day.

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(2) A period mentioned in subsection (1) (the ***initial period***) is extended for an additional period (an ***extension***), not more than 3 months, if—

(a) the council is required to resolve complex issues in relation to the place or object provisionally registered and the council is satisfied on reasonable grounds that the initial period will end before it is able to resolve the issues; and

(b) the council, at least 25 working days before the end of the initial period, takes reasonable steps to tell each interested person for the place or object that the council seeks an extension; and

(c) the council, at least 25 working days before the end of the initial period, gives the Minister written notice (an ***extension notice***) stating—

(i) that the council seeks an extension; and

(ii) the length of the extension sought, including the beginning and end dates of the extension; and

(iii) the reasons for the extension; and

(d) the Minister does not, within 10 working days after receiving an extension notice, tell the council in writing that the extension is opposed.

(3) If the Minister gives the council a direction under section 39 the initial period is extended for 3 months beginning—

(a) on the day after the end of the initial period; or

(b) if an extension applies to the initial period—on the day after the end of the extension period.

(4) However, if a termination event happens before the end of a period of provisional registration worked out under this section, the period of provisional registration ends on the day the event happens.

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(5) An extension notice that is not opposed by the Minister—

(a) is a notifiable instrument; and

(b) must be notified under the Legislation Act within 5 working days of the last day on which the Minister could have opposed the extension notice.

(6) The council must, as soon as practicable, give additional public notice of the extension notice under subsection (5).

Note ***Public notice*** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see Legislation Act, dict, pt 1). The requirement in s (6) is in addition to the requirement for notification on the legislation register as a notifiable instrument.

(7) In this section:

termination event, for a period of provisional registration for a place or object, means a decision by the council to register or not register the place or object under division 6.2.

36 End of period of provisional registration without decision

If the period of provisional registration for a place or object ends and the council has not made a decision about whether or not to register the place or object under division 6.2, the place or object is taken to be a nominated place or object.

Note If a place or object is a nominated place or object the council must decide whether or not to provisionally register the nominated place or object (see s 32).

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Division 6.2 Registration

37 Public consultation about registration of place or object

(1) A notice under section 34 (Notice of decision about provisional registration) must include an invitation to make comments, in writing, about the registration of the place or object to the council within 4 weeks after the day the notice is notified under the Legislation Act (the ***public consultation period***).

Note Section 117 deals with giving documents to the council.

(2) The council may give public notice (an ***extension notice***) to extend the public consultation period.

Note 1 ***Public notice*** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see Legislation Act, dict, pt 1).

Note 2 The council may extend the public consultation period after it has ended (see Legislation Act, s 151C).

(3) An extension notice is a notifiable instrument.

(4) In deciding whether to register a place or object under this division, the council—

(a) must consider any written comments made to the council about the registration before the end of the public consultation period; and

(b) may consider any written comments made to the council about the registration after the end of the public consultation period.

38 Report to Minister about public consultation

As soon as practicable after the end of the public consultation period in relation to the registration of a place or object, the council must give the Minister a written report that—

(a) identifies the place or object; and

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(b) gives the council's view about whether the place or object should be registered under this division; and

(c) identifies issues raised in written comments made to the council before the end of the public consultation period; and

(d) includes a copy of the written comments (if any); and

(e) identifies any other change the council proposes to make to the registration having regard to the issues raised in the written comments.

39 Minister may require council to further consider issues related to registration

(1) The Minister may direct the council to give further consideration to the following when considering a place or object for registration under this division:

(a) any issue raised in, or arising from, the council's report to the Minister for the place or object under section 38;

(b) any issue relating to the council's functions.

(2) The Minister must give the direction to the council in writing within 15 working days after the day the report is given to the Minister.

40 Decision about registration

(1) If a place or object is provisionally registered the council must either—

(a) decide to register the place or object under this division by—

(i) entering the registration details for the place or object in the register; and

(ii) removing the indication that registration is provisional; and

(iii) preparing written notice of the decision; or

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(b) decide not to register the place or object under this division by preparing a written notice stating—

(i) the decision; and

(ii) the date the decision takes effect (the ***cancellation date***).

(2) The cancellation date must not be a date before the end of the period an interested person may apply to the ACAT for a review of the decision.

(3) A notice under this section—

(a) is a notifiable instrument; and

(b) must be notified under the Legislation Act within 5 working days after the day the decision is made; and

(c) must include the following information:

(i) the registration details of the place or object;

(ii) the reasons for the council's decision;

(iii) for a decision to register a place or object—the date registration takes effect; and

(d) must not include restricted information.

(4) The council must, as soon as practicable, give additional public notice of the notice under subsection (3).

Note ***Public notice*** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see Legislation Act, dict, pt 1). The requirement in s (4) is in addition to the requirement for notification on the legislation register as a notifiable instrument.

(5) The council must take reasonable steps to give a copy of the notice to each interested person within 15 working days after the day the decision is made.

Note ***Interested person***—see s 13.

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(6) However, any decision of the council under this section may only be made if—

(a) the council is satisfied on reasonable grounds that the place or object has heritage significance; and

(b) the council has complied with any direction given by the Minister under section 39.

Division 6.3 Registration of place or object protected under Nature Conservation Act 2014

42A Registration of place or object under this Act limited if place or object already protected under Nature Conservation Act 2014

(1) This section applies if a place or object includes or is likely to include—

(a) the habitat of—

(i) a threatened native species; or

(ii) a threatened ecological community; or

(b) a key threatening process.

(2) The council may register the place or object only if the place or object also has—

(a) cultural heritage significance; or

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(b) natural heritage significance of a kind not protected under the *Nature Conservation Act 2014*.

Example

The council registers a homestead and its surrounding property that includes a threatened ecological community because of either of the following:

(a) the homestead and surrounding property have cultural heritage significance because of the homestead's special association with the ACT community;

(b) the surrounding property on which the homestead is located contains an unusual geological formation (the *Nature Conservation Act 2014* is principally concerned with the protection of flora and fauna).

(3) In this section:

habitat—see the *Nature Conservation Act 2014*, dictionary.

key threatening process—see the *Nature Conservation Act 2014*, section 74.

threatened ecological community—see the *Nature Conservation Act 2014*, section 67.

threatened native species—see the *Nature Conservation Act 2014*, section 61.

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Part 7 Cancellation of registration

43 Cancellation proposal

(1) A person may make an application proposing, or the council may on its own initiative propose, that a place or object registered under division 6.2 cease to be registered (a ***cancellation proposal***).

(2) A cancellation proposal made by a person must—

(a) be in writing; and

(b) be given to the council; and

(c) include the following details about the place or object to which the proposal relates:

(i) its name;

(ii) its location or address;

(iii) a statement by the applicant about why the place or object does not have heritage significance.

Note Section 117 deals with giving documents to the council.

(3) As soon as practicable after receiving the cancellation proposal, the council must assess the merit of the proposal and—

(a) dismiss the proposal if—

(i) the council is satisfied on reasonable grounds that the proposal is frivolous, vexatious, misconceived, lacking in substance or not made honestly; or

(ii) the council has previously decided not to cancel the registration of the place or object to which the proposal relates, and is satisfied that the proposal shows no substantial new grounds for cancellation; or

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(b) if the proposal is not dismissed under paragraph (a)—accept the proposal and exercise the council's functions under section 49 (Decision about cancellation proposal).

(4) The council must—

(a) if the council dismisses a proposal—give the person who made the proposal written notice of the dismissal and reasons for the dismissal as far as practicable within 15 working days after the day the decision is made; and

(b) if the council accepts the proposal, or makes a proposal on its own initiative—tell each interested person about the decision as far as practicable within 15 working days after the day the decision is made.

Note ***Interested person***—see s 13.

44 Notice of cancellation proposal

(1) The council must prepare a written notice of each cancellation proposal.

(2) A notice under subsection (1)—

(a) is a notifiable instrument; and

(b) must be notified under the Legislation Act within 5 working days after the day the proposal is given to the council.

(3) The council must, as soon as practicable, give additional public notice of the notice under subsection (1).

Note ***Public notice*** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see Legislation Act, dict, pt 1). The requirement in s (3) is in addition to the requirement for notification on the legislation register as a notifiable instrument.

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(4) The council must give a copy of the notice to each interested person as far as practicable within 15 working days after—

(a) for a cancellation proposal made by a person—the day the proposal is given to the council; or

(b) for a cancellation proposal made by the council—the day the council makes the proposal.

Note ***Interested person***—see s 13.

(5) A notice under this section must include the following:

(a) the registration details of the place or object;

(b) the proponent's reasons for the cancellation proposal;

(c) the date the proposal was given to the council.

(6) The notice must not include restricted information.

45 Consultation with representative Aboriginal organisation about cancellation proposal

(1) This section applies if a cancellation proposal is made about an Aboriginal place or Aboriginal object registered under division 6.2.

(2) In deciding whether the place or object should cease to be registered, the council must consult, and consider the views of, each representative Aboriginal organisation about the proposal.

45A Consultation with scientific committee about cancellation proposal

(1) This section applies if a cancellation proposal is made in relation to a place or object that forms part of the natural environment.

(2) In deciding whether the place or object should cease to be registered, the council must consult, and consider the views of, the scientific committee.

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46 Public consultation about cancellation proposal

(1) A notice under section 44 (Notice of cancellation proposal) in relation to the registration of a place or object must include an invitation to make comments, in writing, about the proposal to the council within 4 weeks after the day the notice is notified under the Legislation Act (the ***public consultation period***).

Note Section 117 deals with giving documents to the council.

(2) The council may give public notice to extend the consultation period (an ***extension notice***).

Note 1 ***Public notice*** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see Legislation Act, dict, pt 1).

Note 2 The council may extend the consultation period after it has ended (see Legislation Act, s 151C).

(3) An extension notice is a notifiable instrument.

(4) In deciding whether a place or object registered under division 6.2 should cease to be registered, the council—

(a) must consider any written comments made to the council about the proposed cancellation before the end of the public consultation period; and

(b) may consider any written comments made to the council about the proposed cancellation after the end of the public consultation period.

47 Report to Minister about public consultation

As soon as practicable after the end of the public consultation period in relation to the cancellation of the registration of a place or object, the council must give the Minister a written report that—

(a) identifies the place or object; and

(b) gives the council's view about whether the registration of the place or object should be cancelled under this part; and

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(c) identifies issues raised in written comments made to the council before the end of the public consultation period; and

(d) includes a copy of the written comments (if any); and

(e) if the council's view is not to cancel the registration of the place or object—identifies any change the council proposes to make to the registration having regard to the issues raised in the written comments.

48 Minister may require council to further consider issues related to cancellation

(1) The Minister may direct the council to give further consideration to the following when considering a cancellation proposal:

(a) any issue raised in, or arising from, the council's report to the Minister for the place or object under section 47;

(b) any issue relating to the council's functions.

(2) The Minister must give the direction to the council in writing within 15 working days after the day the report is given to the Minister.

49 Decision about cancellation proposal

(1) If the council receives a cancellation proposal about a registered place or object, or proposes cancellation on its own initiative, the council must by written notice either—

(a) decide to end the registration of the place or object, in accordance with the proposal by entering the following information in the heritage register:

(i) particulars of the place or object and its registration;

(ii) the reasons for the decision;

(iii) the date the decision takes effect (the ***cancellation date***); or

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(b) decide not to end the registration of the place or object.

(2) However, any decision of the council under subsection (1) (a) may only be made if—

(a) the council is satisfied on reasonable grounds that the place or object no longer has heritage significance; and

(b) the council has complied with any direction given by the Minister under section 48.

(3) The cancellation date must not be a date that happens before the end of the period an interested person may apply to the ACAT for a review of the decision.

(4) A notice under subsection (1)—

(a) is a notifiable instrument; and

(b) must be notified under the Legislation Act within 5 working days after the day the decision is made.

(5) The council must, as soon as practicable, give additional public notice of a notice under subsection (1).

Note ***Public notice*** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see Legislation Act, dict, pt 1). The requirement in s (5) is in addition to the requirement for notification on the legislation register as a notifiable instrument.

(6) The council must take reasonable steps to give a copy of the notice to each interested person within 15 working days after the day the decision is made.

50 Partial cancellation of registration of place or object

(1) In this part:

cancellation includes partial cancellation.

partial cancellation means the exclusion of part of a registered place or object.

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(2) This part applies to a partial cancellation as if—

(a) a reference to a registered place or object were a reference to the part of the place or object to be excluded; and

(b) all other necessary changes, including any changes prescribed by regulation, were made.

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Part 8 Management of Aboriginal places and Aboriginal objects

51 Reporting discovery of Aboriginal place or object

(1) A person commits an offence if the person—

(a) discovers an Aboriginal place or object; and

(b) has reasonable grounds to believe it is an Aboriginal place or object; and

(c) fails to take reasonable steps to report the discovery to the council, in accordance with subsection (2), as soon as practicable after the day of the discovery.

Maximum penalty: 5 penalty units.

(2) The report must be in writing and must include the following:

(a) a description of the place or object and its location;

(b) the person's name and address;

(c) if known by the person—the name and address of the owner or occupier of the place where the discovery was made.

(3) A discovery is taken to be reported to the council as soon as practicable if the discovery is reported to the council within 5 working days after the day of the discovery.

(4) An offence against this section is a strict liability offence.

52 Exceptions to reporting obligation

Section 51 does not apply to—

(a) a registered place or object; or

(b) a person who has a traditional Aboriginal affiliation with the land where the place or object was discovered.

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53 Assessing heritage significance of reported Aboriginal places and objects

As soon as practicable after a place or object is reported under section 51, the council must—

(a) arrange consultation under section 31 with each representative Aboriginal organisation in relation to the place or object; and

(b) decide whether the place or object is to be provisionally registered.

53A Repository for Territory-owned Aboriginal objects

The Minister must ensure that each Aboriginal object owned by the Territory is kept in a repository declared under section 53B.

53B Declaration of repository

(1) The Minister may declare a place to be a repository for Aboriginal objects.

Note For laws about delegations, see the Legislation Act, pt 19.4.

(2) Before making a declaration, the Minister must consult the council and each representative Aboriginal organisation about the proposed declaration.

(3) The Minister may declare a place to be a repository only if satisfied on reasonable grounds that the place is suitable for the conservation of Aboriginal objects owned by the Territory.

(4) A declaration must not include restricted information.

(5) A declaration is a notifiable instrument.

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53C Ownership of Aboriginal objects on territory land

(1) An Aboriginal object is owned by the Territory if—

(a) the object is located on territory land, and the following apply:

(i) another person or entity does not hold a legal interest in the object;

(ii) the Minister has not made a declaration stating that the Territory surrenders its legal interest in the object; or

(b) the object is purchased by the Territory; or

(c) the object is given to the Territory by a person who holds an interest in the object.

(2) A declaration is a disallowable instrument.

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Part 9 Restricted information

54 Declaration of restricted information

(1) The council may, in writing, declare particular information about the location or nature of the following to be restricted information:

(a) a place or object that has heritage significance;

(b) an Aboriginal place or an Aboriginal object.

(2) The council may make the declaration only if satisfied on reasonable grounds that public disclosure of the information would be likely to have a substantial adverse effect on—

(a) the heritage significance of the place or object; or

(b) the Aboriginal place or Aboriginal object.

(3) Before making a declaration in relation to an Aboriginal place or object, the council must consult, and consider the views of, each representative Aboriginal organisation about the proposed declaration.

(4) The council must use its best endeavours to give a copy of the declaration to each interested person for the place or object.

Note Section 13 defines ***interested person***.

55 Restricted information not to be published without approval

(1) A person commits an offence if the person—

(a) publishes restricted information about a place or object; and

(b) knows the information is restricted information.

Maximum penalty: 50 penalty units.

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(2) Subsection (1) does not apply if the publication is—

(a) in accordance with an approval under section 56; or

(b) for the exercise of a function under this Act or another territory law.

(3) Also, subsection (1) does not apply to a publication about an Aboriginal place or object if the publication—

(a) is made by a person with a traditional affiliation with the place or object; and

(b) is—

(i) to another Aboriginal person; or

(ii) for the purpose of education about Aboriginal tradition; or

(iii) necessary and reasonable to avoid an imminent risk of damage to, or destruction of, an Aboriginal place or object.

56 Approval to publish restricted information

(1) The council may approve the publication of restricted information about a place or object if satisfied, on reasonable grounds, that the publication will not have a substantial adverse effect on the heritage significance of the place or object.

(2) An approval—

(a) may be given only on application; and

(b) must be given in writing to the applicant.

(3) An application must be in writing and must—

(a) identify the restricted information proposed to be published; and

(b) state the reason for the publication; and

(c) state the nature of the publication, including the person, people or kind of people to whom it would be directed.

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57 Limited access to restricted information

(1) This section applies if a person applies to access restricted information.

(2) The council must give the applicant the restricted information—

(a) if land is offered for sale; and

(b) the applicant is an interested person for the land, or someone considering buying an interest in the land; and

(c) the restricted information is relevant to the conservation and use of the land.

(3) The council may give the applicant the restricted information if—

(a) the council is satisfied on reasonable grounds that the release of the information will not diminish the heritage significance of a place or object, or damage an Aboriginal place or object; and

(b) the applicant satisfies the council that the applicant will use the information for 1 or more of the following:

(i) academic research in connection with a recognised tertiary institution;

(ii) as a consultant or researcher engaged by an interested person in connection with planning, land management, or a development proposal;

(iii) to assess heritage significance;

(iv) to assess whether proposed conduct will diminish the heritage significance of a place or object, or damage an Aboriginal place or object.

Note ***Interested person***—see s 13.

(4) If the council gives a person restricted information the council must, at the same time, give the person a written explanation about the operation of this part.

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Part 10 Land development applications

58 Meaning of *development*—pt 10

In this part:

development means a proposed development to which a development application under the *Planning Act 2023*, chapter 7 applies.

59 Simplified outline

The following notes provide a simplified outline of this part and the *Planning Act 2023*, chapter 7 (Development assessment and approvals):

Note 1 *Certain development applications to be referred to council*

The territory planning authority may be required to refer a development application to the council (see *Planning Act 2023*, s 170 and s 171).

Note 2 *Council to give advice about development application*

The council gives advice to the territory planning authority, within the prescribed number of days, about the effect of a development on the heritage significance of a place or object if the development application is referred to the council (see *Planning Act 2023*, s 172). The council may also give the authority advice about the effect of development on heritage significance under this Act, s 60 or make a representation about a development application under the *Planning Act 2023*, s 180.

Note 3 *Council's advice to be considered*

The council's advice must be considered by the decision-maker in deciding a development application referred to the council (see *Planning Act 2023*, s 186 (i), s 189 and s 190).

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Note 4 *Council may apply for review of decision to approve application*

The council may apply to the ACAT for review of the territory planning authority's decision to approve a development application if the council—

(a) made a representation about the development application under the *Planning Act 2023*, s 180; and

(b) is an eligible entity under that Act, ch 15 (Notification and review of decisions) (see *Planning Act 2023*, s 504 and s 506 and sch 5, pt 5.2, item 2, item 6 and item 8).

60 Advice about effect of development on heritage significance

(1) This section applies if the council is satisfied on reasonable grounds that a development would affect—

(a) the heritage significance of a registered place or object; or

Note A registered place or object includes a provisionally registered place or object (see s 11).

(b) a nominated place or object that, in the opinion of the council, is likely to have heritage significance.

(2) The council may give the territory planning authority written advice in accordance with section 61 about its decision.

Note 1 If the territory planning authority refers a development application to the council under the *Planning Act 2023*, s 170 or s 171, the council must, within the number of days prescribed by regulation after the day the authority refers the application, give the authority its advice in relation to the development application (see *Planning Act 2023*, s 172).

Note 2 The council may apply to the ACAT for review of the territory planning authority's decision to approve a development application if the council—

(a) made a representation about the development application under the *Planning Act 2023*, s 180; and

(b) is an eligible entity under that Act, ch 15 (Notification and review of decisions) (see *Planning Act 2023*, s 504 and s 506 and sch 5, pt 5.2, item 2, item 6 and item 8).

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61 Requirements for council's advice about development

(1) This section applies if the council gives advice—

(a) under section 60 about the effect of a development on a place or object that has, or is likely to have, heritage significance; or

(b) under the *Planning Act 2023*, section 172 in relation to a development application.

(2) The council's advice must include the following:

(a) an outline of the effect of the development on the heritage significance of the place or object;

(b) advice about ways of avoiding or minimising the impact of the development on the heritage significance of the place or object.

(3) Without limiting subsection (2), the advice may set out proposed conditions on any approval of the development, including conditions requiring compliance with 1 or more of the following:

(a) if it is not reasonably practicable for the development to avoid harming the place or object—the reasonable steps that must be taken to minimise the extent of the harm;

(b) conservation requirements under applicable heritage guidelines;

(c) a conservation management plan approved by the council.

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Part 10A Tree damaging activity etc

61A Definitions—pt 10A

In this part:

Aboriginal cultural tree—see the *Urban Forest Act 2023*, dictionary.

decision-maker—see the *Urban Forest Act 2023*, dictionary.

tree damaging activity means an activity to which an application under the *Urban Forest Act 2023*, section 21 applies.

tree management plan—see the *Urban Forest Act 2023*, dictionary.

61B Advice about effect of tree damaging activity or tree management plan

(1) This section applies if, after receiving a tree protection notice—

(a) the council is satisfied on reasonable grounds that a proposed tree damaging activity would harm a tree, or a tree management plan proposal or application does not adequately protect a tree, that—

(i) has heritage significance; or

(ii) forms an important part of a place with heritage significance; or

(b) a representative Aboriginal organisation is satisfied on reasonable grounds that a proposed tree damaging activity would harm a tree, or a tree management plan proposal or application does not adequately protect a tree, that—

(i) is an Aboriginal cultural tree; or

(ii) forms an important part of an Aboriginal place.

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(2) However, this section does not apply if the notice is about proposed tree damaging activity, or a tree management plan, required for reasons of public safety.

(3) The council or representative Aboriginal organisation, as the case requires—

(a) may give the decision-maker written advice about the proposed tree-damaging activity, or tree management plan proposal or application, set out in the notice; and

(b) if the council or representative Aboriginal organisation decides to give written advice—must give the decision-maker advice—

(i) in accordance with section 61C; and

(ii) within the period mentioned in—

(A) for a proposed tree damaging activity—the *Urban Forest Act 2023*, section 26; or

(B) for a tree management plan proposal or application—that Act, section 83.

(4) In this section:

tree protection notice means a notice given to the council or a representative Aboriginal organisation by—

(a) for a proposed tree damaging activity—the decision-maker under the *Urban Forest Act 2023*, section 25; or

(b) for a tree management plan proposal or application—the decision-maker under that Act, section 82.

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61C Requirements for advice about tree damaging activity or tree management plan

(1) Advice given by the council to the decision-maker under section 61B (3) must include the following:

(a) an outline of the effect of the proposed tree damaging activity or tree management plan on—

(i) the tree that has heritage significance; or

(ii) the place with heritage significance of which the tree forms an important part;

(b) advice about ways of avoiding or minimising the harm of the activity, or risks associated with the plan, for the tree or place.

(2) Advice given by the representative Aboriginal organisation to the decision-maker under section 61B (3) must include the following:

(a) an outline of the effect of the proposed tree damaging activity or tree management plan on—

(i) the Aboriginal cultural tree; or

(ii) the Aboriginal place of which the tree forms an important part;

(b) advice about ways of avoiding or minimising the harm of the activity, or risks associated with the plan, for the tree or place.

(3) Without limiting subsection (1) or (2), the advice may recommend conditions that must be complied with.

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61D Effect of advice about tree damaging activity or tree management plan

(1) This section applies if—

(a) the council, or a representative Aboriginal organisation, gives advice to the decision-maker under section 61B (3) in relation to a proposed tree damaging activity or tree management plan proposal or application; and

(b) the decision-maker makes a decision under the *Urban Forest Act 2023* in relation to the proposed activity, or plan proposal or application that is substantially consistent with the advice of the entity.

(2) The entity that provided the advice must act consistently with the advice given to the decision-maker in any activity undertaken, further advice given or decision made, by the entity in relation to a tree that is the subject of the proposed tree damaging activity or tree management plan proposal or application, unless—

(a) further information comes to the entity's attention which was not available to the entity when it gave the advice; and

(b) the further information is relevant to the advice; and

(c) the entity would have given different advice if the entity had the further information before giving the advice.

(3) However, for subsection (2), a reference to further information does not include information that—

(a) was not required to be provided under the *Urban Forest Act 2023* for the decision-maker to make a decision about a tree damaging activity or tree management plan under that Act; and

(b) is substantially the same as information available to the entity at the time the entity gave the advice.

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Part 10B Permissions and approvals

61E Application to excavate

(1) A person or entity may make an application to the council (an ***excavation application***) for permission to carry out archaeological excavation work at, or near, a registered place or object, or an Aboriginal place or Aboriginal object (a ***heritage site***).

Note A registered place or object includes a provisionally registered place or object (see s 11).

(2) An excavation application must—

(a) be in writing; and

(b) be given to the council; and

(c) include the following information:

(i) the applicant's name and address;

(ii) a description of the heritage site;

(iii) the location or address of the heritage site;

(iv) details about the proposed excavation work, including the reason for the excavation, the extent and duration of the excavation and any other work of which the excavation forms part;

(v) details about the measures the applicant will adopt during the excavation to reduce the risk of diminishing the heritage significance of, or damage to, the heritage site;

(vi) any other matter prescribed by regulation.

Note Section 117 deals with giving documents to the council.

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(3) In this section:

archaeological excavation work means excavation undertaken—

(a) in a systematic way; and

(b) using archaeological methods; and

(c) to investigate the heritage significance of a place or object.

61F Permit to excavate

(1) As soon as practicable after receiving an excavation application the council must assess the application and decide whether or not to issue a permit for the proposed archaeological excavation work (an ***excavation permit***).

(2) An excavation permit may be issued with conditions.

(3) The council must issue an excavation permit if satisfied on reasonable grounds—

(a) that the proposed excavation is a justifiable part of work required at, or near, a registered place or object, or an Aboriginal place or Aboriginal object (a ***heritage site***); and

(b) that there are no reasonably practicable alternatives to the excavation; and

(c) that the applicant has identified reasonable steps it will take to reduce the risk of diminishing the heritage significance of, or damage to, the heritage site; and

(d) about any other matter prescribed by regulation.

(4) The council must give the applicant written notice about a decision under subsection (1), including any conditions associated with a decision to issue a permit, as far as practicable within 15 working days after the decision.

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61G Application for approval of statement of heritage effect

(1) A person or entity proposing to undertake an activity that is likely to diminish the heritage significance of a place or object, or likely to damage an Aboriginal place or Aboriginal object, may make an application to the council for approval of a plan (a ***statement of heritage effect***) that sets out the following:

(a) a description of the place or object, or Aboriginal place or object (the ***heritage site***);

(b) details about the proposed activity, including the reason for the activity and the extent and duration of the activity;

(c) the likely effect of the proposed activity on the heritage site, including the effects that may diminish the heritage significance of, or damage, the heritage site;

(d) the measures the applicant will adopt during the activity to reduce the risk of diminishing the heritage significance of, or damage to, the heritage site;

(e) whether other reasonably practicable ways of carrying out the activity at the heritage site are available;

(f) any other matter prescribed by regulation.

(2) An application must—

(a) be in writing; and

(b) be given to the council; and

(c) include the following information:

(i) the applicant's name and address;

(ii) the location or address of the heritage site;

(iii) any other matter prescribed by regulation; and

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(d) attach the applicant's statement of heritage effect.

Note Section 117 deals with giving documents to the council.

61H Approval of statement of heritage effect

(1) As soon as practicable after receiving an application under section 61G the council must assess the application and decide whether or not to approve the applicant's statement of heritage effect.

(2) A statement of heritage effect may be approved with conditions.

(3) The council must approve the statement of heritage effect, if satisfied on reasonable grounds—

(a) that the proposed activity is justifiable at, or near, a place or object, or an Aboriginal place or Aboriginal object (a ***heritage site***); and

(b) that there are no reasonably practicable alternative ways to carry out the proposed activity at the heritage site; and

(c) that the applicant has identified reasonable steps it will take to reduce the risk of diminishing the heritage significance of, or damage to, the heritage site; and

(d) about any other matter prescribed by regulation.

(4) The council must give the applicant written notice about a decision under subsection (1), including any conditions associated with its approval, as far as practicable within 15 working days after the decision.

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61I Council may direct application for approval of statement of heritage effect

(1) The council may, in writing, direct a person or entity to make an application under section 61G if the council is satisfied on reasonable grounds that—

(a) the person or entity conducts, or proposes to conduct, an activity that is likely to diminish the heritage significance of a place or object, or likely to damage an Aboriginal place or Aboriginal object; and

(b) the council has not approved a statement of heritage effect in relation to the activity.

(2) If the council issues a direction under this section—

(a) if the activity has not started—the person or entity may only start the activity if the council approves a statement of heritage effect for the activity; or

(b) if the activity has started—the person or entity must immediately stop the activity until the council approves a statement of heritage effect for the activity.

Note It is an offence to engage in conduct—

(a) that—

(i) diminishes the heritage significance of a place or object; or

(ii) damages an Aboriginal place or Aboriginal object; and

(b) that is not in accordance with a statement of heritage effect approved by the council, or some other exception under s 76 (see pt 13).

61J Application for approval of conservation management plan

(1) A person or entity responsible for a place or object with heritage significance, or an Aboriginal place or Aboriginal object, (a ***heritage site***) may make an application to the council for approval of a conservation management plan for the heritage site.

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(2) An application must—

(a) be in writing; and

(b) be given to the council; and

(c) include the following information:

(i) the applicant's name and address;

(ii) the location or address of the heritage site;

(iii) any other matter prescribed by regulation; and

(d) attach the applicant's conservation management plan.

Note Section 117 deals with giving documents to the council.

61K Approval of conservation management plan

(1) As soon as practicable after receiving an application under section 61J, the council must assess the application and decide whether or not to approve the conservation management plan.

(2) A conservation management plan may be approved with conditions.

(3) The council must approve the conservation management plan, if satisfied on reasonable grounds—

(a) that the plan ensures the conservation and responsible management of the place or object, or Aboriginal place or Aboriginal object, to which the plan relates; and

(b) about any other matter prescribed by regulation.

(4) The council must give the applicant written notice about a decision under subsection (1), including any conditions associated with its approval, as far as practicable within 15 working days after the decision.

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Part 11 Heritage directions

62 Heritage direction by council

(1) This section applies if a place or object—

(a) has heritage significance; or

(b) is an Aboriginal place or an Aboriginal object.

(2) The council may give any of the following people a written direction (a ***heritage direction***) to do or not do something to conserve the place or object:

(a) the owner or occupier of the place;

(b) the owner or custodian of the object;

(c) a person whose work affects the place or object.

Examples—heritage directions

1 to do essential maintenance on a place

2 not to adversely affect a significant feature of a heritage place

3 not to undertake a development affecting the heritage significance of a place

Examples—person whose work affects a place or object

1 tradesperson providing trade services for the place or object

2 developer of the place or object

3 building certifier for the place

(3) A heritage direction may be given only if the council is satisfied on reasonable grounds that—

(a) immediate protection of the place or object is justified because an imminent threat exists that would harmfully affect—

(i) for a place or object with heritage significance—the heritage significance of the place or object; or

(ii) an Aboriginal place or Aboriginal object; and

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(b) if heritage guidelines apply to the place or object—the direction complies with the guideline.

(4) A heritage direction must state the period for which it is in force.

(5) To remove any doubt, a heritage direction may be given for a place or object whether or not the place or object is registered.

63 Service of heritage direction

A heritage direction may be given to a person mentioned in section 62 (2) by leaving it secured in a conspicuous position at the place or object to which it relates.

Note For how directions may be served generally, see the Legislation Act, pt 19.5.

64 Extension of heritage direction

(1) On application by the council, the Supreme Court may extend the period for which a heritage direction is in force in relation to a place or object if satisfied that—

(a) there is an imminent threat to the heritage significance of the place or object; and

(b) extended protection is necessary.

(2) An extension must be for no longer than the Supreme Court considers necessary.

65 Contravention of heritage direction—offence

A person commits an offence if the person intentionally contravenes a requirement of a heritage direction.

Maximum penalty: 1 000 penalty units.

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66 Contravention of heritage direction—action by authorised person

(1) This section applies if—

(a) a person does not comply with a heritage direction requiring the person to do something; and

(b) either—

(i) the appeal period has ended and no appeal has been made; or

(ii) any appeal has been finally decided and is unsuccessful.

(2) An authorised person, with necessary assistance, may enter the premises where the place or object to which the direction applies is located and—

(a) do the thing stated in the direction; or

(b) do or finish any work stated in the direction; or

(c) direct or supervise another person that the authorised person has asked to carry out a task mentioned in paragraph (a) or (b).

(3) The reasonable cost incurred by the Territory in doing anything under subsection (2) is a debt owing to the Territory by the person to whom the direction was given.

(4) The council must endeavour to give each interested person for the place or object written notice of the action proposed under subsection (2) at least 5 working days before the day the action is to begin.

(5) The notice must include the following:

(a) a statement about the operation of this section;

(b) the purpose and nature of the proposed action;

(c) the parts of the place likely to be affected;

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(d) the time or times when the action is proposed to be taken;

(e) a statement about the obligations of the authorised person and the Territory under subsection (7).

(6) A person may waive the right to all or part of the minimum period of notice under subsection (4).

(7) Section 97 (Damage etc to be minimised) and section 98 (Compensation for exercise of enforcement powers) apply to any action taken under subsection (2) as if—

(a) it were the exercise of a function under part 14 (Enforcement) by an authorised person or a person assisting an authorised person; and

(b) as if all other changes, including changes prescribed under the regulations, were made.

(8) In this section:

necessary assistance, for an authorised person entering premises, includes the attendance of 1 or more people who, in the opinion of the authorised person, have knowledge or skills that could assist in carrying out the authorised person's functions.

67 Order to enforce exercise of functions

(1) This section applies if—

(a) an authorised person is entitled to exercise a function under section 66 (2); and

(b) another person obstructs, or proposes to obstruct, the authorised person in the exercise of the function.

(2) The Magistrates Court may, on the application of the authorised person, make an order authorising a police officer or other person named in the order to use necessary assistance and force to enable the function to be exercised.

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(3) A copy of an application under subsection (1) must be given to the obstructor, and the obstructor is entitled to appear and be heard on the hearing of the application.

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Part 11A Repair damage directions

67A Repair damage direction by council

(1) This section applies if—

(a) a person causes damage to—

(i) a place or object that has heritage significance; or

(ii) an Aboriginal place or an Aboriginal object; and

(b) the damage can be repaired; and

(c) the damage is not caused by conduct engaged in, in accordance with any of the following:

(i) a heritage guideline;

(ii) a heritage direction;

(iii) a heritage agreement;

(iv) a conservation management plan approved by the council;

(v) development approval under the *Planning Act 2023*, chapter 7;

(vi) an excavation permit;

(vii) a statement of heritage effect approved by the council.

(2) The council may give any of the following people a written direction (a ***repair damage direction***) to do or not do something to repair damage to the place or object:

(a) the owner or occupier of the place;

(b) the owner or custodian of the object;

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(c) a person whose work affects a place or object that has heritage significance.

Examples—person whose work affects a place or object

1 developer of a place

2 tradesperson providing trade services for a place or object

(3) A repair damage direction must be in writing and state—

(a) the place or object; and

(b) the damage to be repaired; and

(c) when the direction must be complied with, being a day at least 1 month after the direction is given to the person.

67B Extension of repair damage direction

(1) A person who has been given a repair damage direction may apply to the council for an extension of time to comply with the direction.

(2) The application must—

(a) be in writing; and

(b) state the reasons why the extension is required.

(3) In deciding whether to extend the time, the council must consider the reasons set out in the application.

(4) The council must—

(a) extend the time; or

(b) refuse to extend the time.

(5) If the council extends the time, the extension must not be for longer than the time the council considers necessary for the damage to be repaired.

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(6) If the council refuses to extend the time, the council must give the applicant—

(a) written notice of the refusal; and

(b) reasons for the refusal.

67C Offence—fail to comply with repair damage direction

(1) A person commits an offence if the person—

(a) is subject to a repair damage direction; and

(b) fails to comply with the direction within the later of—

(i) the time stated in the direction; and

(ii) if the council extends the time under section 67B—the extended time.

Maximum penalty: 500 penalty units.

(2) This section does not apply to a person if the person has a reasonable excuse for failing to comply with the repair damage direction.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

67D Repair of damage by Territory

(1) This section applies if a person—

(a) is subject to a repair damage direction; and

(b) fails to comply with the direction within the later of—

(i) the time stated in the direction; and

(ii) if the council extends the time under section 67B—the extended time.

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(2) An authorised person, with necessary assistance, may enter the premises where the place or object to which the repair damage direction applies is located and—

(a) do the thing stated in the direction; or

(b) do or finish any work stated in the direction; or

(c) direct or supervise another person that the authorised person has asked to carry out a task mentioned in paragraph (a) or (b).

(3) However, the authorised person may only—

(a) enter the premises—

(i) between 8 am and 6 pm on a day; or

(ii) at any reasonable time with the occupier's consent; and

(b) enter the premises necessary to carry out the task mentioned in subsection (2); and

(c) remain at the premises until the task mentioned in subsection (2) is complete.

(4) The reasonable costs incurred by the Territory in doing anything under subsection (2) is a debt owing to the Territory by the person to whom the direction was given.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see Legislation Act, s 177).

(5) The council must, at least 7 days before the proposed action is to begin—

(a) give the person written notice of the action proposed under subsection (2); and

(b) endeavour to give each interested person for the place or object written notice of the action proposed under subsection (2).

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(6) The notice must include the following:

(a) a statement about the operation of this section;

(b) the purpose and nature of the proposed action;

(c) the parts of the place likely to be affected;

(d) the time or times when the action is proposed to be taken;

(e) a statement about the obligations of the authorised person and the Territory under subsection (7).

(7) Section 97 (Damage etc to be minimised) and section 98 (Compensation for exercise of enforcement powers) apply to any action taken under subsection (2) as if—

(a) it were the exercise of a function under part 14 (Enforcement) by an authorised person or a person assisting an authorised person; and

(b) all other necessary changes, including changes prescribed by regulation, were made.

(8) In this section:

necessary assistance, for an authorised person entering premises, includes the attendance of 1 or more people who, in the opinion of the authorised person, have knowledge or skills that could assist in carrying out the authorised person's functions.

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Part 12 Civil protection of heritage

68 Application for heritage order

(1) An application for a heritage order may be made to the Supreme Court by—

(a) the council on behalf of the Territory; or

(b) someone else with the court's leave.

(2) The Supreme Court may grant leave under subsection (1) (b) only if satisfied that—

(a) the person has asked the council to apply for a heritage order and the council has failed to do so within a reasonable time; and

(b) it is in the public interest that the proceeding be brought.

69 Heritage order

(1) This section applies if, on an application under section 68, the Supreme Court is satisfied that—

(a) the respondent has contravened, is contravening or is likely to contravene a defined offence provision; and

(b) an order under this section is necessary to avoid material harm to the heritage significance of a place or object.

(2) The Supreme Court may make an order (a ***heritage order***)—

(a) restraining the respondent from contravening the defined offence provision (including an order requiring the respondent to do something); and

(b) about anything else the court considers appropriate for giving effect to the order.

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(3) In this section:

defined offence provision means any of the following:

(a) section 55 (Restricted information not to be published without approval);

(b) section 65 (Contravention of heritage direction—offence);

(c) section 67C (Offence—fail to comply with repair damage direction);

(d) section 74 (Diminishing heritage significance of place or object);

(e) section 75 (Damaging Aboriginal place or object);

(f) section 96 (Contravention of information discovery order).

70 Interim heritage order

The Supreme Court may make an interim heritage order under section 69 before deciding an application for a heritage order.

71 Costs

In deciding the amount of any costs to be awarded against a party to a proceeding under section 69, the Supreme Court must consider the public interest in the proceeding being brought.

72 Security for costs etc

The Supreme Court may order an applicant for a heritage order to give—

(a) security for the payment of costs that may be awarded against the applicant if the application is subsequently dismissed; or

(b) an undertaking about the payment of any amount that may be awarded against the applicant under section 73.

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73 Respondent's loss etc in relation to heritage order proceedings

(1) This section applies if, on an application for a heritage order claiming a contravention of a defined offence provision, the Supreme Court is satisfied that—

(a) there has not been a contravention of the provision by the respondent; and

(b) the respondent has suffered loss or damage because of the making of the application; and

(c) in the circumstances it is appropriate to make an order under this section.

(2) The court may, on the application of the respondent, and in addition to any order about costs, order the applicant to pay the respondent an amount, decided by the court, to compensate the respondent for the loss or damage suffered by the respondent.

(3) In this section:

defined offence provision—see section 69 (3).

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Part 13 Heritage offences

74 Diminishing heritage significance of place or object

(1) A person commits an offence if the person—

(a) engages in conduct that diminishes the heritage significance of a place or object; and

(b) is reckless about whether the conduct would diminish the heritage significance of the place or object.

Maximum penalty: 1 000 penalty units.

(2) A person commits an offence if the person—

(a) engages in conduct that diminishes the heritage significance of a place or object; and

(b) is negligent about whether the conduct would diminish the heritage significance of the place or object.

Maximum penalty: 500 penalty units.

(3) A person commits an offence if the person engages in conduct that diminishes the heritage significance of a place or object.

Maximum penalty: 100 penalty units.

(4) An offence against subsection (3) is a strict liability offence.

(5) In this section:

place or object—

(a) means a place or object that is registered; but

(b) does not include an Aboriginal place or an Aboriginal object.

Note A registered place or object includes a provisionally registered place or object (see s 11).

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75 Damaging Aboriginal place or object

(1) A person commits an offence if the person—

(a) engages in conduct that causes damage to an Aboriginal place or object; and

(b) is reckless about whether the conduct would cause damage to the Aboriginal place or object.

Maximum penalty: 1 000 penalty units.

(2) A person commits an offence if the person—

(a) engages in conduct that causes damage to an Aboriginal place or object; and

(b) is negligent about whether the conduct would cause damage to the Aboriginal place or object.

Maximum penalty: 500 penalty units.

(3) A person commits an offence if the person engages in conduct that causes damage to an Aboriginal place or object.

Maximum penalty: 100 penalty units.

(4) An offence against subsection (3) is a strict liability offence.

(5) In this section:

cause damage includes disturb and destroy.

76 Exceptions to part 13 offences

(1) In this section:

authorised—see the Legislation Act, section 121 (6).

conservation officer—see the *Nature Conservation Act 2014*, dictionary.

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governmental officer means—

(a) a public servant or conservation officer; or

(b) a person declared under subsection (3) to be a governmental officer.

(2) Section 74 and section 75 do not apply to—

(a) engaging in conduct in accordance with any of the following:

(i) a heritage guideline;

(ii) a heritage direction;

(iii) a repair damage direction;

(iv) a heritage agreement;

(v) a conservation management plan approved by the council;

(vi) development approval under the *Planning Act 2023*, chapter 7;

(vii) an excavation permit;

(viii) a statement of heritage effect approved by the council; or

(b) a governmental officer exercising a function for this Act or another territory law or engaging in authorised conduct.

(3) The Minister may declare a person to be a governmental officer.

(4) A declaration is a notifiable instrument.

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Part 14 Enforcement

Division 14.1 General

77 Definitions for pt 14

In this part:

connected—a thing is ***connected*** with an offence if—

(a) the offence has been committed in relation to it; or

(b) it will provide evidence of the commission of the offence; or

(c) it was used, is being used, or is intended to be used, to commit the offence.

occupier, of premises, includes—

(a) a person believed, on reasonable grounds, to be an occupier of the premises; and

(b) a person apparently in charge of the premises.

Note The dictionary defines ***premises*** as including land.

offence includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

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Division 14.2 Authorised people

78 Appointment of authorised people

The director-general may appoint a public servant to be an authorised person for this Act.

Note 1 For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

79 Identity cards

(1) The director-general must give each authorised person an identity card that states the person's name and appointment as an authorised person, and shows—

(a) a recent photograph of the person; and

(b) the date of issue of the card; and

(c) the date of expiry of the card; and

(d) anything else prescribed under the regulations.

(2) A person commits an offence if—

(a) the person ceases to be an authorised person; and

(b) the person does not return the person's identity card to the director-general as soon as practicable (but within 7 days) after the day the person ceases to be an authorised person.

Maximum penalty: 1 penalty unit.

(3) An offence against this section is a strict liability offence.

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Division 14.3 Powers of authorised people

80 Power to enter premises

(1) For this Act, an authorised person may—

(a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or

(b) at any reasonable time, enter premises to—

(i) inspect a place or object that is registered, or nominated for provisional registration; or

Note A registered place or object includes a provisionally registered place or object (see s 11).

(ii) give a heritage direction to—

(A) the person to whom the direction is given; or

(B) the owner or occupier; or

(iii) give a repair damage direction to—

(A) the person to whom the direction is given; or

(B) the owner or occupier; or

(c) at any time, enter premises with the occupier's consent; or

(d) at any time, enter premises if the authorised person believes, on reasonable grounds, that the circumstances are so serious and urgent that immediate entry to the premises without the authority of a search warrant is necessary; or

(e) enter premises in accordance with a search warrant.

(2) However, subsections (1) (a) and (1) (b) do not authorise entry into a part of the premises that is being used only for residential purposes.

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(3) An authorised person may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.

(4) To remove any doubt, an authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.

(5) An authorised person may—

(a) for subsection (1) (a), (b) or (c)—enter the premises with necessary assistance; and

(b) for subsection (1) (d)—enter the premises with necessary assistance and force.

Note A search warrant to enter premises, issued under this Act, permits an authorised person to enter premises with any necessary assistance and force.

(6) In this section:

necessary assistance, for an authorised person entering premises, includes the attendance of 1 or more people who, in the opinion of the authorised person, have knowledge or skills that could assist in carrying out the authorised person's functions.

81 Production of identity card

An authorised person and any other person other than a police officer who is accompanying the authorised person may not remain at premises entered under this part if the authorised person does not produce the authorised person's identity card when asked by the occupier.

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82 Consent to entry

(1) When seeking the consent of an occupier to enter premises under section 80 (1) (c), an authorised person must—

(a) produce the authorised person's identity card; and

(b) tell the occupier—

(i) the purpose of the entry; and

(ii) the reason for, and identity of, any other person accompanying the authorised person; and

(iii) that anything found and seized under this part may be used in evidence in court; and

(iv) that consent may be refused.

(2) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment (an ***acknowledgment of consent***)—

(a) that the occupier was told—

(i) the purpose of the entry; and

(ii) the reason for, and identity of, any other person accompanying the authorised person; and

(iii) that anything found and seized under this part may be used in evidence in court; and

(iv) that consent may be refused; and

(b) that the occupier consented to the entry; and

(c) stating the time and date when consent was given.

(3) If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.

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(4) A court must find that the occupier did not consent to entry to the premises by the authorised person under this part if—

(a) the question whether the occupier consented to the entry arises in a proceeding in the court; and

(b) an acknowledgment of consent for the entry is not produced in evidence; and

(c) it is not proved that the occupier consented to the entry.

83 General powers on entry to premises

(1) An authorised person who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything at the premises:

(a) inspect or examine;

(b) take measurements or conduct tests;

(c) take samples;

(d) make sketches, drawings or any other kind of record (including photographs, films, or audio, video or other recordings);

(e) require the occupier, or anyone at the premises, to give the authorised person reasonable help to exercise a power under this part.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

(2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (e).

Maximum penalty: 50 penalty units.

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84 Power to seize things

(1) An authorised person who enters premises under this part with the occupier's consent may seize anything at the premises if—

(a) the authorised person is satisfied, on reasonable grounds, that the thing is connected with an offence against this Act; and

(b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.

(2) An authorised person who enters premises under a warrant under this part may seize anything at the premises that the authorised person is authorised to seize under the warrant.

(3) An authorised person who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied, on reasonable grounds, that—

(a) the thing is connected with an offence against this Act; and

(b) the seizure is necessary to prevent the thing from being—

(i) concealed, lost or destroyed; or

(ii) used to commit, continue or repeat the offence.

(4) Having seized a thing, an authorised person may—

(a) remove the thing from the premises where it was seized (the ***place of seizure***) to another place; or

(b) leave the thing at the place of seizure but restrict access to it.

(5) A person commits an offence if—

(a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (4); and

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(b) the person does not have an authorised person's approval to interfere with the thing.

Maximum penalty: 50 penalty units.

(6) An offence against subsection (5) is a strict liability offence.

85 Power to require name and address

(1) An authorised person may require a person to state the person's name and home address if the authorised person suspects, on reasonable grounds, that the person is committing, is about to commit, or has committed, an offence against this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

(2) If an authorised person makes a requirement of a person under subsection (1), the authorised person must—

(a) tell the person the reasons for the requirement; and

(b) as soon as practicable, record the reasons.

(3) A person commits an offence if the person contravenes a requirement under subsection (1).

Maximum penalty: 10 penalty units.

(4) However, a person is not required to comply with a requirement under subsection (1) if, when asked by the person, the authorised person does not produce the authorised person's identity card for inspection by the person.

(5) An offence against subsection (3) is a strict liability offence.

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Division 14.4 Search warrants

86 Warrants generally

(1) An authorised person may apply to a magistrate for a warrant to enter premises.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

(4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—

(a) there is a particular thing or activity connected with an offence against this Act; and

(b) the thing or activity—

(i) is, or is being engaged in, at the premises; or

(ii) may be, or may be engaged in, at the premises within the next 14 days.

(5) The warrant must state—

(a) that an authorised person may, with any necessary assistance and force, enter the premises and exercise the authorised person's powers under this part; and

(b) the offence for which the warrant is issued; and

(c) the things that may be seized under the warrant; and

(d) the hours when the premises may be entered; and

(e) the date, within 14 days after the day of the warrant's issue, when the warrant ends.

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87 Warrants—application made other than in person

(1) An authorised person may apply for a warrant by phone, fax, radio, email, letter or other form of communication if the authorised person considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances.

(2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.

(3) The authorised person may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must immediately provide a written copy to the authorised person if it is practicable to do so.

(5) If it is not practicable to provide a written copy to the authorised person—

(a) the magistrate must—

(i) tell the authorised person what the terms of the warrant are; and

(ii) tell the authorised person the date and time the warrant was issued; and

(b) the authorised person must complete a form of warrant (the ***warrant form***) and write on it—

(i) the magistrate's name; and

(ii) the date and time the magistrate issued the warrant; and

(iii) the warrant's terms.

(6) The written copy of the warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the authorised person's powers under this part.

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(7) The authorised person must, at the first reasonable opportunity, send to the magistrate—

(a) the sworn application; and

(b) if the authorised person completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) A court must find that a power exercised by an authorised person was not authorised by a warrant under this section if—

(a) the question arises in a proceeding before the court whether the exercise of power was authorised by a warrant; and

(b) the warrant is not produced in evidence; and

(c) it is not proved that the exercise of power was authorised by a warrant under this section.

88 Search warrants—announcement before entry

(1) An authorised person must, before anyone enters premises under a search warrant—

(a) announce that the authorised person is authorised to enter the premises; and

(b) give anyone at the premises an opportunity to allow entry to the premises; and

(c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify themself to the person.

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(2) The authorised person is not required to comply with subsection (1) if the authorised person believes, on reasonable grounds, that immediate entry to the premises is required to ensure—

(a) the safety of anyone (including the authorised person or any person assisting); or

(b) that the effective execution of the warrant is not frustrated.

89 Details of search warrant to be given to occupier etc

If the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the authorised person or a person assisting must make available to the person—

(a) a copy of the warrant; and

(b) a document setting out the rights and obligations of the person.

90 Occupier entitled to be present during search etc

(1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.

(2) However, the person is not entitled to observe the search if—

(a) to do so would impede the search; or

(b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.

(3) This section does not prevent 2 or more areas of the premises being searched at the same time.

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Division 14.5 Return and forfeiture of things seized

91 Receipt for things seized

(1) As soon as practicable after a thing is seized by an authorised person under this part, the authorised person must give a receipt for it to the person from whom it was seized.

(2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must leave the receipt, secured conspicuously at the place of seizure under section 84 (Power to seize things).

(3) A receipt under this section must include the following:

(a) a description of the thing seized;

(b) an explanation of why the thing was seized;

(c) the authorised person's name, and how to contact the authorised person;

(d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

92 Moving things to another place for examination or processing under search warrant

(1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—

(a) both of the following apply:

(i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;

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(ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or

(b) the occupier of the premises agrees in writing.

(2) The thing may be moved to another place for examination or processing for no longer than 72 hours.

(3) An authorised person may apply to a magistrate for an extension of time if the authorised person believes, on reasonable grounds, that the thing cannot be examined or processed within 72 hours.

(4) The authorised person must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.

(5) If a thing is moved to another place under this section, the authorised person must, if practicable—

(a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and

(b) allow the occupier or the occupier's representative to be present during the examination or processing.

(6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

93 Access to things seized

A person who would, apart from the seizure, be entitled to inspect a thing seized under this part may—

(a) inspect it; and

(b) if it is a document—take extracts from it or make copies of it.

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94 Return of things seized

(1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, if—

(a) an infringement notice for an offence connected with the thing is not served on the owner within 1 year after the day of the seizure and either—

(i) a prosecution for an offence connected with the thing is not begun within the 1-year period; or

(ii) a prosecution for an offence connected with the thing is begun within the 1-year period but the court does not find the offence proved; or

(b) an infringement notice for an offence connected with the thing is served on the owner within 1 year after the day of the seizure, the infringement notice is withdrawn and—

(i) a prosecution for an offence connected with the thing is not begun within 1 year after the day of the seizure; or

(ii) a prosecution for an offence connected with the thing is begun within 1 year after the day of the seizure but the court does not find the offence proved; or

(c) an infringement notice for an offence connected with the thing is served on the owner within 1 year after the day of the seizure, liability for the offence is disputed in accordance with the *Magistrates Court Act 1930*, section 132 (Disputing liability for infringement notice offence) and—

(i) an infringement notice is not laid in the Magistrates Court against the person for the offence within 60 days after the day notice is given under section 132 that liability is disputed; or

(ii) the Magistrates Court does not find the offence proved.

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(2) If anything seized under this part is not required to be returned or reasonable compensation is not required to be paid under subsection (1), the thing—

(a) is forfeited to the Territory; and

(b) may be sold, destroyed or otherwise disposed of as the director-general directs.

Division 14.6 Miscellaneous

95 Information discovery order

(1) This section applies if the council has reasonable grounds for suspecting that a person—

(a) has information (the ***required information***) reasonably required by the council for the administration or enforcement of this Act; or

(b) has possession or control of a document containing the required information.

(2) The council may give the person an order (an ***information discovery order***) requiring the person to give the information, or produce the document, to the council.

(3) The information discovery order must be in writing and must include particulars of the following:

(a) the identity of the person to whom it is given;

(b) why the information is required;

(c) the time by which the order must be complied with;

(d) the operation of section 96.

(4) A person does not incur any civil or criminal liability only because the person gives information, or produces a document, to the council in accordance with an information discovery order.

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(5) The council must return a document produced in accordance with an information discovery order to the person who produced the document as soon as practicable.

96 Contravention of information discovery order

A person commits an offence if the person intentionally contravenes a requirement of an information discovery order.

Maximum penalty: 100 penalty units.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against self-incrimination and legal professional privilege.

97 Damage etc to be minimised

(1) In the exercise, or purported exercise, of a function under this part, an authorised person must take all reasonable steps to ensure that the authorised person, and any person assisting the authorised person, cause as little inconvenience, detriment and damage as is practicable.

(2) If an authorised person, or a person assisting an authorised person, damages anything in the exercise or purported exercise of a function under this part, the authorised person must give written notice of the particulars of the damage to the person whom the authorised person believes, on reasonable grounds, is the owner of the thing.

(3) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it secured in a conspicuous place at the premises.

98 Compensation for exercise of enforcement powers

(1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by—

(a) the council; or

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(b) an authorised person; or

(c) a person assisting an authorised person.

(2) Compensation may be claimed and ordered in a proceeding for—

(a) compensation brought in a court of competent jurisdiction; or

(b) an offence against this Act brought against the person making the claim for compensation.

(3) A court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.

(4) The regulations may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

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Part 15 Heritage agreements

99 Heritage agreement with Minister

(1) The Minister may enter into an agreement (a ***heritage agreement***) with a person in relation to the conservation of the heritage significance of a place or object.

(2) A heritage agreement may only be made in accordance with the council's advice and with—

(a) the owner of the place or object; or

(b) if the owner consents—someone else.

(3) A heritage agreement may be made in relation to a place or object, whether or not it is registered.

(4) The regulations may provide that a stated territory law does not apply to—

(a) a place to which a heritage agreement applies; or

(b) a place where there is an object to which a heritage agreement applies.

100 Provisions of heritage agreement

A heritage agreement may include provisions about 1 or more of the following:

(a) conservation of the place or object;

(b) provision of financial, technical or other professional advice or assistance needed for the conservation of the place or object;

(c) review of the valuation of the place or object;

(d) restrictions on the use of the place or object;

(e) requirements to carry out work;

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(f) standards to which any work is to be carried out;

(g) restrictions on work that may be carried out;

(h) public appreciation of the heritage significance of the place or object;

(i) availability of the place or object for public inspection.

101 Amending or ending heritage agreement

The Minister may, on the council's advice, amend or end a heritage agreement—

(a) by agreement with the owner of the place or object; or

(b) in accordance with the original agreement.

102 Period of heritage agreement

A heritage agreement begins and ends on the dates stated in the agreement.

103 Binding nature of heritage agreement

(1) A heritage agreement attaches to the land where the place or object is located and is binding on the owner of the land for the time being.

(2) The Minister must lodge a copy of each heritage agreement, and of any agreement to vary or end a heritage agreement, with the registrar-general for registration under the *Land Titles Act 1925*.

(3) The Minister must ensure as far as is practicable that the copy of the agreement is lodged with the registrar-general in registrable form.

Note The *Land Titles Act 1925* provides for the registrar-general to register an agreement mentioned in s (2) under that Act (see s 48).

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104 Enforcement order

(1) A party to a heritage agreement may apply to the Supreme Court for an enforcement order to give effect to the agreement if—

(a) someone contravenes the agreement; or

(b) there are reasonable grounds for believing that someone may contravene the agreement.

Note ***Contravene*** includes fails to comply with (see Legislation Act, dict, pt 1).

(2) The council must enter details of an enforcement order in the heritage register as soon as possible after the order is made.

105 Financial and other assistance

The council may arrange for the provision of financial, technical or other assistance that the council considers necessary or desirable for the conservation of a place or object subject to a heritage agreement.

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Part 16 Heritage and public sector bodies

107 *Heritage places* and *heritage objects* for which public sector body responsible

For this part, a place or object is a ***heritage place*** or ***heritage object*** for which a public sector body is responsible if—

(a) the place or object—

(i) is vested in, or subject to the control of, the body; or

(ii) is owned by the body; and

(b) the place or object—

(i) is registered; or

(ii) although not registered, meets 1 or more heritage significance criteria; or

(iii) is an Aboriginal place or object.

108 Heritage reports

(1) A public sector body must give the council a written report (a ***heritage report***) for a heritage reporting period if the body was responsible for a heritage place or object at any time during the period.

(2) A heritage report must include—

(a) details about each heritage place or object for which the body was responsible during the reporting period; and

(b) if the body disposed of a heritage place or object during the reporting period—details about the disposal of the place or object; and

(c) any other information prescribed by regulation.

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(3) However, a heritage report does not need to include details about a heritage place or object if—

(a) details about the place or object were included in a previous heritage report to the council; and

(b) since the previous heritage report—

(i) the details about the place or object have not changed; and

(ii) the place or object was not disposed of by the body.

(4) A regulation may prescribe information that may, or must not, be included in a heritage report.

(5) A heritage report must be given to the council by the heritage reporting day.

(6) In this section:

heritage reporting day, for a heritage report, means the day that is 1 month after the end of the heritage reporting period to which the report relates.

heritage reporting period means a period of 3 years beginning on 1 July 2014, and each successive 3-year period.

109 Assessment of heritage reports by council

(1) If the council is given a heritage report by a public sector body, the council must review the report and give—

(a) the body, in writing—

(i) any comments about the report; and

(ii) any recommendations relating to the conservation of a heritage place or object mentioned in the report; and

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(b) the Minister a written summary of the report and the council's comments and recommendations (if any) on the report.

Note The council's comments, recommendations and summary must be given as soon as possible (see Legislation Act, s 151B).

(2) If the council makes a recommendation under subsection (1) (a) (ii), the council may monitor the implementation of the recommendation.

109A Public reporting

(1) A public sector body must include information about the following in a report prepared by the body under the *Annual Reports (Government Agencies) Act 2004*:

(a) any action taken by the body in response to a council comment or recommendation;

(b) any council comment or recommendation about which the body did not take action and the reasons for not taking action.

(2) In this section:

council comment or recommendation means a comment or recommendation made by the council under section 109.

110 Conservation management plan

(1) The council or the Minister, may, in writing—

(a) direct a public sector body to prepare a conservation management plan for a heritage place or object for which the body is responsible; and

(b) state a date, at least 1 month after the day the direction is given for completion of the plan (the ***completion date***).

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(2) If a public sector body is given a direction under subsection (1), the body must—

(a) draft the plan; and

(b) ensure the plan complies with any requirements prescribed by regulation for a conservation management plan; and

(c) give the completed plan to the council by the completion date.

(3) If the council is satisfied that a conservation management plan adequately manages a threat, or potential threat, to a heritage place or object the council—

(a) may, in writing, approve the plan; and

(b) if the council approves the plan—must, in writing, tell the public sector body—

(i) that it has approved the plan; and

(ii) the date the plan was approved (the ***approval date***).

(4) If the council is not satisfied that a conservation management plan adequately manages a threat, or potential threat, to a heritage place or object the council must, in writing—

(a) refuse to approve the plan; and

(b) tell the public sector body responsible for the plan the reasons why the council is not satisfied with the plan; and

(c) state a new completion date for the plan.

(5) The council must tell the public sector body about the council's decision under subsection (3) or (4) as far as practicable within 15 working days after making the decision.

(6) The public sector body responsible for a plan that is not approved under subsection (4) must take into account the council's reasons for not approving the plan, and give a revised plan to the council by the completion date stated under subsection (4) (c).

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(7) A public sector body must comply, and promote compliance by other entities, with a conservation management plan approved under this section.

(8) The council or Minister must not give a direction to a public sector body under subsection (1) in relation to a heritage place or object if—

(a) a direction has been given under subsection (1) in relation to the place or object and the council has not yet approved a conservation management plan for the place or object; or

(b) a conservation management plan for the place or object has been approved by the council within the previous 5 years.

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Part 17 Notification and review of decisions

111 Meaning of *reviewable decision*

In this Act:

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

112 Meaning of *decision-maker*—pt 17

In this part:

decision-maker, for a reviewable decision, means an entity mentioned in schedule 1, column 4 for the decision.

113 Reviewable decision notices

If a decision-maker makes a reviewable decision, the decision-maker must give a reviewable decision notice to each interested person for the decision.

Note The decision-maker must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

114 Applications for review

An interested person for a reviewable decision may apply to the ACAT for a review of the decision.

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114A Stay of decision under review

(1) This section applies if—

(a) the council makes a decision under section 40 (Decision about registration) or section 49 (Decision about cancellation proposal); and

(b) an interested person for the decision applies to the ACAT for a review of the decision.

(2) The decision is stayed until the review, or an appeal to a court arising from the review—

(a) has been finally decided; and

(b) the final decision on the review, or appeal arising from the review, is consistent with the council's decision.

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Part 18 Miscellaneous

116 Criminal liability of executive officers

(1) An executive officer of a corporation commits an offence if—

(a) the corporation commits a relevant offence; and

(b) the officer was reckless about whether the relevant offence would be committed; and

(c) the officer was in a position to influence the conduct of the corporation in relation to the commission of the relevant offence; and

(d) the officer failed to take reasonable steps to prevent the commission of the relevant offence.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

(2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the commission of the relevant offence, a court must consider the following:

(a) any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):

(i) that the corporation arranges regular professional assessments of the corporation's compliance with the provision to which the relevant offence relates;

(ii) that the corporation implements any appropriate recommendation arising from such an assessment;

(iii) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates;

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(b) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.

(3) Subsection (2) does not limit the matters the court may consider.

(4) Subsection (1) does not apply if the corporation would have a defence to a prosecution for the relevant offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see Criminal Code, s 58).

(5) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.

(6) In this section:

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

relevant offence means an offence against any of the following:

(a) section 65 (Contravention of heritage direction—offence);

(b) section 67C (Offence—fail to comply with repair damage direction);

(c) section 74 (Diminishing heritage significance of place or object);

(d) section 75 (Damaging Aboriginal place or object).

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117 Service of documents on council

A document may be given to the council by giving it to the director-general.

Note 1 For how documents may be given generally, see the Legislation Act, pt 19.5.

Note 2 The director-general may delegate the function under this section, for example, to the council secretary (see *Public Sector Management Act 1994*, s 20).

118 Legal immunity for council members etc

(1) This section applies to someone who is, or has been, a member of the council or an authorised person.

(2) A civil proceeding does not lie against the person in relation to anything done or omitted to be done honestly by the person in the exercise or purported exercise of a function under this Act.

(3) Subsection (2) does not affect any liability the Territory would have for the act or omission apart from that subsection.

118A Council may ask for information from commissioner for revenue in certain cases

(1) This section applies if—

(a) the council—

(i) may, or must, give notice to a person under this Act; or

(ii) intends taking action under this Act which affects a person; and

(b) the person is an uncontactable person.

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(2) The council may, in writing, ask the commissioner for revenue for either of the following:

(a) the person's name;

(b) the person's home address or other contact address.

(3) The commissioner for revenue must provide the council with the information requested in accordance with subsection (2).

Note See also the *Taxation Administration Act 1999*, s 97 (1) (d) for power to disclose the information.

(4) In this section:

uncontactable person means a person for whom the council does not have, or only has incomplete or outdated information about—

(a) the person's name; or

(b) the person's address.

118B Council may ask for information about leases from commissioner for revenue

(1) The council may, in writing, ask the commissioner for revenue for the following information in relation to a lease:

(a) the lessee's name;

(b) the lessee's home address or other contact address.

Note 1 The Territory privacy principles apply to the council (see *Information Privacy Act 2014*, sch 1).

Note 2 The council may ask the commissioner for information in relation to more than 1 lease at a time. Words in the singular include the plural (see Legislation Act, s 145 (b)).

(2) The commissioner for revenue must disclose the information required in a request made in accordance with subsection (1).

Note See also the *Taxation Administration Act 1999*, s 97 (1) (d) for power to disclose the information.

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(3) The council must not—

(a) make a request under subsection (1) in relation to a lease more often than—

(i) once every 3 months; or

(ii) if a regulation prescribes a longer period—once each period; and

(b) use the information provided by the commissioner for revenue about a lessee other than—

(i) for giving notice to the lessee under this Act; or

(ii) to take action under this Act which affects the lessee.

(4) Nothing in this section prevents the council from asking for information under section 118A.

(5) In this section:

lease—see the *Planning Act 2023*, section 257.

lessee—see the *Planning Act 2023*, section 256.

119 Approved forms

(1) The Minister may approve forms for this Act.

(2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

(3) An approved form is a notifiable instrument.

120 Determination of fees

(1) The Minister may determine fees for this Act.

(2) A determination is a disallowable instrument.

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121 Delegation

The council may delegate the council's functions under this Act or another territory law to the director-general.

Note 1 For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

Note 2 The director-general may subdelegate a function delegated to the director-general under this section (see *Public Sector Management Act 1994*, s 20).

122 Regulation-making power

The Executive may make regulations for this Act.

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Schedule 1 Reviewable decisions

(see pt 17)

column 1 item	column 2 section	column 3 decision	column 4 decision-maker
1	40	register, or not register, place or object	council
2	49	to cancel, or not cancel, registration of place or object	council
3	56	to approve, or not approve, publication of restricted information	council
4	62	to make, or not make, heritage direction	council
5	62	revoke, or not revoke, heritage direction	council
6	67A	give a repair damage direction	council
7	67B	refuse to give extension of time to comply with repair damage direction	council
8	95	give information discovery order	council

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Dictionary

(see s 4)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1 defines the following terms:

- ACAT
- chief planner
- commissioner for revenue
- conservator of flora and fauna
- director-general (see s 163)
- entity
- exercise
- function
- home address
- interest
- Minister (see s 162)
- national capital authority
- notification
- public sector body
- reviewable decision notice
- territory land
- territory law
- territory planning authority
- working day.

Aboriginal cultural tree, for part 10A (Tree damaging activity etc)—see the *Urban Forest Act 2023*, dictionary.

Aboriginal object—see section 9.

Aboriginal place—see section 9.

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Aboriginal tradition means Aboriginal tradition, observance, custom or belief, including Aboriginal tradition, observance, custom or belief that has evolved or developed since European colonisation of Australia.

appeal, in relation to a reviewable decision, means an application to the ACAT to review the decision.

appeal period means the period within which an appeal may be made.

at premises includes on the premises.

authorised person means a person appointed as an authorised person under section 78.

cancellation, for part 7 (Cancellation of registration)—see section 50.

cancellation proposal—see section 43.

connected, for part 14 (Enforcement)—see section 77.

conservation includes preservation, protection, maintenance, restoration and reconstruction.

conservation management plan means a plan that—

(a) sets out the conservation measures that must be adopted for, and conditions on future use of, a place or object or Aboriginal place or object to conserve its heritage significance; and

(b) identifies any threat, or potential threat, to the heritage significance of the place or object or Aboriginal place or object, and sets out a plan for management of the threats; and

(c) includes the following information:

(i) a description of the place or object or Aboriginal place or object;

(ii) the history of the place or object or Aboriginal place or object;

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(iii) details about the heritage significance of the place or object or Aboriginal place or object;

(iv) any other matter prescribed by regulation.

conservation requirement means a requirement under any heritage guideline that applies, directly or indirectly, to conservation of the heritage significance of a place or object.

conservator means the conservator of flora and fauna.

consultation notice—see section 26.

council means the Australian Capital Territory Heritage Council established under section 16.

cultural heritage significance—see section 10B.

decision-maker—

(a) for part 10A (Tree damaging activity etc)—see the *Urban Forest Act 2023*, dictionary; and

(b) for part 17 (Notification and review of decisions)—see section 112.

development, for part 10 (Land development applications)—see section 58.

enforcement order means an order under section 104.

engage in conduct means—

(a) do an act; or

(b) omit to do an act.

excavation application—see section 61E.

excavation permit—see section 61F.

heritage agreement—see section 99.

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heritage decision means a decision under—

(a) section 32 (Decision about provisional registration); or

(b) section 40 (Decision about registration); or

(c) section 49 (Decision about cancellation proposal).

heritage direction—see section 62.

heritage guidelines—see section 25.

heritage object, for which a public sector body is responsible—see section 107.

heritage order—see section 69.

heritage place, for which a public sector body is responsible—see section 107.

heritage report—see section 108.

heritage register—see section 20.

heritage significance—see section 10.

heritage significance criteria—see section 10.

information discovery order—see section 95.

interested person—see section 13.

natural heritage significance—see section 10A.

nominated, place or object, means a place or object the subject of a nomination application that is—

(a) accepted by the council under section 29 (2) (b) (ii); and

(b) not dismissed by the council under section 30A (3) (a).

Note 1 A nominated place or object is eligible to be considered for provisional registration, but is not yet provisionally registered under s 32.

Note 2 A place or object is taken to be a nominated place or object under s 36.

nomination application—see section 28.

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object—see section 8.

occupier, for part 14 (Enforcement)—see section 77.

offence, for part 14 (Enforcement)—see section 77.

owner, of a place, means—

(a) the registered proprietor of a lease granted under the *Planning Act 2023* over land that includes the place; or

(b) a unit owner within the meaning of the *Unit Titles Act 2001*, if the lease of the unit is over land that includes the place; or

(c) an owners corporation within the meaning of the *Unit Titles (Management) Act 2011*, if the common property covers land that includes the place.

partial cancellation, for part 7 (Cancellation of registration)—see section 50.

place—see section 8.

precinct means an area that contains buildings, structures or other constructed features that—

(a) are spatially or thematically connected; and

(b) have a distinct identity; and

(c) are located in, or make up, a discernable zone.

Example—precinct

1 a brick furnace, chimney and adjoining clay quarry
2 a powerhouse with adjoining railway track and rail yard
3 a homestead with associated structures, sheds and surrounding property

premises includes land.

public consultation period—

(a) for division 6.2 (Registration)—see section 37; and

(b) for part 7 (Cancellation of registration)—see section 46.

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register amendment application—see section 24 (3).

registered—see section 11.

registered proprietor, of a lease, means the person registered under the *Land Titles Act 1925* as the proprietor of the lease.

registration details—see section 12.

repair damage direction—see section 67A (2).

representative Aboriginal organisation—see section 14.

restricted information means information declared to be restricted information under section 54 (Declaration of restricted information).

reviewable decision—see section 111.

scientific committee—see the *Nature Conservation Act 2014*, dictionary.

statement of heritage effect—see section 61G.

tree damaging activity, for part 10A (Tree damaging activity etc)—see section 61A.

tree management plan, for part 10A (Tree damaging activity etc)—see the *Urban Forest Act 2023*, dictionary.

urgent provisional registration application—see section 30.

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Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act
AF = Approved form
am = amended
amdt = amendment
AR = Assembly resolution
ch = chapter
CN = Commencement notice
def = definition
DI = Disallowable instrument
dict = dictionary
disallowed = disallowed by the Legislative Assembly
div = division
exp = expires/expired
Gaz = gazette
hdg = heading
IA = Interpretation Act 1967
ins = inserted/added
LA = Legislation Act 2001
LR = legislation register
LRA = Legislation (Republication) Act 1996
mod = modified/modification
NI = Notifiable instrument
o = order
om = omitted/repealed
ord = ordinance
orig = original
par = paragraph/subparagraph
pres = present
prev = previous
(prev...) = previously
pt = part
r = rule/subrule
reloc = relocated
renum = renumbered
R[X] = Republication No
RI = reissue
s = section/subsection
sch = schedule
sdiv = subdivision
SL = Subordinate law
sub = substituted
underlining = whole or part not commenced or to be expired

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3 Legislation history

Heritage Act 2004 A2004-57
notified LR 9 September 2004
s 1, s 2 commenced 9 September 2004 (LA s 75 (1))
remainder commenced 9 March 2005 (s 2 and LA s 79)

as amended by

Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.27
notified LR 12 May 2005
s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))
sch 3 pt 3.27 commenced 2 June 2005 (s 2 (1))

Tree Protection Act 2005 A2005-51 sch 1 pt 1.2
notified LR 29 September 2005
s 1, s 2 commenced 29 September 2005 (LA s 75 (1))
sch 1 pt 1.2 commenced 29 March 2006 (s 2 and LA s 79)

Statute Law Amendment Act 2007 (No 2) A2007-16 sch 1 pt 1.2, sch 3 pt 3.19
notified LR 20 June 2007
s 1, s 2 taken to have commenced 12 April 2007 (LA s 75 (2))
sch 1 pt 1.2, sch 3 pt 3.19 commenced 11 July 2007 (s 2 (1))

Planning and Development (Consequential Amendments) Act 2007 A2007-25 sch 1 pt 1.17
notified LR 13 September 2007
s 1, s 2 commenced 13 September 2007 (LA s 75 (1))
sch 1 pt 1.17 commenced 31 March 2008 (s 2 and see Planning and Development Act 2007 A2007-24, s 2 and CN2008-1)

ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 A2008-36 sch 1 pt 1.29
notified LR 4 September 2008
s 1, s 2 commenced 4 September 2008 (LA s 75 (1))
sch 1 pt 1.29 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

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Statute Law Amendment Act 2009 A2009-20 sch 3 pt 3.41
notified LR 1 September 2009
s 1, s 2 commenced 1 September 2009 (LA s 75 (1))
sch 3 pt 3.41 commenced 22 September 2009 (s 2)

Statute Law Amendment Act 2009 (No 2) A2009-49 sch 3 pt 3.38
notified LR 26 November 2009
s 1, s 2 commenced 26 November 2009 (LA s 75 (1))
sch 3 pt 3.38 commenced 17 December 2009 (s 2)

Administrative (One ACT Public Service Miscellaneous Amendments) Act 2011 A2011-22 sch 1 pt 1.80
notified LR 30 June 2011
s 1, s 2 commenced 30 June 2011 (LA s 75 (1))
sch 1 pt 1.80 commenced 1 July 2011 (s 2 (1))

Unit Titles (Management) Act 2011 A2011-41 sch 5 pt 5.4
notified LR 3 November 2011
s 1, s 2 commenced 3 November 2011 (LA s 75 (1))
sch 5 pt 5.4 commenced 30 March 2012 (s 2 and CN2012-6)

Statute Law Amendment Act 2012 A2012-21 sch 3 pt 3.23
notified LR 22 May 2012
s 1, s 2 commenced 22 May 2012 (LA s 75 (1))
amdt 3.86, amdt 3.87 commenced 5 June 2012 (s 2 (2))
sch 3 pt 3.23 remainder commenced 5 June 2012 (s 2 (1))

Directors Liability Legislation Amendment Act 2013 A2013-4 sch 1 pt 1.5
notified LR 21 February 2013
s 1, s 2 commenced 21 February 2013 (LA s 75 (1))
sch 1 pt 1.5 commenced 22 February 2013 (s 2)

Statute Law Amendment Act 2014 A2014-18 sch 3 pt 3.11
notified LR 20 May 2014
s 1, s 2 commenced 20 May 2014 (LA s 75 (1))
sch 3 pt 3.11 commenced 10 June 2014 (s 2 (1))

Heritage Legislation Amendment Act 2014 A2014-43 pt 2
notified LR 3 October 2014
s 1, s 2 commenced 3 October 2014 (LA s 75 (1))
pt 2 commenced 4 October 2014 (s 2 (1))

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Nature Conservation Act 2014 A2014-59 sch 2 pt 2.8
notified LR 11 December 2014
s 1, s 2 commenced 11 December 2014 (LA s 75 (1))
sch 2 pt 2.8 commenced 11 June 2015 (s 2 (1) and LA s 79)

Red Tape Reduction Legislation Amendment Act 2015 A2015-33 sch 1 pt 1.35
notified LR 30 September 2015
s 1, s 2 commenced 30 September 2015 (LA s 75 (1))
sch 1 pt 1.35 commenced 14 October 2015 (s 2)

Planning, Building and Environment Legislation Amendment Act 2016 (No 2) A2016-24 pt 7
notified LR 11 May 2016
s 1, s 2 commenced 11 May 2016 (LA s 75 (1))
pt 7 commenced 12 May 2016 (s 2 (1))

Emergencies Amendment Act 2016 A2016-33 sch 1 pt 1.11
notified LR 20 June 2016
s 1, s 2 commenced 20 June 2016 (LA s 75 (1))
sch 1 pt 1.11 commenced 21 June 2016 (s 2)

Public Sector Management Amendment Act 2016 A2016-52 sch 1 pt 1.35
notified LR 25 August 2016
s 1, s 2 commenced 25 August 2016 (LA s 75 (1))
sch 1 pt 1.35 commenced 1 September 2016 (s 2)

Planning, Building and Environment Legislation Amendment Act 2017 (No 2) A2017-20 pt 7
notified LR 15 June 2017
s 1, s 2 commenced 15 June 2017 (LA s 75 (1))
pt 7 commenced 16 June 2017 (s 2)

Planning, Building and Environment Legislation Amendment Act 2018 A2018-18 pt 3
notified LR 16 May 2018
s 1, s 2 commenced 16 May 2018 (LA s 75 (1))
pt 3 commenced 17 May 2018 (s 2)

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Red Tape Reduction Legislation Amendment Act 2018 A2018-33 sch 1 pt 1.21

notified LR 25 September 2018
s 1, s 2 commenced 25 September 2018 (LA s 75 (1))
sch 1 pt 1.21 commenced 23 October 2018 (s 2 (4))

Heritage Amendment Act 2020 A2020-3

notified LR 25 February 2020
s 1, s 2 commenced 25 February 2020 (LA s 75 (1))
remainder commenced 26 February 2020 (s 2)

Emergencies Amendment Act 2020 A2020-47 sch 1 pt 1.3

notified LR 3 September 2020
s 1, s 2 commenced 3 September 2020 (LA s 75 (1))
sch 1 pt 1.3 commenced 4 September 2020 (s 2)

Statute Law Amendment Act 2022 A2022-14 sch 3 pt 3.22

notified LR 10 August 2022
s 1, s 2 commenced 10 August 2022 (LA s 75 (1))
sch 3 pt 3.22 commenced 24 August 2022 (s 2)

Planning (Consequential Amendments) Act 2023 A2023-36 sch 1 pt 1.33

notified LR 29 September 2023
s 1, s 2 commenced 29 September 2023 (LA s 75 (1))
sch 1 pt 1.33 commenced 27 November 2023 (s 2 (1) and see Planning Act 2023 A2023-18, s 2 (2) and CN2023-10)

Urban Forest (Consequential Amendments) Act 2023 A2023-52 sch 1 pt 1.3

notified LR 11 December 2023
s 1, s 2 commenced 11 December 2023 (LA s 75 (1))
sch 1 pt 1.3 commenced 1 January 2024 (s 2 and see Urban Forest Act 2023 A2023-14, s 2)

Planning and Environment Legislation Amendment Act 2024 A2024-21 pt 4

notified LR 24 May 2024
s 1, s 2 commenced 24 May 2024 (LA s 75 (1))
pt 4 commenced 31 May 2024 (s 2 (1))

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Heritage Amendment Act 2024 A2024-32

notified LR 9 July 2024
s 1, s 2 commenced 9 July 2024 (LA s 75 (1))
remainder commenced 10 July 2024 (s 2)

Heritage and Planning Legislation Amendment Act 2025 A2025-15 pt 2

notified LR 26 May 2025
s 1, s 2 commenced 26 May 2025 (LA s 75 (1))
pt 2 commenced 2 June 2025 (s 2)

Statute Law Amendment Act 2025 A2025-29 sch 3 pt 3.47, sch 4 pt 4.92

notified LR 6 November 2025
s 1, s 2 commenced 6 November 2025 (LA s 75 (1))
sch 3 pt 3.47, sch 4 pt 4.92 commenced 16 November 2025 (s 2 (1), (9))

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4 Amendment history

Commencement
s 2 om LA s 89 (4)

Objects of Act
s 3 am A2014-43 s 4, s 5

Exercise of functions under Act
s 3A ins A2005-51 amdt 1.3
om A2014-43 s 6
ins A2014-43 s 5

Registration of urban tree
s 3B ins A2014-43 s 6
am A2023-52 amdt 1.5

Application of Act to Emergencies Act 2004
s 7 am A2012-21 amdt 3.86, amdt 3.87
sub A2016-33 amdt 1.28
am A2020-47 amdts 1.6-1.8; pars renum R29 LA

Meaning of *object* and *place*
s 8 sub A2014-43 s 7

Meaning of *Aboriginal object* and *Aboriginal place*
s 9 sub A2014-43 s 7

Meaning of *heritage significance*
s 10 sub A2014-43 s 7
am A2016-24 s 24

Meaning of *natural heritage significance*
s 10A ins A2014-43 s 7

Meaning of *cultural heritage significance*
s 10B ins A2014-43 s 7

Meaning of *registered*
s 11 hdg sub A2014-43 s 8

Meaning of *registration details*
s 12 hdg sub A2014-43 s 9

Meaning of *interested person*
s 13 am A2007-16 amdt 1.3
sub A2014-43 s 10
am A2016-24 s 44, s 45; A2020-3 s 4; pars renum R28 LA; A2023-36 amdt 1.166; A2025-29 amdt 3.155

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Meaning of *representative Aboriginal organisation*

s 14 hdg sub A2014-43 s 11

s 14 am A2012-21 amdts 3.88-3.90; A2014-43 s 12; A2015-33 amdt 1.106; ss renum R20 LA; A2025-29 amdt 4.92

Conservation management plan

s 15 om A2014-43 s 13

Members of council

s 17 am A2007-16 amdt 3.69; A2023-36 amdt 1.167; A2024-32 ss 4-6; ss renum R34 LA

Functions of council

s 18 am A2007-16 amdt 3.70; A2007-25 amdt 1.72; A2023-36 amdt 1.168, amdt 1.169; A2025-29 amdt 3.158

Ministerial statement of priorities

s 18A ins A2024-21 s 19

Procedures of council

s 19 am A2023-36 amdt 1.170

Council must consult scientific committee on matters affecting natural heritage significance

s 19A hdg am A2014-59 amdt 2.29

s 19A ins A2014-43 s 14
am A2014-59 amdt 2.29

Establishment of heritage register

s 20 am A2014-43 ss 15-17; pars renum R18 LA; A2020-3 s 5; pars renum R28 LA; A2024-32 s 7

Public access to heritage register

s 21 am A2012-21 amdt 3.91, amdt 3.92; A2025-29 amdt 4.92

Heritage register corrections and changes

s 24 sub A2014-43 s 18
am A2025-29 amdt 4.92

Effect of further registration decision about registered place or object

s 24A ins A2014-43 s 18

Guidelines about conserving heritage significance

s 25 am A2007-25 amdt 1.73; A2012-21 amdt 3.93; A2014-43 s 19, s 20; A2025-29 amdt 4.92

Public consultation about heritage guidelines

s 26 am A2014-43 s 21; A2015-33 amdt 1.107; ss renum R20 LA; A2016-24 ss 25-27, s 45, s 46; ss renum R21 LA; A2025-29 amdt 4.92

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Period for making heritage guidelines
s 26A ins A2014-43 s 22
am A2015-33 amdt 1.108; ss renum R20 LA

Report to Minister about public consultation on heritage guidelines
s 26B ins A2014-43 s 22
am A2016-24 s 46

Minister may require further consideration by council on heritage guidelines
s 26C ins A2014-43 s 22

Heritage guidelines revocation
s 26D ins A2014-43 s 22

Notification about heritage guidelines
s 26E ins A2014-43 s 22

Application of heritage guidelines
s 27 am A2020-3 s 6; pars renum R28 LA; A2023-36 amdt 1.171

Application for provisional registration of place or object—nomination application
s 28 sub A2014-43 s 23
am A2024-32 s 8; A2025-29 amdt 4.92

Decision about nomination application
s 29 sub A2014-43 s 23; A2024-32 s 9

Request for urgent provisional registration
s 30 sub A2014-43 s 23
am A2016-24 ss 28-30; A2025-29 amdt 4.92

Change to nominated place or object before provisional registration decision
s 30A ins A2024-32 s 10

Council must consult representative Aboriginal organisation
s 31 sub A2014-43 s 23

Consultation with scientific committee about provisional registration
s 31A hdg am A2014-59 amdt 2.30
s 31A ins A2014-43 s 23
am A2014-59 amdt 2.30

Decision about provisional registration
s 32 sub A2014-43 s 23

Notice of decision about provisional registration
s 34 am A2014-43 ss 24-26; A2015-33 amdt 1.109; ss renum R20 LA; A2016-24 s 31; A2017-20 s 14

Period of provisional registration
s 35 sub A2014-43 s 27
am A2015-33 amdt 1.110; ss renum R20 LA

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End of period of provisional registration without decision

s 36 am A2012-21 amdt 3.94
sub A2014-43 s 27

Public consultation about registration of place or object

s 37 am A2014-43 s 28; A2016-24 s 32, s 45, s 46; ss renum R21 LA; A2025-29 amdt 4.92

Report to Minister about public consultation

s 38 am A2016-24 s 46

Minister may require council to further consider issues related to registration

s 39 sub A2014-43 s 29

Decision about registration

s 40 sub A2014-43 s 29
am A2015-33 amdt 1.111; ss renum R20 LA

Registration of place or object

s 41 om A2014-43 s 29

Notice of decision about registration

s 42 om A2014-43 s 30

Registration of place or object protected under Nature Conservation Act 2014

div 6.3 hdg ins A2014-43 s 31
sub A2014-59 amdt 2.31

Registration of place or object under this Act limited if place or object already protected under Nature Conservation Act 2014

s 42A ins A2014-43 s 31
sub A2014-59 amdt 2.31

Cancellation proposal

s 43 sub A2014-43 s 32
am A2016-24 s 44; A2025-29 amdt 4.92

Notice of cancellation proposal

s 44 am A2014-43 s 33, s 34; A2015-33 amdt 1.112; ss renum R20 LA

Consultation with representative Aboriginal organisation about cancellation proposal

s 45 sub A2014-43 s 35

Consultation with scientific committee about cancellation proposal

s 45A hdg am A2014-59 amdt 2.32
s 45A ins A2014-43 s 36
am A2014-59 amdt 2.32

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Public consultation about cancellation proposal
s 46 am A2014-43 s 37; A2016-24 s 33, s 45, s 46; ss renum R21 LA; A2025-29 amdt 4.92

Report to Minister about public consultation
s 47 sub A2014-43 s 38
am A2016-24 s 46

Minister may require council to further consider issues related to cancellation
s 48 sub A2014-43 s 38

Decision about cancellation proposal
s 49 sub A2014-43 s 38
am A2015-33 amdt 1.113; ss renum R20 LA; A2018-18 s 10

Partial cancellation of registration of place or object
s 50 sub A2007-16 amdt 1.4

Management of Aboriginal places and Aboriginal objects
pt 8 hdg sub A2014-43 s 39

Repository for Territory-owned Aboriginal objects
s 53A ins A2014-43 s 40

Declaration of repository
s 53B ins A2014-43 s 40
am A2022-14 amdt 3.115; A2025-29 amdt 4.92

Ownership of Aboriginal objects on territory land
s 53C ins A2014-43 s 40
am A2025-29 amdt 4.92

Declaration of restricted information
s 54 am A2014-43 s 41

Restricted information not to be published without approval
s 55 am A2025-29 amdt 3.158

Approval to publish restricted information
s 56 am A2025-29 amdt 4.92

Limited access to restricted information
s 57 sub A2016-24 s 34
am A2025-29 amdt 4.92

Meaning of *development*—pt 10
s 58 sub A2007-25 amdt 1.74
am A2023-36 amdt 1.172

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Simplified outline
s 59 sub A2007-25 amdt 1.74
am A2008-36 amdt 1.344
sub A2023-36 amdt 1.173

Advice about effect of development on heritage significance
s 60 am A2007-25 amdt 1.75
am A2008-36 amdt 1.344; A2014-43 s 42;
A2023-36 amdt 1.174

Requirements for council's advice about development
s 61 sub A2007-25 amdt 1.76
am A2014-18 amdt 3.47; A2014-43 s 43, s 44;
A2023-36 amdt 1.175

Tree damaging activity etc
pt 10A hdg ins A2014-43 s 45

Definitions—pt 10A
s 61A ins A2014-43 s 45
sub A2023-52 amdt 1.6
def ***Aboriginal cultural tree*** ins A2023-52 amdt 1.6
def ***Aboriginal heritage tree*** ins A2014-43 s 45
om A2023-52 amdt 1.6
def ***decision-maker*** ins A2023-52 amdt 1.6
def ***tree damaging activity*** ins A2014-43 s 45
sub A2023-52 amdt 1.6
def ***tree management plan*** ins A2014-43 s 45
sub A2023-52 amdt 1.6

Advice about effect of tree damaging activity or tree management plan
s 61B ins A2014-43 s 45
am A2023-52 amdt 1.7, amdt 1.8

Requirements for advice about tree damaging activity or tree management plan
s 61C ins A2014-43 s 45
am A2023-52 amdt 1.9, amdt 1.10

Effect of advice about tree damaging activity or tree management plan
s 61D ins A2014-43 s 45
am A2023-52 amdts 1.11-1.14

Permissions and approvals
pt 10B hdg ins A2014-43 s 45

Application to excavate
s 61E ins A2014-43 s 45
am A2016-24 s 35, s 36; A2025-29 amdt 4.92

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Permit to excavate
s 61F ins A2014-43 s 45
am A2016-24 s 37

Application for approval of statement of heritage effect
s 61G ins A2014-43 s 45
am A2025-29 amdt 4.92

Approval of statement of heritage effect
s 61H ins A2014-43 s 45

Council may direct application for approval of statement of heritage effect
s 61I ins A2014-43 s 45

Application for approval of conservation management plan
s 61J ins A2014-43 s 45
sub A2016-24 s 38
am A2025-29 amdt 4.92

Approval of conservation management plan
s 61K ins A2014-43 s 45

Heritage direction by council
s 62 am A2007-25 amdt 1.77
sub A2014-43 s 46
am A2016-24 s 39; A2020-3 s 7; A2025-29 amdt 4.92

Service of heritage direction
s 63 sub A2014-43 s 46

Extension of heritage direction
s 64 am A2014-43 s 47; A2020-3 s 8

Contravention of heritage direction—action by authorised person
s 66 am A2014-43 ss 48-50; A2022-14 amdt 3.116

Repair damage directions
pt 11A hdg ins A2020-3 s 9

Repair damage direction by council
s 67A ins A2020-3 s 9
am A2023-36 amdt 1.176; A2025-29 amdt 4.92

Extension of repair damage direction
s 67B ins A2020-3 s 9

Offence—fail to comply with repair damage direction
s 67C ins A2020-3 s 9

Repair of damage by Territory
s 67D ins A2020-3 s 9

Heritage order
s 69 am A2020-3 s 10; pars renum R28 LA

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Diminishing heritage significance of place or object
s 74 am A2014-43 s 51

Exceptions to part 13 offences
s 76 am A2007-25 amdt 1.78; A2012-21 amdt 3.95; A2014-43 s 52; A2014-59 amdt 2.33; A2020-3 s 11; pars renum R28 LA; A2023-36 amdt 1.176; A2025-29 amdt 3.158, amdt 4.92

Appointment of authorised people
s 78 am A2011-22 amdt 1.248

Identity cards
s 79 am A2011-22 amdt 1.248

Power to enter premises
s 80 am A2014-43 ss 53-55; A2020-3 s 12; A2022-14 amdt 3.116

Production of identity card
s 81 am A2014-43 s 56; A2022-14 amdt 3.117

Production of identity card
s 82 am A2014-43 ss 57-59; pars renum R18 LA; A2022-14 amdt 3.117

Power to require name and address
s 85 am A2009-49 amdt 3.87; A2014-43 s 60; A2022-14 amdt 3.117

Warrants—application made other than in person
s 87 am A2014-43 ss 61-63; A2018-33 amdt 1.39, amdt 1.40

Search warrants—announcement before entry
s 88 am A2022-14 amdt 3.118

Return of things seized
s 94 am A2005-20 amdts 3.164-3.166; A2011-22 amdt 1.248

Information discovery order
s 95 am A2014-18 amdt 3.48

Heritage agreement with Minister
s 99 am A2025-29 amdt 3.158

Heritage and public sector bodies
pt 16 hdg sub A2025-15 s 4

Meaning of *public authority* for pt 16
s 106 om A2025-15 s 5

***Heritage places* and *heritage objects* for which public sector body responsible**
s 107 hdg sub A2025-15 s 6
s 107 am A2025-15 s 7, s 8

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Heritage reports
s 108 (4), (5) exp 9 March 2007 (s 108 (5))
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am A2025-15 s 11, s 12

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s 111 sub A2008-36 amdt 1.345; A2014-43 s 66

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s 112 sub A2008-36 amdt 1.345; A2014-43 s 66

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s 114 sub A2008-36 amdt 1.345; A2014-43 s 66
am A2025-29 amdt 4.92

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s 114A ins A2014-43 s 66
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s 115 am A2012-21 amdt 3.96
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s 116 sub A2013-4 amdt 1.6
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s 117 am A2011-22 amdt 1.248; A2014-18 amdt 3.49; A2016-52 amdt 1.100

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s 118A ins A2014-43 s 68
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s 118B ins A2016-24 s 41
am A2023-36 amdt 1.177; A2024-32 amdt 1.2

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s 121 am A2011-22 amdt 1.248; A2014-18 amdt 3.50; A2014-43 s 69; A2016-52 amdt 1.101

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s 122 am A2025-29 amdt 4.92

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s 123 exp 9 March 2011 (s 123 (4))

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s 124 exp 9 March 2006 (s 136)

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s 125 om LA s 89 (3)

Legislation amended—sch 1

s 126 om LA s 89 (3)

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s 127 exp 9 March 2006 (s 136)

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s 128 exp 9 March 2006 (s 136)

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s 129 exp 9 March 2006 (s 136)

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s 130 exp 9 March 2006 (s 136)

Conservation requirements for objects on old heritage objects register

s 131 exp 9 March 2006 (s 136)

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s 132 exp 9 March 2006 (s 136)

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s 133 exp 9 March 2006 (s 136)

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s 134 exp 9 March 2006 (s 136)

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s 135 exp 9 March 2006 (s 136)

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pt 20 hdg ins A2014-43 s 70
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Dictionary

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am A2008-36 amdt 1.347; A2009-20 amdt 3.97; A2009-49 amdt 3.88; A2011-22 amdt 1.249, amdt 1.250; A2014-43 s 72; A2015-33 amdt 1.114; A2023-36 amdt 1.178; A2025-15 s 22; A2025-29 amdt 3.157

def ***Aboriginal cultural tree*** ins A2023-52 amdt 1.15

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def ***consultation notice*** ins A2014-43 s 75

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def ***representative Aboriginal organisations*** om A2014-43 s 84
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def ***scientific committee*** ins A2014-59 amdt 2.35
def ***statement of heritage effect*** ins A2014-43 s 87
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def ***tree management plan*** ins A2014-43 s 87
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5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 (RI) 18 Oct 2006	9 Mar 2005– 1 June 2005	not amended	new Act reissue for textual correction in s 127
R2 (RI) 18 Oct 2006	2 June 2005– 9 Mar 2006	A2005-20	amendments by A2005-20 reissue for textual correction in s 127
R3 10 Mar 2006	10 Mar 2006– 28 Mar 2006	A2005-20	commenced expiry
R4 29 Mar 2006	29 Mar 2006– 9 Mar 2007	A2005-51	amendments by A2005-51
R5 10 Mar 2007	10 Mar 2007– 10 July 2007	A2005-51	commenced expiry
R6 11 July 2007	11 July 2007– 30 Mar 2008	A2007-16	amendments by A2007-16
R7 31 Mar 2008	31 Mar 2008– 1 Feb 2009	A2007-25	amendments by A2007-25
R8 2 Feb 2009	2 Feb 2009– 9 Mar 2009	A2008-36	amendments by A2008-36
R9 10 Mar 2009	10 Mar 2009– 21 Sept 2009	A2008-36	commenced expiry
R10 22 Sept 2009	22 Sept 2009– 16 Dec 2009	A2009-20	amendments by A2009-20
R11 17 Dec 2009	17 Dec 2009– 9 Mar 2011	A2009-49	amendments by A2009-49

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5 Earlier republications

Republication No and date	Effective	Last amendment made by	Republication for
R12 10 Mar 2011	10 Mar 2011– 30 June 2011	A2009-49	expiry of provision (s 123)
R13 1 July 2011	1 July 2011– 29 Mar 2012	A2011-22	amendments by A2011-22
R14 30 Mar 2012	30 Mar 2012– 4 June 2012	A2011-41	amendments by A2011-41
R15 5 June 2012	5 June 2012– 21 Feb 2013	A2012-21	amendments by A2012-21
R16 22 Feb 2013	22 Feb 2013– 9 June 2014	A2013-4	amendments by A2013-4
R17 10 June 2014	10 June 2014– 3 Oct 2014	A2014-18	amendments by A2014-18
R18 4 Oct 2014	4 Oct 2014– 10 June 2015	A2014-43	amendments by A2014-43
R19 11 June 2015	11 June 2015– 13 Oct 2015	A2014-59	amendments by A2014-59
R20 14 Oct 2015	14 Oct 2015– 11 May 2016	A2015-33	amendments by A2015-33
R21 12 May 2016	12 May 2016– 20 June 2016	A2016-24	amendments by A2016-24
R22 21 June 2016	21 June 2016– 31 Aug 2016	A2016-33	amendments by A2016-33
R23 1 Sept 2016	1 Sept 2016– 15 June 2017	A2016-52	amendments by A2016-52
R24 16 June 2017	16 June 2017– 16 May 2018	A2017-20	amendments by A2017-20
R25 17 May 2018	17 May 2018– 22 Oct 2018	A2018-18	amendments by A2018-18
R26 23 Oct 2018	23 Oct 2018– 4 Oct 2019	A2018-33	amendments by A2018-33
R27 5 Oct 2019	5 Oct 2019– 25 Feb 2020	A2018-33	expiry of transitional provisions (pt 20)

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Republication No and date	Effective	Last amendment made by	Republication for
R28 26 Feb 2020	26 Feb 2020– 3 Sept 2020	A2020-3	amendments by A2020-3
R29 4 Sept 2020	4 Sept 2020– 23 Aug 2022	A2020-47	amendments by A2020-47
R30 24 Aug 2022	24 Aug 2022– 26 Nov 2023	A2022-14	amendments by A2022-14
R31 27 Nov 2023	27 Nov 2023– 31 Dec 2023	A2023-36	amendments by A2023-36
R32 1 Jan 2024	1 Jan 2024– 30 May 2024	A2023-52	amendments by A2023-52
R33 31 May 2024	31 May 2024– 9 July 2024	A2024-21	amendments by A2024-21
R34 10 July 2024	10 July 2024– 1 June 2025	A2024-32	amendments by A2024-32
R35 2 June 2025	2 June 2025– 15 Nov 2025	A2025-15	amendments by A2025-15

6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see *Legislation Act 2001*, s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation 'exp' followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.

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