



Australian Capital Territory

Heritage Legislation Amendment Act 2014

A2014-43

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Australian Capital Territory

Heritage Legislation Amendment Act 2014

A2014-43

An Act to amend the *Heritage Act 2004*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Heritage Legislation Amendment Act 2014*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This Act amends the *Heritage Act 2004* and the *Tree Protection Act 2005*.

Part 2 Heritage Act 2004

4 Objects of Act Section 3 (1) (a)

substitute

- (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;

5 Section 3 (2) and (3)

substitute

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;
 - (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.

6 Section 3A

substitute

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:

built-up urban area—see the *Tree Protection Act 2005*, section 7 (2) (Application of Act—built-up urban areas).

Note The *Tree Protection Act 2005* includes provision for the protection of trees of heritage significance in built-up urban areas.

urban tree means a tree in a built-up urban area.

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

7 Sections 8 to 10

substitute

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 1 Words in the singular number include the plural (see [Legislation Act](#), s 145 (b)).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

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 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;

- (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

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (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.

8 Section 11 heading

substitute

11 Meaning of *registered*

9 Section 12 heading

substitute

12 Meaning of *registration details*

10 Section 13

substitute

13 Meaning of *interested person*

(1) In this Act:

interested person means the following:

- (a) for a place or object on Territory land—the planning and land authority;
- (b) for a place or object that affects the conservation of flora or fauna—the conservator;
- (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;
 - (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 to the council about the decision before the end of the public consultation period for the decision;
- (h) for a decision under section 47 (Decision about cancellation proposal)—anyone who made comments 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);
 - (b) for a decision under section 47 (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 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).

11 Section 14 heading

substitute

14 Meaning of *representative Aboriginal organisation*

12 Section 14 (7), new note

insert

Note The power to make a declaration includes the power to amend or repeal the declaration. The power to amend or repeal the declaration is exercisable in the same way, and subject to the same conditions, as the power to make the declaration (see [Legislation Act](#), s 46).

13 Section 15

omit

14 New section 19A

in part 3, insert

19A Council must consult Flora and Fauna Committee on matters affecting natural heritage significance

The council must—

- (a) consult the Flora and Fauna Committee before making any decision that may affect a place or object that has natural heritage significance; and
- (b) tell the Flora and Fauna Committee about the decision the council makes.

**15 Establishment of heritage register
Section 20 (3) (a)**

substitute

- (a) details of the place or object;

16 Section 20 (3) (b) and (c)

after

nomination

insert

application

17 New section 20 (4) (ba)

insert

- (ba) each heritage agreement;

18 Section 24*substitute***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 1 If a form is approved under s 119 for this provision, the form must be used.

Note 2 A fee may be determined under s 120 for this provision.

Note 3 Section 117 deals with giving documents to the council.

- (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.

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).

**19 Guidelines about conserving heritage significance
Section 25 (1), except examples and notes**

substitute

- (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.

20 Section 25 (2) and note

substitute

- (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.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**21 Public consultation about heritage guidelines
Section 26 (5)**

substitute

- (5) In making heritage guidelines, the council—
 - (a) must consider any comments about the proposed guidelines made to the council before the end of the public consultation period; and
 - (b) may consider any comments about the guidelines made to the council after the end of the consultation period.

22 New sections 26A to 26E

insert

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.
- (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.
- (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 after the last day on which the Minister could have opposed the extension notice; and
 - (c) must be published in a daily newspaper as soon as practicable.
- (6) 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
 - (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 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 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.

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).

23 Sections 28 to 32

substitute

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 1 If a form is approved under s 119 for a nomination application, the form must be used.

Note 2 A fee may be determined under s 120 for this provision.

Note 3 Section 117 deals with giving documents to the council.

29 Decision about nomination application

- (1) As soon as practicable after receiving a nomination application, the council must assess the merit of each nomination 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 register the place or object the subject of the application, and is satisfied that the application shows no substantial new grounds for registration; or
 - (b) if the application is not dismissed under paragraph (a)—accept the application and exercise the council’s functions under section 32 (Decision about provisional registration).
- (2) The council must—
 - (a) if the council dismisses a nomination 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 day the decision is made; and
 - (b) if the council accepts a nomination 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.

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.

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 1 If a form is approved under s 119 for an application under this section, the form must be used.

Note 2 A fee may be determined under s 120 for this provision.

Note 3 Section 117 deals with giving documents to the council.

Note 4 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (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
 - (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.

- (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 as if the place or object was a nominated 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.

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 Flora and Fauna Committee about provisional registration

The council must consult the Flora and Fauna 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.

**24 Notice of decision about provisional registration
Section 34 (1)**

substitute

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

25 Section 34 (2) (b)

omit

3 working days

substitute

5 working days

26 Section 34 (3)

omit

10 working days

substitute

15 working days

27 Sections 35 and 36

substitute

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.
- (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.
- (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 after the last day on which the Minister could have opposed the extension notice; and
 - (c) must be published in a daily newspaper as soon as practicable.
- (6) 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).

**28 Public consultation about registration of place or object
Section 37 (2)**

substitute

- (2) In deciding whether to register a place or object under this division, the council—
- (a) must consider any comments made to the council about the registration before the end of the public consultation period; and
 - (b) may consider any comments made to the council about the registration after the end of the public consultation period.

29 Sections 39 to 41

substitute

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
 - (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 be published in a daily newspaper as soon as practicable; and
 - (d) 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

(e) must not include restricted information.

- (4) 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.

- (5) 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.

**30 Notice of decision about registration
Section 42**

omit

31 New division 6.3

insert

**Division 6.3 Registration of place or object
protected under Nature Conservation
Act 1980**

**42A Registration of place or object under this Act limited if
declaration under Nature Conservation Act 1980 in force**

The council may register a place or object that has native flora, native fauna or a process, that is, or is likely to be, the subject of a declaration in force under the *Nature Conservation Act 1980*, section 38, only if the place or object also has—

- (a) cultural heritage significance; or

- (b) natural heritage significance of a kind not protected under the *Nature Conservation Act 1980*.

Example

The council registers a homestead and its surrounding property that includes vegetation that is the subject of a declaration in force under the *Nature Conservation Act 1980*, s 38, 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 1980* is principally concerned with the protection of flora and fauna).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act*, s 126 and s 132).

32 Section 43

substitute

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 1 If a form is approved under s 119 for this provision, the form must be used.

Note 2 A fee may be determined under s 120 for this provision.

Note 3 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
 - (b) if the proposal is not dismissed under paragraph (a)—accept the proposal and exercise the council’s functions under section 47 (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.

**33 Notice of cancellation proposal
Section 44 (2) (b)**

omit

3 working days

substitute

5 working days

34 Section 44 (3) and note

substitute

- (3) 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.

35 Section 45

substitute

**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.

36 New section 45A

insert

45A Consultation with Flora and Fauna 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 Flora and Fauna Committee.

**37 Public consultation about cancellation proposal
Section 46 (2)**

substitute

- (2) In deciding whether a place or object registered under division 6.2 should cease to be registered, the council—
 - (a) must consider any comments made to the council about the proposed cancellation before the end of the public consultation period; and
 - (b) may consider any comments made to the council about the proposed cancellation after the end of the public consultation period.

38 Sections 47 to 49

substitute

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
- (c) identifies issues raised in 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 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
 - (b) decide not to end the registration of the place or object.
- (2) 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 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) The notice—
 - (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 be published in a daily newspaper as soon as practicable.
- (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.

39 Part 8 heading

substitute

Part 8 Management of Aboriginal places and Aboriginal objects

40 New sections 53A to 53C

in part 8, insert

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 1 The power to make a statutory instrument (including a declaration) includes power to amend or repeal the instrument (see [Legislation Act](#), s 46).

Note 2 The Minister may delegate his or her functions to anyone else (see [Legislation Act](#), s 254A).

Note 3 For the making of delegations and the exercise of delegated functions, 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.

Note A notifiable instrument must be notified under the [Legislation Act](#).

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.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**41 Declaration of restricted information
Section 54 (1) and (2)**

substitute

- (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.

**42 Advice about effect of development on heritage significance
Section 60 (1)**

substitute

- (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.

**43 Requirements for council's advice about development
Section 61 (1) (a)**

substitute

- (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

44 Section 61 (3) (a)

substitute

- (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;

45 New parts 10A and 10B

insert

Part 10A Tree damaging activity etc

61A Definitions—pt 10A

In this part:

Aboriginal heritage tree—see the *Tree Protection Act 2005*, dictionary.

tree damaging activity means an activity to which an application under the *Tree Protection Act 2005*, section 22 applies.

tree management plan—see the *Tree Protection Act 2005*, 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 heritage tree; or

- (ii) forms an important part of an Aboriginal place.
- (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 conservator 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 conservator advice—
 - (i) in accordance with section 61C; and
 - (ii) within the time allowed under the *Tree Protection Act 2005*.

Note The *Tree Protection Act 2005*, s 24B and s 34B state the time in which the council and representative Aboriginal organisation are allowed to provide written advice in relation to applications for tree damaging activity and proposed tree management plans.

- (4) In this section:

tree protection notice means a notice given to the council, or representative Aboriginal organisation, by the conservator under the *Tree Protection Act 2005*, section 24A or section 34A.

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

- (1) Advice given by the council to the conservator 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 conservator 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 heritage 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.

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 conservator under section 61B (3) in relation to a proposed tree damaging activity or tree management plan proposal or application; and
 - (b) the conservator makes a decision under the *Tree Protection Act 2005* in relation to the proposed tree damaging activity or tree management 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 conservator 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 *Tree Protection Act 2005* for the conservator 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.

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 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 1 If a form is approved under s 119 for an excavation application, the form must be used.

Note 2 A fee may be determined under s 120 for this provision.

Note 3 Section 117 deals with giving documents to the council.

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 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.

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

Note 1 If a form is approved under s 119 for this section the form must be used.

Note 2 A fee may be determined under s 120 for this provision.

Note 3 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.

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 plan (a *conservation management plan*) that—
- (a) sets out the conservation measures that must be adopted for, and conditions on future use of the heritage site to preserve its heritage significance; and
 - (b) identifies any threat, or potential threat, to the heritage significance of the heritage site, and sets out a plan for management of the threats.
- (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 setting out the following information:
 - (i) a description of the heritage site;
 - (ii) the history of the site;
 - (iii) details about the heritage significance of the site;
 - (iv) any other matter prescribed by regulation.

Note 1 If a form is approved under s 119 for a conservation management plan, the form must be used.

Note 2 A fee may be determined under s 120 for this provision.

Note 3 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.

46 Sections 62 and 63

substitute

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 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

Note 1 The power to make a statutory instrument (including a heritage direction) includes power to amend or repeal the instrument (see [Legislation Act](#), s 46).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (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 a serious and 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
 - (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.

**47 Extension of heritage direction
Section 64 (1)**

omit

Minister

substitute

council

**48 Contravention of heritage direction—action by authorised person
Section 66 (2)**

substitute

- (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).

49 Section 66 (4)

omit

Minister

substitute

council

50 New section 66 (8)

insert

(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 the authorised person to carry out his or her function.

**51 Diminishing heritage significance of place or object
New section 74 (5)**

insert

(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).

**52 Exceptions to part 13 offences
New section 76 (2) (a) (vi) and (vii)**

insert

(vi) an excavation permit;

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

**53 Power to enter premises
Section 80 (1) (b) (i), new note**

insert

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

54 Section 80 (2)

after

of

insert

the

55 Section 80 (5)

substitute

- (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 the authorised person carry out his or her function.

**56 Production of identity card
Section 81**

after 1st mention of

authorised person

insert

and any other person other than a police officer who is accompanying the authorised person

**57 Consent to entry
Section 82 (1)**

omit

section 80 (1) (b)

substitute

section 80 (1) (c)

58 New section 82 (1) (b) (ia)

insert

(ia) the reason for, and identity of, any other person accompanying the authorised person; and

59 New section 82 (2) (a) (ia)

insert

(ia) the reason for, and identity of, any other person accompanying the authorised person; and

**60 Power to require name and address
Section 85 (1)**

omit

just

**61 Warrants—application made other than in person
Section 87 (1)**

after

radio

insert

, email, letter

62 Section 87 (4) and (5)

omit

fax

substitute

give

63 Section 87 (6)

omit

faxed

64 Section 108

substitute

108 Heritage reports

- (1) A public authority must give the council a written report (a ***heritage report***) for a heritage reporting period if the authority 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 authority was responsible during the reporting period; and

- (b) if the authority 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.
- (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 authority.
- (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 authority, the council must review the report and give—
- (a) the authority, 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
- (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 authority must include information about the following in its public authority annual report:
 - (a) action taken by the authority in response to any comments or recommendations made by the council under section 109;
 - (b) any council comments or recommendations about which the authority did not take action, and the reasons for not taking action.
- (2) In this section:

public authority annual report—see the [Annual Reports \(Government Agencies\) Act 2004](#), dictionary.

65 Section 110

substitute

110 Conservation management plan

- (1) The council or the Minister, may, in writing—
 - (a) direct a public authority to prepare a conservation management plan for a heritage place or object for which the authority 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*).
- (2) If a public authority is given a direction under subsection (1), the authority 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 authority—
 - (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 authority responsible for the plan the reasons why the council is not satisfied with the plan; and
 - (c) state a completion date for the plan.
- (5) The council must tell the public authority about the council's decision under subsection (3) or (4) as far as practicable within 15 working days after making the decision.

- (6) The authority 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).
- (7) A public authority 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 an authority 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.

66 Part 17

substitute

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 1 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).

Note 2 The requirements for reviewable decision notices are prescribed by regulation under the [ACT Civil and Administrative Tribunal Act 2008](#).

114 Applications for review

An interested person for a reviewable decision may apply to the ACAT for a review of the decision.

Note If a form is approved under the [ACT Civil and Administrative Tribunal Act 2008](#) for the application, the form must be used.

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 47 (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.

**67 Repository for Territory-owned Aboriginal objects
Section 115**

omit

68 New section 118A

insert

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.
- (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 (c) 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.

**69 Delegation
Section 121**

after

Act

insert

or another territory law

70 New part 20

insert

**Part 20 Transitional—Heritage
Legislation Amendment Act 2014**

200 Meaning of *commencement day*—pt 20

In this part:

commencement day means the day the *Heritage Legislation Amendment Act 2014*, section 23 commences.

201 Application for provisional registration not determined before commencement day

- (1) This section applies if immediately before the commencement day—
- (a) a place or object is nominated for provisional registration in an application under section 28; and
 - (b) the application complies with section 28; and
 - (c) the council has not—
 - (i) dismissed the application under section 30; or
 - (ii) made a decision about whether or not to provisionally register the nominated place or object; and
 - (d) the application has not been withdrawn.
- (2) The application is taken to be accepted by the council under section 29 (1) (b).

Note A place or object the subject of an application under s 28 that is accepted by the council is a nominated place or object (see dict, def *nominated*).

202 Decisions or proposals made before commencement day

This Act, as in force immediately before the commencement day, continues to apply to the following:

- (a) if the public consultation period has begun under section 26 for a decision about making heritage guidelines under section 25—the decision under section 25 and any matter under part 5 (including a decision or action by the council or any other person) resulting from the decision;

- (b) if the public consultation period has begun under section 37 for a decision about registration under section 40—the decision under section 40 and any matter under part 6 (including a decision or action by the council or any other person) resulting from the decision;
- (c) if the public consultation period has begun under section 46 for a decision about a cancellation proposal under section 47—the decision under section 47 and any matter under part 7 (including a decision or action by the council or any other person) resulting from the proposal.

203 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Heritage Legislation Amendment Act 2014*.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

204 Expiry—pt 20

This part expires 5 years after the commencement day.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

71 Schedule 1

substitute

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	47	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	95	give information discovery order	council

72 Dictionary, note 2

insert

- commissioner for revenue
- interest
- notification
- territory land

73 Dictionary, new definitions

insert

Aboriginal heritage tree, for part 10A (Tree damaging activity etc)—see the [Tree Protection Act 2005](#), dictionary.

appeal period means the period within which an appeal may be made.

74 Dictionary, definitions of *cancellation proposal* and *conservation management plan*

substitute

cancellation proposal—see section 43.

conservation management plan—see section 61J.

75 Dictionary, new definitions

insert

conservator means the conservator of flora and fauna.

consultation notice—see section 26.

cultural heritage significance—see section 10B.

decision-maker, for part 17 (Notification and review of decisions)—see section 112.

excavation application—see section 61E.

excavation permit—see section 61F.

Flora and Fauna Committee means the committee established under the [Nature Conservation Act 1980](#), section 13.

heritage decision means a decision under—

- (a) section 32 (Decision about provisional registration); or
- (b) section 40 (Decision about registration); or
- (c) section 47 (Decision about cancellation proposal).

heritage report—see section 108.

76 Dictionary, definition of *interested person*

substitute

interested person—see section 13.

77 Dictionary, new definitions

insert

natural heritage significance—see section 10A.

nominated, place or object, means a place or object the subject of a nomination application that is accepted by the council under section 29 (1) (b) (Decision about nomination application).

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 (End of period of provisional registration without decision).

78 Dictionary, definition of *nomination*

omit

79 Dictionary, new definition of *nomination application*

insert

nomination application—see section 28.

80 Dictionary, definition of *nomination details*

omit

81 Dictionary, definition of *object*

omit

(2)

82 Dictionary, definition of *place*

omit

(1)

83 Dictionary, new definitions

insert

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

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

register amendment application—see section 24 (3).

84 Dictionary, definition of *representative Aboriginal organisations*

omit

85 Dictionary, new definition of *representative Aboriginal organisation*

insert

representative Aboriginal organisation—see section 14.

86 Dictionary, definition of *restricted information*

substitute

restricted information means information declared to be restricted information under section 54 (Declaration of restricted information).

87 Dictionary, new definitions

insert

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 [Tree Protection Act 2005](#), dictionary.

urgent provisional registration application—see section 30.

Part 3 Tree Protection Act 2005

88 New sections 24A to 24C

insert

24A Approval application may need to be referred to other entities

- (1) The conservator must, within 3 days after the day the conservator receives the application, give a copy of the application to the following:
 - (a) if the application relates to a tree that forms part of a place with heritage significance—the heritage council;
 - (b) if the application relates to a tree that is an Aboriginal heritage tree—each representative Aboriginal organisation.
- (2) However, the conservator is not required to give a copy of the application to an entity mentioned in subsection (1) if the conservator is satisfied that—
 - (a) the—
 - (i) applicant has adequately consulted the entity about the application not earlier than 6 months before the day the application is made; and
 - (ii) entity agrees in writing to the activity proposed in the application; or
 - (b) if the entity is the heritage council—the activity proposed in the application is included in a development application given to the council under the *Planning and Development Act 2007*, section 148.
- (3) A written agreement to an activity mentioned in subsection (2) (a) (ii) is taken to be advice on the application received in accordance with section 24B.

24B Time for referral entity to give advice on application

- (1) This section applies if an application is referred to an entity under section 24A.
- (2) The entity must give the conservator the entity's advice on the application not later than 10 working days after the day the conservator gives the application to the entity or, if a shorter period is prescribed by regulation, not later than the end of the shorter period.

Note 1 A written agreement to an activity proposed in the application is taken to be advice given in accordance with this section in relation to an application (see s 24A (3)).

Note 2 For how documents may be given, see the [Legislation Act](#), pt 19.5.

24C Effect of no response by referral entity

If an entity does not give advice on an application referred to the entity in accordance with section 24B, the entity is taken to have given advice that the entity supports the application.

**89 Decision on approval application
New section 25 (3) (ba)**

insert

- (ba) the advice (if any) of an entity to which the application was referred under section 24A; and

90 New sections 34A to 34C*insert***34A Proposal or application may need to be referred to other entities**

- (1) The conservator must, within 3 days after the day the conservator makes the proposal, or receives the application, give a copy of the proposal or application to the following:
 - (a) if the proposal or application relates to a tree that forms part of a place with heritage significance—the heritage council;
 - (b) if the proposal or application relates to a tree that is an Aboriginal heritage tree—each representative Aboriginal organisation.
- (2) However, the conservator is not required to give a copy of the application to an entity mentioned in subsection (1) if the conservator is satisfied that—
 - (a) the—
 - (i) applicant has adequately consulted the entity about the application not earlier than 6 months before the day the application is made; and
 - (ii) entity agrees in writing to the activity proposed in the application; or
 - (b) if the entity is the heritage council—the activity proposed in the application is included in a development application given to the council under the *Planning and Development Act 2007*, section 148.
- (3) A written agreement to an activity mentioned in subsection (2) (a) (ii) is taken to be advice on the application received in accordance with section 34B.

34B Time for referral entity to give advice on proposal or application

- (1) This section applies if a proposal or application is referred to an entity under section 34A.
- (2) The entity must give the conservator the entity's advice on the proposal or application not later than 10 working days after the day the conservator gives the proposal or application to the entity or, if a shorter period is prescribed by regulation, not later than the end of the shorter period.

Note 1 A written agreement to an activity proposed in the proposal or application is taken to be advice given in accordance with this section in relation to an application (see s 34A (3)).

Note 2 For how documents may be given, see the [Legislation Act](#), pt 19.5.

34C Effect of no response by referral entity

If an entity does not give advice on a proposal or application referred to the entity in accordance with section 34B, the entity is taken to have given advice that the entity supports the proposal or application.

**91 Decision on tree management plan
New section 35 (4) (ba)**

insert

- (ba) the advice (if any) of an entity to which the application was referred under section 34A; and

92 **Schedule 1, part 1.1***substitute***Part 1.1** **Internally reviewable decisions**

column 1 item	column 2 section	column 3 decision	column 4 entity
1	25	approve, or refuse to approve, activity	applicant for approval, heritage council, representative Aboriginal organisation
2	28	cancel approval of activity	person who held approval
3	35	approve, or refuse to approve, tree management plan	applicant for approval, heritage council, representative Aboriginal organisation

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 16 May 2013.

2 Notification

Notified under the [Legislation Act](#) on 3 October 2014.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Heritage Legislation Amendment Bill 2014, which originated in the Legislative Assembly as the Heritage Legislation Amendment Bill 2013 and was passed by the Assembly on 25 September 2014.

Acting Clerk of the Legislative Assembly

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