



Australian Capital Territory

Heritage Amendment Act 2020

A2020-3

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Australian Capital Territory

Heritage Amendment Act 2020

A2020-3

An Act to amend the *Heritage Act 2004*

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

1 Name of Act

This Act is the *Heritage Amendment Act 2020*.

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*.

**4 Meaning of *interested person*
New section 13 (2) (da) and (db)**

insert

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

**5 Establishment of heritage register
New section 20 (4) (ba)**

insert

- (ba) each repair damage direction;

**6 Application of heritage guidelines
New section 27 (2) (ba)**

insert

(ba) the giving of a repair damage direction;

**7 Heritage direction by council
Section 62 (3) (a)**

omit

a serious and imminent

substitute

an imminent

**8 Extension of heritage direction
Section 64 (1) (a)**

omit

a serious and imminent

substitute

an imminent

9 New part 11A

insert

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 and Development Act 2007*, 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;
 - (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.

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

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.
- (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.
- (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 8am and 6pm 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).
- (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.

**10 Heritage order
New section 69 (3) (ba)**

insert

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

**11 Exceptions to part 13 offences
New section 76 (2) (a) (iia)**

insert

- (iia) a repair damage direction;

**12 Power to enter premises
Section 80 (1) (b) (ii)**

substitute

- (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

**13 Criminal liability of executive officers
Section 116 (6), definition of *relevant offence*, new
paragraph (aa)**

insert

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

**14 Reviewable decisions
Schedule 1, new items 5A and 5B**

insert

5A	67A	give a repair damage direction	council
5B	67B	refuse to give extension of time to comply with repair damage direction	council

15 Dictionary, new definition of *repair damage direction*

insert

repair damage direction—see section 67A (2).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 24 October 2019.

2 Notification

Notified under the [Legislation Act](#) on 25 February 2020.

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 Amendment Bill 2020, which originated in the Legislative Assembly as the Heritage Amendment Bill 2019 and was passed by the Assembly on 18 February 2020.

Clerk of the Legislative Assembly

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