

2013

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for the Environment and Sustainable Development)

Heritage Legislation Amendment Bill 2013

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2013

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for the Environment and Sustainable Development)

Heritage Legislation Amendment Bill 2013

A Bill for

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Heritage Legislation Amendment Act 2013*.

4 **2 Commencement**

5 This Act commences on the day after its notification day.

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

8 **3 Legislation amended**

9 This Act amends the *Heritage Act 2004* and the *Tree Protection*
10 *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.

- 1 (2) However, if the exercise of a function would result in harm to a
2 place or object with heritage significance, or an Aboriginal place or
3 object, the function may be exercised only if the entity or person
4 exercising the function—
- 5 (a) is satisfied that it is not reasonably practicable to exercise the
6 function in a way that avoids the harm; and
- 7 (b) identifies all reasonable steps that must be taken to minimise
8 the extent of the harm.

9 **6 Section 3A**

10 *substitute*

11 **3B Registration of urban tree**

- 12 (1) This section applies if—
- 13 (a) an urban tree forms part of a place; and
- 14 (b) the council or Minister decides to register the place.
- 15 (2) The council, or Minister, may also register the tree.
- 16 (3) To remove any doubt, an urban tree must not be registered under
17 this Act unless the tree forms part of a place that is registered.
- 18 (4) In this section:

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

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

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

24 *Note* Words in the singular number include the plural (see [Legislation Act](#),
25 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.

place includes the following:

- (a) a site, precinct or parcel of land;
- (b) an object or feature historically associated with, and located at, the place;
- (c) a building or structure, or part of a building or structure, at the place.

Examples—objects or features historically associated with a place

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

Examples—things that *place* includes

- 1 landforms
- 2 plantings
- 3 animal habitats

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).

1 **9** **Meaning of *Aboriginal object* and *Aboriginal place***

2 In this Act:

3 *Aboriginal object* means an object associated with Aboriginal
4 people because of—

- 5 (a) Aboriginal tradition; or
6 (b) Aboriginal history before or after European settlement of
7 Australia.

8 *Aboriginal place* means a place associated with Aboriginal people
9 because of—

- 10 (a) Aboriginal tradition; or
11 (b) Aboriginal history before or after European settlement of
12 Australia.

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

15 **10** **Meaning of *heritage significance***

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

- 19 (a) importance to the course or pattern of the ACT's cultural or
20 natural history;
21 (b) has uncommon, rare or endangered aspects of the ACT's
22 cultural or natural history;
23 (c) potential to yield information that will contribute to an
24 understanding of the ACT's cultural or natural history;
25 (d) importance in demonstrating the principal characteristics of a
26 class of cultural or natural places or objects;
27 (e) importance in exhibiting particular aesthetic characteristics
28 valued by the ACT community or a cultural group in the ACT;

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

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

6 **Example**

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

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

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

15 **10A Meaning of *natural heritage significance***

16 (1) A place or object has *natural heritage significance* if it—

17 (a) forms part of the natural environment; and

18 (b) has heritage significance.

19 (2) In this section:

20 *natural environment* means flora, fauna, geological formations or
21 any other naturally occurring element.

22 **10B Meaning of *cultural heritage significance***

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

24 (a) is—

25 (i) created or modified by human action; or

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

27 (b) has heritage significance.

- 1 **8 Section 11 heading**
- 2 *substitute*
- 3 **11 Meaning of *registered***
- 4 **9 Section 12 heading**
- 5 *substitute*
- 6 **12 Meaning of *registration details***
- 7 **10 Section 13**
- 8 *substitute*
- 9 **13 Meaning of *interested person***
- 10 (1) In this Act:
- 11 *interested person* means the following:
- 12 (a) for a place or object on Territory land—the planning and land
- 13 authority;
- 14 (b) for a place or object that affects the conservation of flora or
- 15 fauna—the conservator;
- 16 (c) for a place or object the council considers may be relevant to
- 17 the Commonwealth—the national capital authority;
- 18 (d) for a place—the following:
- 19 (i) the owner of the place;
- 20 (ii) the occupier of the place;
- 21 (iii) the lessee or sublessee of the place;
- 22 (iv) the architect or designer of a building, structure or
- 23 landscape at the place;

- 1 (v) any person who made a nomination application for the
2 place;
- 3 (vi) any person who made an urgent provisional registration
4 application for the place;
- 5 (vii) any person who made a cancellation proposal for the
6 place;
- 7 (viii) any person who made a register amendment application
8 for the place;
- 9 (e) for an object—the following:
- 10 (i) the owner of the object;
- 11 (ii) the person in possession of the object;
- 12 (iii) the designer of the object;
- 13 (iv) if the object is an artwork—the artist who created the
14 object;
- 15 (v) any person who made a nomination application for the
16 object;
- 17 (vi) any person who made an urgent provisional registration
18 application for the object;
- 19 (vii) any person who made a cancellation proposal for the
20 object;
- 21 (viii) any person who made a register amendment application
22 for the object;
- 23 (f) for a place or object that is also an Aboriginal place or
24 Aboriginal object—the following:
- 25 (i) for an Aboriginal place—a person (or entity) mentioned
26 in paragraphs (a) to (d);
- 27 (ii) for an Aboriginal object—a person (or entity) mentioned
28 in paragraphs (a) to (c), and paragraph (e);

- 1 (iii) a representative Aboriginal organisation;
- 2 (iv) if the discovery of the place or object was reported under
3 section 51—the person who reported the discovery;
- 4 (g) for a decision under section 40 (Decision about registration)—
5 anyone who made comments to the council about the decision
6 before the end of the public consultation period for the
7 decision;
- 8 (h) for a decision under section 47 (Decision about cancellation
9 proposal)—anyone who made comments to the council about
10 the decision before the end of the public consultation period for
11 the decision.
- 12 (2) However, a person is an *interested person* for part 17 (Notification
13 and review of decisions) only if the person is 1 of the following:
- 14 (a) for a decision under section 40 (Decision about registration)—
15 the following:
- 16 (i) a person mentioned in subsection (1) (g);
- 17 (ii) if the decision relates to a place—a person mentioned in
18 subsection (1) (d) (i) to (iii);
- 19 (iii) if the decision relates to an object—a person mentioned
20 in subsection (1) (e) (i) and (ii);
- 21 (b) for a decision under section 47 (Decision about cancellation
22 proposal)—the following:
- 23 (i) a person mentioned in subsection (1) (h);
- 24 (ii) if the decision relates to a place—a person mentioned in
25 subsection (1) (d) (i) to (iii);
- 26 (iii) if the decision relates to an object—a person mentioned
27 in subsection (1) (e) (i) and (ii);
- 28 (c) for a decision under section 56 (Approval to publish restricted
29 information)—the applicant for approval;

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

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

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

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

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

8 **11 Section 14 heading**

9 *substitute*

10 **14 Meaning of *representative Aboriginal organisation***

11 **12 Section 14 (7), new note**

12 *insert*

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

17 **13 Section 15**

18 *omit*

19 **14 New sections 19A to 19C**

20 *in part 3, insert*

21 **19A Council must prepare heritage finding before making
22 heritage decision**

23 (1) Before the council makes a heritage decision about a place or object
24 the council must prepare a written report (a *heritage finding*) that—

25 (a) evaluates the heritage significance of the place or object; and

26 (b) states the type of decision to which the finding relates; and

- 1 (c) states the council's proposed decision.
- 2 *Note* **Heritage decision**—see the dictionary.
- 3 (2) A heritage finding must include—
- 4 (a) information that identifies the place or object; and
- 5 (b) a summary of the information taken into account to evaluate
- 6 whether or not the place or object has heritage significance;
- 7 and
- 8 (c) a statement identifying the heritage significance criteria, if any,
- 9 that apply to the place or object; and
- 10 (d) any information that explains a matter raised in the finding;
- 11 and
- 12 (e) if the finding is about a decision under section 40 (Decision
- 13 about registration)—the following:
- 14 (i) a statement identifying any issues raised in comments
- 15 received by the council before the end of the public
- 16 consultation period;
- 17 (ii) a copy of any written comments received during the
- 18 period;
- 19 (iii) any changes, based on any comments received during the
- 20 period, that the council thinks should be made to the
- 21 heritage citation of the place or object for the decision;
- 22 and
- 23 (f) if the finding is about a decision under section 47 (Decision
- 24 about cancellation proposal)—the following:
- 25 (i) a statement identifying any issues raised in comments
- 26 received by the council before the end of the public
- 27 consultation period;
- 28 (ii) a copy of any written comments received during the
- 29 period; and

- 1 (g) the date the finding was made; and
2 (h) any other information prescribed by regulation.

3 (3) In this section:

4 ***heritage citation***, of a place or object, means the particulars that the
5 council is satisfied describe the place or object and any relevant
6 heritage significance criteria that appear to apply to the place or
7 object.

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

11 **19B Council must notify Minister that heritage finding made**

12 (1) The council must give the Minister written notice that a heritage
13 finding has been made in a referable heritage matter (a ***notice of***
14 ***finding***)—

- 15 (a) as soon as practicable after the finding is made; and
16 (b) before the council makes a heritage decision about the matter.

17 *Note* The Minister may direct the council to refer a referable heritage matter
18 to the Minister. If directed to refer the matter to the Minister, the
19 council must also provide the Minister with associated information (see
20 s 50A (Minister may call-in referable heritage matter)).

21 (2) A notice of finding must include—

- 22 (a) a brief description of the type of heritage decision to which it
23 relates; and
24 (b) the date the notice is given to the Minister; and
25 (c) any information prescribed by regulation.

1 **19C Council must consult Flora and Fauna Committee on**
2 **matters affecting natural heritage significance**

3 The council must—

4 (a) consult the Flora and Fauna Committee before making any
5 decision that may affect a place or object that has natural
6 heritage significance; and

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

8 **15 Establishment of heritage register**
9 **Section 20 (3) (a)**

10 *substitute*

11 (a) details of the place or object;

12 **16 Section 20 (3) (b) and (c)**

13 *after*

14 nomination

15 *insert*

16 application

17 **17 New section 20 (4) (ba)**

18 *insert*

19 (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;

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

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

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

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

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

10 (a) dismiss the application if—

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

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

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

21 (5) The council must—

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

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

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

- 1 (6) In this section:
2 *change*, of a registration detail, includes add extra information to
3 the detail.

4 **24A Effect of further registration decision about registered**
5 **place or object**

- 6 (1) If the council makes a registration decision about a place or object
7 that is already registered (a *further decision*), the further decision—
8 (a) does not affect the operation of the registration for the place or
9 object as in force before the further decision is notified; and
10 (b) if the further decision is a decision under section 40—amends
11 the place or object’s registration details to include the further
12 decision.

- 13 (2) In this section:
14 *registration decision* means a decision under—
15 (a) section 32 (Decision about provisional registration); or
16 (b) section 40 (Decision about registration).

17 **19 Guidelines about conserving heritage significance**
18 **Section 25 (1), except examples and notes**

19 *substitute*

- 20 (1) The council may make guidelines (*heritage guidelines*) in relation
21 to the conservation of the following:
22 (a) a place or object registered under division 6.2;
23 (b) an Aboriginal place or Aboriginal object.

1 **20 Section 25 (2) and note**

2 *substitute*

- 3 (2) However, the council may make heritage guidelines only—
- 4 (a) if the Minister has given the council a direction under
- 5 section 26C—after the council complies with the Minister’s
- 6 direction; and
- 7 (b) if satisfied on reasonable grounds that making the guidelines
- 8 promotes the effective conservation of—
- 9 (i) places or objects that have heritage significance; or
- 10 (ii) Aboriginal places or Aboriginal objects.
- 11 (3) A guideline is a disallowable instrument.

12 *Note* A disallowable instrument must be notified, and presented to the

13 Legislative Assembly, under the [Legislation Act](#).

14 **21 Public consultation about heritage guidelines**

15 **Section 26 (5)**

16 *substitute*

- 17 (5) In making heritage guidelines, the council—
- 18 (a) must consider any comments about the proposed guidelines
- 19 made to the council before the end of the public consultation
- 20 period; and
- 21 (b) may consider any comments about the guidelines made to the
- 22 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

- 1 (ii) council, at least 25 working days before the end of the
2 initial period, takes reasonable steps to tell each
3 interested person for the place or object that the council
4 seeks an extension of time to make the guidelines; and
- 5 (iii) council, at least 25 working days before the end of the
6 initial period, gives the Minister written notice (an
7 *extension notice*) stating—
- 8 (A) that the council seeks an extension of time to make
9 the guidelines; and
- 10 (B) the reasons for the extension; and
- 11 (iv) Minister does not, within 10 working days after receiving
12 an extension notice, tell the council in writing that the
13 extension notice is opposed;
- 14 (c) the Minister gives the council a direction under section 26C.
- 15 (4) An extension is—
- 16 (a) if subsection (3) (a) applies—the period of extended
17 provisional registration; or
- 18 (b) if subsection (3) (b) applies—3 months beginning on the day
19 after the end of the initial period; or
- 20 (c) if subsection (3) (c) applies—3 months beginning on the day
21 after the end of the initial period; or
- 22 (d) if subsection (3) (a) and (b) apply—the period in paragraph (a)
23 only; or
- 24 (e) if subsection (3) (a) and (c) apply—the period in paragraph (a)
25 plus the period in paragraph (c); or
- 26 (f) if subsection (3) (b) and (c) apply—the period in paragraph (b)
27 plus the period in paragraph (c); or
- 28 (g) if subsection (3) (a), (b) and (c) apply—the period in
29 paragraph (a) plus the period in paragraph (c).

- 1 (5) An extension notice that is not opposed by the Minister—
- 2 (a) is a notifiable instrument; and
- 3 (b) must be notified under the [Legislation Act](#) within 5 working
- 4 days after the last day on which the Minister could have
- 5 opposed the extension notice; and
- 6 (c) must be published in a daily newspaper as soon as practicable.
- 7 (6) If the council has not made the guidelines by the end of the period
- 8 allowed under this section—
- 9 (a) the proposal for the guidelines lapses; and
- 10 (b) if the council wishes to make the guidelines—the council must
- 11 comply with the requirements under section 26 (Public
- 12 consultation about heritage guidelines) again.

13 **26B Report to Minister about public consultation on heritage**

14 **guidelines**

15 As soon as practicable after the end of the public consultation period

16 in relation to heritage guidelines, the council must give the Minister

17 a written report that—

- 18 (a) identifies the guidelines the council proposes to make; and
- 19 (b) gives the council's view about the need for the proposed
- 20 guidelines; and
- 21 (c) identifies any issues raised in comments made to the council
- 22 before the end of the public consultation period; and
- 23 (d) includes a copy of the written comments (if any); and
- 24 (e) identifies any other change the council proposes to make to the
- 25 guidelines taking into account the issues raised in the
- 26 comments.

- 1 **26C Minister may require further consideration by council on**
2 **heritage guidelines**
- 3 (1) The Minister may direct the council to give further consideration
4 to—
- 5 (a) issues raised in, or arising from, its report to the Minister under
6 section 26B; or
- 7 (b) any other matter the Minister considers—
- 8 (i) relevant to the proposed guidelines; and
- 9 (ii) related to the functions of the council.
- 10 (2) The Minister must give the direction to the council in writing within
11 15 working days after the day the report is given to the Minister.

12 **26D Heritage guidelines revocation**

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

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

17 **26E Notification about heritage guidelines**

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

- 20 (a) proposed heritage guidelines for the place or object;
- 21 (b) notification of the guidelines;
- 22 (c) revocation of the guidelines.

23 *Note* If a provision of a law requires something to be done but does not
24 provide a time for doing the thing, the thing must or may be done as
25 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.

- 1 **29 Decision about nomination application**
- 2 (1) As soon as practicable after receiving a nomination application, the
- 3 council must assess the merit of each nomination application
- 4 received and—
- 5 (a) dismiss the application if—
- 6 (i) the council is satisfied on reasonable grounds that the
- 7 application is frivolous, vexatious, misconceived, lacking
- 8 in substance or not made honestly; or
- 9 (ii) the council has previously decided not to register the
- 10 place or object the subject of the application, and is
- 11 satisfied that the application shows no substantial new
- 12 grounds for registration; or
- 13 (b) if the application is not dismissed under paragraph (a)—accept
- 14 the application and exercise the council’s functions under
- 15 section 32 (Decision about provisional registration).
- 16 (2) The council must—
- 17 (a) if the council dismisses a nomination application—give the
- 18 person who made the application written notice of the
- 19 dismissal and reasons for the dismissal as far as practicable
- 20 within 15 working days after the day the decision is made; and
- 21 (b) if the council accepts a nomination application—tell each
- 22 interested person about the decision as far as practicable within
- 23 15 working days after the day the decision is made.
- 24 *Note Interested person*—see s 13.

-
- 1 **30 Request for urgent provisional registration**
- 2 (1) A person may make an application (an *urgent provisional*
3 *registration application*) requesting that the council urgently decide
4 whether to provisionally register a place or object.
- 5 (2) An urgent provisional registration application—
- 6 (a) must be in writing; and
- 7 (b) must be given to the council; and
- 8 (c) may be made—
- 9 (i) at the same time as a nomination application for the place
10 or object to which the urgent provisional registration
11 application relates is given to the council, or a later time;
12 and
- 13 (ii) by the same person who made the nomination
14 application, or someone else.
- 15 **Examples—urgent provisional registration applications**
- 16 1 a member of the Legislative Assembly applies for urgent provisional
17 registration to protect a place or object under imminent threat
- 18 2 a developer applies for urgent provisional registration to avoid delay in a
19 development project
- 20 *Note 1* If a form is approved under s 119 for an application under this section,
21 the form must be used.
- 22 *Note 2* A fee may be determined under s 120 for this provision.
- 23 *Note 3* Section 117 deals with giving documents to the council.
- 24 *Note 4* An example is part of the Act, is not exhaustive and may extend, but
25 does not limit, the meaning of the provision in which it appears (see
26 [Legislation Act](#), s 126 and s 132).
- 27 (3) The council must accept the application only if—
- 28 (a) the place or object mentioned in the application is a nominated
29 place or object; and

- 1 (b) either—
- 2 (i) the application complies with subsection (2); or
- 3 (ii) if the application does not comply with subsection (2)—
- 4 the council agrees to accept the application.
- 5 (4) If the council accepts the application, the council must, as far as
- 6 practicable, prepare a heritage finding about provisional registration
- 7 for the place or object—
- 8 (a) if the place is a precinct—within 60 working days after the day
- 9 the council receives the application; or
- 10 (b) in any other case—within 20 working days after the day the
- 11 council receives the application.
- 12 (5) Subsection (6) applies if the Minister—
- 13 (a) has not given a direction under section 50A about provisional
- 14 registration of the place or object; or
- 15 (b) if the Minister has given a direction under section 50A about
- 16 the place or object—has referred the matter back to the council
- 17 under section 50B (2) (b).
- 18 (6) The council must—
- 19 (a) as soon as practicable, make a decision under section 32 about
- 20 the place or object as if the place or object was a nominated
- 21 place or object; and
- 22 (b) notify each interested person of the decision.
- 23 (7) If the council dismisses the application the council must notify the
- 24 applicant of the dismissal as far as practicable within 15 working
- 25 days of the decision.

1 **31 Council must consult representative Aboriginal**
2 **organisation**

3 The council must consult each representative Aboriginal
4 organisation about an Aboriginal place or an Aboriginal object
5 before making a heritage finding about registration under
6 division 6.1 (Provisional registration) for the place or object.

7 **31A Consultation with Flora and Fauna Committee about**
8 **provisional registration**

9 The council must consult the Flora and Fauna Committee before
10 making a heritage finding about registration under division 6.1
11 (Provisional registration) for a place or object that forms part of the
12 natural environment.

13 **32 Decision about provisional registration**

14 (1) The council—

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

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

19 *Note* The council must not make a decision under s (1) (a) if the Minister has
20 given a direction under s 50A (see s 50A (5)).

21 (2) However, any decision of the council under this section—

22 (a) must be consistent with the council's heritage finding for the
23 place or object; and

24 (b) may only be made if the Minister—

25 (i) has not given a direction under section 50A about
26 provisional registration of the place or object; or

- 1 (ii) if the Minister has given a direction under section 50A
2 about the place or object—has referred the matter back to
3 the council under section 50B (2) (b).

4 **24 Notice of decision about provisional registration**
5 **Section 34 (1)**

6 *substitute*

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

9 **25 Section 34 (2) (b)**

10 *omit*

11 3 working days

12 *substitute*

13 5 working days

14 **26 Section 34 (3)**

15 *omit*

16 10 working days

17 *substitute*

18 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

- 1 (d) the Minister does not, within 10 working days after receiving
2 an extension notice, tell the council in writing that the
3 extension is opposed.
- 4 (3) If the Minister gives the council a direction under section 39 the
5 initial period is extended for 3 months beginning—
- 6 (a) on the day after the end of the initial period; or
7 (b) if an extension applies to the initial period—on the day after
8 the end of the extension period.
- 9 (4) However, if a termination event happens before the end of a period
10 of provisional registration worked out under this section, the period
11 of provisional registration ends on the day the event happens.
- 12 (5) An extension notice that is not opposed by the Minister—
- 13 (a) is a notifiable instrument; and
14 (b) must be notified under the [Legislation Act](#) within 5 working
15 days after the last day on which the Minister could have
16 opposed the extension notice; and
17 (c) must be published in a daily newspaper as soon as practicable.
- 18 (6) In this section:
- 19 *termination event*, for a period of provisional registration for a place
20 or object, means a decision by the council, or the Minister, to
21 register or not register the place or object under division 6.2.

1 **36 End of period of provisional registration without decision**

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

6 *Note* If a place or object is a nominated place or object the council must
7 decide whether or not to provisionally register the nominated place or
8 object, unless the Minister gives the council a direction under s 50A
9 (see s 32).

10 **28 Public consultation about registration of place or object**
11 **Section 37 (2)**

12 *substitute*

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

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

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

20 *Note* The council must give the Minister notice that a heritage finding about a
21 place or object has been made—

22 (a) as soon as practicable after the end of the public consultation
23 period; and

24 (b) before making a decision about whether to register the place or
25 object (see s 19B).

29 Sections 38 to 41

2 *substitute*

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

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

8 (a) any issue raised in, or arising from, the council's heritage
9 finding for the place or object;

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

11 (2) The Minister must give the direction to the council in writing within
12 15 working days after the day the heritage finding is given to the
13 Minister.

40 Decision about registration

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

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

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

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

22 (iii) preparing written notice of the decision; or

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

25 (i) the decision; and

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

- 1 (2) The cancellation date must not be a date before the end of the period
2 an interested person may apply to the ACAT for a review of the
3 decision.
- 4 (3) A notice under this section—
- 5 (a) is a notifiable instrument; and
- 6 (b) must be notified under the [Legislation Act](#) within 5 working
7 days after the day the decision is made; and
- 8 (c) must be published in a daily newspaper as soon as practicable.
- 9 (4) The council must take reasonable steps to give a copy of the notice
10 to each interested person within 15 working days after the day the
11 decision is made.
- 12 *Note Interested person*—see s 13.
- 13 (5) However, any decision of the council under this section—
- 14 (a) must be consistent with the council’s heritage finding for the
15 place or object, unless the reason for an inconsistent decision is
16 to comply with a direction given by the Minister under
17 section 39; and
- 18 (b) may only be made if—
- 19 (i) the council has complied with any direction given by the
20 Minister under section 39; and
- 21 (ii) the Minister—
- 22 (A) has not given a direction under section 50A about
23 provisional registration of the place or object; or
- 24 (B) if the Minister has given a direction under
25 section 50A about the place or object—has referred
26 the matter back to the council under
27 section 50B (2) (b).

- 1 **30 Notice of decision about registration**
2 **Section 42 (2) (b)**
- 3 *omit*
4 3 working days
5 *substitute*
6 5 working days
- 7 **31 Section 42 (3)**
- 8 *omit*
9 10 working days
10 *substitute*
11 15 working days
- 12 **32 New division 6.3**
- 13 *insert*
- 14 **Division 6.3 Registration of place or object**
15 **protected under Nature Conservation**
16 **Act 1980**
- 17 **42A Council or Minister must not register place or object that**
18 **only has natural heritage significance if declaration in**
19 **force**
- 20 The council, or Minister, must not register a place or object that—
21 (a) includes flora, fauna or a process that is, or is likely to be, the
22 subject of a declaration in force under the *Nature Conservation*
23 *Act 1980*, section 38; and

1 (b) does not have cultural heritage significance.

2 **Example**

3 the council registers a homestead and its surrounding property that includes
4 vegetation that is the subject of a declaration in force under the *Nature*
5 *Conservation Act 1980*, s 38, because of the cultural heritage significance of the
6 homestead and surrounding property

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

10 **33 Section 43**

11 *substitute*

12 **43 Cancellation proposal**

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

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

17 (a) be in writing; and

18 (b) be given to the council; and

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

21 (i) its name;

22 (ii) its location or address;

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

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

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

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

- 1 (3) As soon as practicable after receiving the cancellation proposal, the
2 council must assess the merit of the proposal and—
- 3 (a) dismiss the proposal if—
- 4 (i) the council is satisfied on reasonable grounds that the
5 proposal is frivolous, vexatious, misconceived, lacking in
6 substance or not made honestly; or
- 7 (ii) the council has previously decided not to cancel the
8 registration of the place or object to which the proposal
9 relates, and is satisfied that the proposal shows no
10 substantial new grounds for cancellation; or
- 11 (b) if the proposal is not dismissed under paragraph (a)—accept
12 the proposal and exercise the council’s functions under
13 section 47 (Decision about cancellation proposal).
- 14 (4) The council must—
- 15 (a) if the council dismisses a proposal—give the person who made
16 the proposal written notice of the dismissal and reasons for the
17 dismissal as far as practicable within 15 working days after the
18 day the decision is made; and
- 19 (b) if the council accepts the proposal, or makes a proposal on its
20 own initiative—tell each interested person about the decision
21 as far as practicable within 15 working days after the day the
22 decision is made.

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

1 **34 Notice of cancellation proposal**
2 **Section 44 (2) (b)**

3 *omit*

4 3 working days

5 *substitute*

6 5 working days

7 **35 Section 44 (3) and note**

8 *substitute*

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

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

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

15 *Note Interested person—see s 13.*

16 **36 Section 45**

17 *substitute*

18 **45 Consultation with representative Aboriginal organisation**
19 **about cancellation proposal**

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

22 (2) In deciding whether the place or object should cease to be
23 registered, the council must consult, and consider the views of, each
24 representative Aboriginal organisation about the proposal before
25 making its heritage finding.

1 **37 New section 45A**

2 *insert*

3 **45A Consultation with Flora and Fauna Committee about**
4 **cancellation proposal**

- 5 (1) This section applies if a cancellation proposal is made in relation to
6 a place or object that forms part of the natural environment.
- 7 (2) The council must consult the Flora and Fauna Committee about the
8 proposal before making its heritage finding about whether a place or
9 object registered under division 6.2 should cease to be registered.

10 **38 Public consultation about cancellation proposal**
11 **Section 46 (2)**

12 *substitute*

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

- 21 *Note* The council must give the Minister notice that a heritage finding about a
22 place or object has been made—
- 23 (a) as soon as practicable after the end of the public consultation
24 period; and
- 25 (b) before making a decision about whether to register the place or
26 object (see s 19B).

39 Sections 47 to 49

substitute

47 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) if the heritage finding for the place or object states that the place or object no longer has heritage significance—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) if the heritage finding for the place or object states that the place or object has heritage significance—decide not to end the registration of the place or object.

(2) However, the council may only make a decision under subsection (1) if—

(a) the Minister—

(i) has not given a direction under section 50A in relation to cancellation of registration of the place or object; or

(ii) if the Minister has given a direction under section 50A about the place or object—has referred the matter back to the council under section 50B (2) (b); and

(b) if the Minister has given the council a direction under section 48—the council has complied with the direction; and

- 1 (c) any decision of the council under this section is consistent with
2 the council's heritage finding for the place or object, unless the
3 reason for an inconsistent decision is to comply with a
4 direction given by the Minister under section 48.
- 5 (3) The cancellation date must not be a date that happens before the end
6 of the period an interested person may apply to the ACAT for a
7 review of the decision.
- 8 (4) The notice—
- 9 (a) is a notifiable instrument; and
- 10 (b) must be notified under the [Legislation Act](#) within 5 working
11 days after the day the decision is made; and
- 12 (c) must be published in a daily newspaper as soon as practicable.
- 13 (5) The council must take reasonable steps to give a copy of the notice
14 to each interested person within 15 working days after the day the
15 decision is made.

16 **48 Minister may require council to further consider issues**
17 **related to cancellation proposal**

- 18 (1) The Minister may direct the council to give further consideration to
19 the following when considering a cancellation proposal:
- 20 (a) any issue raised in, or arising from, the council's heritage
21 finding for the place or object;
- 22 (b) any issue relating to the council's functions.
- 23 (2) The Minister must give the direction to the council in writing within
24 15 working days after the day the heritage finding is given to the
25 Minister.

40 New part 7A*insert***Part 7A Ministerial call-in power for referable heritage matter****50A Minister may call-in referable heritage matter**

- (1) If the Minister receives a notice of finding from the council, the Minister may by written notice direct the council to refer the referable heritage matter to which the finding relates to the Minister.

Note Power to make a statutory instrument (including a direction) about a matter includes the power to make the instrument for a particular class of matters (see [Legislation Act](#), s 48 (2)).

- (2) A direction must be given to the council—

- (a) if the referable heritage matter requires a decision about provisional registration in the time stated under section 30 (Request for urgent provisional registration)—within 5 working days after the notice of finding for the matter is given to the Minister; or
- (b) for any other referable heritage matter—within 15 working days after the notice of finding for the matter is given to the Minister.

- (3) The council must give a copy of the Minister's direction in relation to a referable heritage matter to each interested person to whom the decision in the matter relates.

- 1 (4) In complying with a direction, the council must—
- 2 (a) if the matter requires a decision about provisional registration
- 3 in the time stated under section 30 (Request for urgent
- 4 provisional registration)—give the Minister the following
- 5 information within 3 working days after receiving the
- 6 direction—
- 7 (i) the information and documents received by the council in
- 8 relation to the referable heritage matter; and
- 9 (ii) any other relevant information and documents held by the
- 10 council; or
- 11 (b) for any other matter—give the Minister the information
- 12 mentioned in paragraph (a) within 5 working days after
- 13 receiving the direction.
- 14 (5) If the Minister gives a direction, the council—
- 15 (a) must take no further determinative action in relation to the
- 16 referable heritage matter; but
- 17 (b) may continue to take procedural steps in relation to the matter,
- 18 unless the Minister’s direction directs the council not to take a
- 19 procedural step.
- 20 (6) However, subsection (5) does not apply if the Minister refers the
- 21 matter back to the council under section 50B (2) (b).

22 **50B Minister may make decision instead of council in**

23 **referable heritage matter**

- 24 (1) This section applies if the Minister is satisfied that a referable
- 25 heritage matter referred under section 50A raises an issue of public
- 26 importance.
- 27 (2) The Minister—
- 28 (a) may make the heritage decision required in the matter instead
- 29 of the council; or

- 1 (b) if the Minister is satisfied that he or she should not, or does not
2 wish to, make the decision—must refer the decision back to the
3 council for the council to make the decision.
- 4 (3) A decision of the Minister must be made—
- 5 (a) if the decision is about provisional registration that must be
6 decided in the time stated under section 30 (Request for urgent
7 provisional registration)—within 10 working days after the
8 Minister receives the information mentioned in
9 section 50A (4); or
- 10 (b) for any other matter—within 15 working days after the
11 Minister receives the information mentioned in
12 section 50A (4).
- 13 (4) In this section:
- 14 *issue of public importance*, raised by a referable heritage matter,
15 means—
- 16 (a) the likelihood of a heritage decision by the council that is not
17 in the public interest; or
- 18 (b) a major policy issue; or
- 19 (c) the likelihood of a substantial effect on the achievement or
20 development of an object of the [territory plan](#).

21 **50C Minister must take into account findings etc when making**
22 **heritage decision**

- 23 (1) This section applies if the Minister decides to make a heritage
24 decision under section 50B.
- 25 (2) In making the decision, the Minister must take into account—
- 26 (a) the council’s heritage finding for the referable heritage matter
27 to which the decision relates; and

1 (b) any other matter prescribed by regulation.

2 *Note* Section 3A deals with the way in which a function under this Act must
3 be exercised.

4 **50D After Minister makes heritage decision**

5 (1) This section applies if the Minister makes a heritage decision under
6 section 50B.

7 (2) Not later than 3 sitting days after the day the Minister makes the
8 decision, the Minister must present to the Legislative Assembly a
9 statement containing—

10 (a) a description of the place or object to which the decision
11 relates; and

12 (b) the kind of heritage decision made; and

13 (c) details of the Minister's decision; and

14 (d) the grounds for the decision.

15 (3) As soon as practicable after the day the Minister makes the decision,
16 the Minister must by written notice—

17 (a) tell the council about the decision; and

18 (b) if practicable, tell each interested person about the decision,
19 and the reasons for the decision.

20 (4) The notice—

21 (a) is a notifiable instrument; and

22 (b) must be notified under the [Legislation Act](#) within 5 working
23 days after the day the decision in the notice is made; and

24 (c) must be published in a daily newspaper as soon as practicable.

- 1 **50E** **Effect of Minister's decision to provisionally register**
2 If the Minister makes a decision to provisionally register a place or
3 object, under section 50B (2)—
4 (a) no public consultation period applies after the decision is
5 made; and
6 (b) the place or object is taken to be registered under division 6.2.

7 **41** **Part 8 heading**

8 *substitute*

9 **Part 8** **Management of Aboriginal places**
10 **and Aboriginal objects**

11 **42** **New sections 53A to 53C**

12 *in part 8, insert*

13 **53A** **Repository for Territory-owned Aboriginal objects**

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

16 **53B** **Declaration of repository**

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

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

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

24 *Note 3* For the making of delegations and the exercise of delegated functions,
25 see the [Legislation Act](#), pt 19.4.

- 1 (2) Before making a declaration, the Minister must consult the council
2 and each representative Aboriginal organisation about the proposed
3 declaration.
- 4 (3) The Minister may declare a place to be a repository only if satisfied
5 on reasonable grounds that the place is suitable for the conservation
6 of Aboriginal objects owned by the Territory.
- 7 (4) A declaration must not include restricted information.
- 8 (5) A declaration is a notifiable instrument.

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

10 **53C Ownership of Aboriginal objects on territory land**

- 11 (1) An Aboriginal object is owned by the Territory if—
- 12 (a) the object is located on territory land, and the following apply:
- 13 (i) another person or entity does not hold a legal interest in
14 the object;
- 15 (ii) the Minister has not made a declaration stating that the
16 Territory surrenders its legal interest in the object; or
- 17 (b) the object is purchased by the Territory; or
- 18 (c) the object is given to the Territory by a person who holds an
19 interest in the object.
- 20 (2) A declaration is a disallowable instrument.

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

1 **43 Declaration of restricted information**
2 **Section 54 (1) and (2)**

3 *substitute*

- 4 (1) The council may, in writing, declare particular information about the
5 location or nature of the following to be restricted information:
- 6 (a) a place or object that has heritage significance;
 - 7 (b) an Aboriginal place or an Aboriginal object.
- 8 (2) The council may make the declaration only if satisfied on
9 reasonable grounds that public disclosure of the information would
10 be likely to have a substantial adverse effect on—
- 11 (a) the heritage significance of the place or object; or
 - 12 (b) the Aboriginal place or Aboriginal object.

13 **44 Advice about effect of development on heritage**
14 **significance**
15 **Section 60 (1)**

16 *substitute*

- 17 (1) This section applies if the council is satisfied on reasonable grounds
18 that a development would affect—
- 19 (a) the heritage significance of a registered place or object; or
- 20 *Note* A registered place or object includes a provisionally registered
21 place or object (see s 11).
- 22 (b) a nominated place or object that, in the opinion of the council,
23 is likely to have heritage significance.

- 1 **45 Requirements for council’s advice about development**
2 **Section 61 (1) (a)**
- 3 *substitute*
- 4 (a) under section 60 about the effect of a development on a place
5 or object that has, or is likely to have, heritage significance; or
- 6 **46 Section 61 (3) (a)**
- 7 *substitute*
- 8 (a) if it is not reasonably practicable for the development to avoid
9 harming the place or object—the reasonable steps that must be
10 taken to minimise the extent of the harm;
- 11 **47 New parts 10A and 10B**
- 12 *insert*

13 **Part 10A Tree damaging activity etc**

14 **61A Definitions—pt 10A**

15 In this part:

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

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

20 *tree management plan*—see the *Tree Protection Act 2005*,
21 dictionary.

- 1 **61B Advice about effect of tree damaging activity or tree**
2 **management plan**
- 3 (1) This section applies if, after receiving a tree protection notice—
- 4 (a) the council is satisfied on reasonable grounds that a proposed
5 tree damaging activity would harm a tree, or a tree
6 management plan proposal or application does not adequately
7 protect a tree, that—
- 8 (i) has heritage significance; or
- 9 (ii) forms an important part of a place with heritage
10 significance; or
- 11 (b) a representative Aboriginal organisation is satisfied on
12 reasonable grounds that a proposed tree damaging activity
13 would harm a tree, or a tree management plan proposal or
14 application does not adequately protect a tree, that—
- 15 (i) is an Aboriginal heritage tree; or
- 16 (ii) forms an important part of an Aboriginal place.
- 17 (2) However, this section does not apply if the notice is about proposed
18 tree damaging activity, or a tree management plan, required for
19 reasons of public safety.
- 20 (3) The council or representative Aboriginal organisation, as the case
21 requires—
- 22 (a) may give the conservator written advice about the proposed
23 tree damaging activity, or tree management plan proposal or
24 application, set out in the notice; and
- 25 (b) if the council or representative Aboriginal organisation decides
26 to give written advice—must give the conservator advice—
- 27 (i) in accordance with section 61C; and

- 1 (ii) within the time allowed under the *Tree Protection*
2 *Act 2005*.

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

- 8 (4) In this section:

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

12 **61C Requirements for advice about tree damaging activity or**
13 **tree management plan**

- 14 (1) Advice given by the council to the conservator under
15 section 61B (3) must include the following:

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

- 18 (i) the tree that has heritage significance; or
19 (ii) the place with heritage significance of which the tree
20 forms an important part;

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

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

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

- 27 (i) the Aboriginal heritage tree; or
28 (ii) the Aboriginal place of which the tree forms an important
29 part;

- 1 (b) advice about ways of avoiding or minimising the harm of the
2 activity, or risks associated with the plan, for the tree or place.
- 3 (3) Without limiting subsection (1) or (2), the advice may recommend
4 conditions that must be complied with.

5 **61D Effect of advice about tree damaging activity or tree**
6 **management plan**

- 7 (1) This section applies if—
- 8 (a) the council, or a representative Aboriginal organisation, gives
9 advice to the conservator under section 61B (3) in relation to a
10 proposed tree damaging activity or tree management plan
11 proposal or application; and
- 12 (b) the conservator makes a decision under the *Tree Protection*
13 *Act 2005* in relation to the proposed tree damaging activity or
14 tree management plan proposal or application that is
15 substantially consistent with the advice of the entity.
- 16 (2) The entity that provided the advice must act consistently with the
17 advice given to the conservator in any activity undertaken, further
18 advice given or decision made, by the entity in relation to a tree that
19 is the subject of the proposed tree damaging activity or tree
20 management plan proposal or application, unless—
- 21 (a) further information comes to the entity's attention which was
22 not available to the entity when it gave the advice; and
- 23 (b) the further information is relevant to the advice; and
- 24 (c) the entity would have given different advice if the entity had
25 the further information before giving the advice.

- 1 (3) However, for subsection (2), a reference to further information does
2 not include information that—
- 3 (a) was not required to be provided under the *Tree Protection*
4 *Act 2005* for the conservator to make a decision about a tree
5 damaging activity or tree management plan under that Act; and
- 6 (b) is substantially the same as information available to the entity
7 at the time the entity gave the advice.

8 Part 10B Permissions and approvals

9 61E Application to excavate

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

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

- 16 (2) An excavation application must—
- 17 (a) be in writing; and
- 18 (b) be given to the council; and
- 19 (c) include the following information:
- 20 (i) the applicant's name and address;
- 21 (ii) a description of the heritage site;
- 22 (iii) the location or address of the heritage site;
- 23 (iv) details about the proposed excavation work, including the
24 reason for the excavation, the extent and duration of the
25 excavation and any other work of which the excavation
26 forms part;

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

4 (vi) any other matter prescribed by regulation.

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

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

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

9 **61F Permit to excavate**

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

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

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

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

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

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

25 (d) about any other matter prescribed by regulation.

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

- 1 **61G Application for approval of statement of heritage effect**
- 2 (1) A person or entity proposing to undertake an activity that is likely to
- 3 diminish the heritage significance of a place or object, or likely to
- 4 damage an Aboriginal place or Aboriginal object, may make an
- 5 application to the council for approval of a plan (a *statement of*
- 6 *heritage effect*) that sets out the following:
- 7 (a) a description of the place or object, or Aboriginal place or
- 8 object (the *heritage site*);
- 9 (b) details about the proposed activity, including the reason for the
- 10 activity and the extent and duration of the activity;
- 11 (c) the likely effect of the proposed activity on the heritage site,
- 12 including the effects that may diminish the heritage
- 13 significance of, or damage, the heritage site;
- 14 (d) the measures the applicant will adopt during the activity to
- 15 reduce the risk of diminishing the heritage significance of, or
- 16 damage to, the heritage site;
- 17 (e) whether other reasonably practicable ways of carrying out the
- 18 activity at the heritage site are available;
- 19 (f) any other matter prescribed by regulation.
- 20 (2) An application must—
- 21 (a) be in writing; and
- 22 (b) be given to the council; and
- 23 (c) include the following information:
- 24 (i) the applicant's name and address;
- 25 (ii) the location or address of the heritage site;
- 26 (iii) any other matter prescribed by regulation; and

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

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

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

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

5 **61H Approval of statement of heritage effect**

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

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

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

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

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

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

21 (d) about any other matter prescribed by regulation.

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

- 1 **611 Council may direct application for approval of statement**
2 **of heritage effect**
- 3 (1) The council may, in writing, direct a person or entity to make an
4 application under section 61G if the council is satisfied on
5 reasonable grounds that—
- 6 (a) the person or entity conducts, or proposes to conduct, an
7 activity that is likely to diminish the heritage significance of a
8 place or object, or likely to damage an Aboriginal place or
9 Aboriginal object; and
- 10 (b) the council has not approved a statement of heritage effect in
11 relation to the activity.
- 12 (2) If the council issues a direction under this section—
- 13 (a) if the activity has not started—the person or entity may only
14 start the activity if the council approves a statement of heritage
15 effect for the activity; or
- 16 (b) if the activity has started—the person or entity must
17 immediately stop the activity until the council approves a
18 statement of heritage effect for the activity.
- 19 *Note* It is an offence to engage in conduct—
- 20 (a) that—
- 21 (i) diminishes the heritage significance of a place or object; or
22 (ii) damages an Aboriginal place or Aboriginal object; and
- 23 (b) that is not in accordance with a statement of heritage effect
24 approved by the council, or some other exception under s 76 (see
25 pt 13).

- 1 **61J Application for approval of conservation management**
2 **plan**
- 3 (1) A person or entity responsible for a place or object with heritage
4 significance, or an Aboriginal place or Aboriginal object, (a
5 *heritage site*) may make an application to the council for approval
6 of a plan (a *conservation management plan*) that—
- 7 (a) sets out the conservation measures that must be adopted for,
8 and conditions on future use of the heritage site to preserve its
9 heritage significance; and
- 10 (b) identifies any threat, or potential threat, to the heritage
11 significance of the heritage site, and sets out a plan for
12 management of the threats.
- 13 (2) An application must—
- 14 (a) be in writing; and
- 15 (b) be given to the council; and
- 16 (c) include the following information:
- 17 (i) the applicant's name and address;
- 18 (ii) the location or address of the heritage site;
- 19 (iii) any other matter prescribed by regulation; and
- 20 (d) attach the applicant's conservation management plan setting
21 out the following information:
- 22 (i) a description of the heritage site;
- 23 (ii) the history of the site;
- 24 (iii) details about the heritage significance of the site;

1 (iv) any other matter prescribed by regulation.

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

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

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

6 **61K Approval of conservation management plan**

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

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

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

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

16 (b) about any other matter prescribed by regulation.

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

21 **48 Sections 62 and 63**

22 *substitute*

23 **62 Heritage direction by council**

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

25 (a) has heritage significance; or

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

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

- 4 (a) the owner or occupier of the place;
5 (b) the owner of the object;
6 (c) a person whose work affects the place or object.

7 **Examples—heritage directions**

- 8 1 to do essential maintenance on a place
9 2 not to adversely affect a significant feature of a heritage place
10 3 not to undertake a development affecting the heritage significance of a place

11 **Examples—person whose work affects a place or object**

- 12 1 tradesperson providing trade services for the place or object
13 2 developer of the place or object
14 3 building certifier for the place

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

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

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

23 (a) immediate protection of the place or object is justified because
24 a serious and imminent threat exists that would harmfully
25 affect—

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

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

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

- 1 (4) A heritage direction must state the period for which it is in force.
2 (5) To remove any doubt, a heritage direction may be given for a place
3 or object whether or not the place or object is registered.

4 **63 Service of heritage direction**

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

8 *Note* For how directions may be served generally, see the [Legislation Act](#),
9 pt 19.5.

10 **49 Extension of heritage direction**
11 **Section 64 (1)**

12 *omit*

13 Minister

14 *substitute*

15 council

16 **50 Contravention of heritage direction—action by authorised**
17 **person**
18 **Section 66 (2)**

19 *substitute*

- 20 (2) An authorised person, with necessary assistance, may enter the
21 premises where the place or object to which the direction applies is
22 located and—
23 (a) do the thing stated in the direction; or
24 (b) do or finish any work stated in the direction; or
25 (c) direct or supervise another person that the authorised person
26 has asked to carry out a task mentioned in paragraph (a) or (b).

1 **51 Section 66 (4)**

2 *omit*

3 Minister

4 *substitute*

5 council

6 **52 New section 66 (8)**

7 *insert*

8 (8) In this section:

9 *necessary assistance*, for an authorised person entering premises,
10 includes the attendance of 1 or more people who, in the opinion of
11 the authorised person, have knowledge or skills that could assist the
12 authorised person to carry out his or her function.

13 **53 Diminishing heritage significance of place or object**
14 **New section 74 (5)**

15 *insert*

16 (5) In this section:

17 *place or object*—

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

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

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

1 **54 Exceptions to part 13 offences**
2 **New section 76 (2) (a) (vi) and (vii)**

- 3 *insert*
- 4 (vi) an excavation permit;
- 5 (vii) a statement of heritage effect approved by the council.

6 **55 Power to enter premises**
7 **Section 80 (1) (b) (i), new note**

- 8 *insert*
- 9 *Note* A registered place or object includes a provisionally
10 registered place or object (see s 11).

11 **56 Section 80 (2)**

- 12 *after*
- 13 of
- 14 *insert*
- 15 the

16 **57 Section 80 (5)**

- 17 *substitute*
- 18 (5) An authorised person may—
- 19 (a) for subsection (1) (a), (b) or (c)—enter the premises with
20 necessary assistance; and
- 21 (b) for subsection (1) (d)—enter the premises with necessary
22 assistance and force.
- 23 *Note* A search warrant to enter premises, issued under this Act, permits an
24 authorised person to enter premises with any necessary assistance and
25 force.

1 (6) In this section:

2 *necessary assistance*, for an authorised person entering premises,
3 includes the attendance of 1 or more people who, in the opinion of
4 the authorised person, have knowledge or skills that could assist the
5 authorised person carry out his or her function.

6 **58 Production of identity card**
7 **Section 81**

8 *after 1st mention of*

9 authorised person

10 *insert*

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

13 **59 Consent to entry**
14 **Section 82 (1)**

15 *omit*

16 section 80 (1) (b)

17 *substitute*

18 section 80 (1) (c)

19 **60 New section 82 (1) (b) (ia)**

20 *insert*

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

- 1 **61 New section 82 (2) (a) (ia)**
- 2 *insert*
- 3 (ia) the reason for, and identity of, any other person
- 4 accompanying the authorised person; and
- 5 **62 Power to require name and address**
- 6 **Section 85 (1)**
- 7 *omit*
- 8 just
- 9 **63 Warrants—application made other than in person**
- 10 **Section 87 (1)**
- 11 *after*
- 12 radio
- 13 *insert*
- 14 , email, letter
- 15 **64 Section 87 (4) and (5)**
- 16 *omit*
- 17 fax
- 18 *substitute*
- 19 give
- 20 **65 Section 87 (6)**
- 21 *omit*
- 22 faxed

66 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.

1 (6) In this section:

2 *heritage reporting day*, for a heritage report, means the day that is
3 1 month after the end of the heritage reporting period to which the
4 report relates.

5 *heritage reporting period* means a period of 3 years beginning on
6 1 July 2014, and each successive 3-year period.

7 **109 Assessment of heritage reports by council**

8 (1) If the council is given a heritage report by a public authority, the
9 council must review the report and give—

10 (a) the authority, in writing—

11 (i) any comments about the report; and

12 (ii) any recommendations relating to the conservation of a
13 heritage place or object mentioned in the report; and

14 (b) the Minister a written summary of the report and the council's
15 comments and recommendations (if any) on the report.

16 *Note* The council's comments, recommendations and summary must be given
17 as soon as possible (see [Legislation Act](#), s 151B).

18 (2) If the council makes a recommendation under subsection (1) (a) (ii),
19 the council may monitor the implementation of the
20 recommendation.

21 **109A Public reporting**

22 (1) A public authority must include information about the following in
23 its public authority annual report:

24 (a) action taken by the authority in response to any comments or
25 recommendations made by the council under section 109;

26 (b) any council comments or recommendations about which the
27 authority did not take action, and the reasons for not taking
28 action.

- 1 (2) In this section:
2 *public authority annual report*—see the *Annual Reports*
3 *(Government Agencies) Act 2004*, dictionary.

4 **67 Section 110**

5 *substitute*

6 **110 Conservation management plan**

- 7 (1) The council or the Minister, may, in writing—
8 (a) direct a public authority to prepare a conservation management
9 plan for a heritage place or object for which the authority is
10 responsible; and
11 (b) state a date, at least 1 month after the day the direction is given
12 for completion of the plan (the *completion date*).
13 (2) If a public authority is given a direction under subsection (1), the
14 authority must—
15 (a) draft the plan; and
16 (b) ensure the plan complies with any requirements prescribed by
17 regulation for a conservation management plan; and
18 (c) give the completed plan to the council by the completion date.
19 (3) If the council is satisfied that a conservation management plan
20 adequately manages a threat, or potential threat, to a heritage place
21 or object the council—
22 (a) may, in writing, approve the plan; and
23 (b) if the council approves the plan—must, in writing, tell the
24 public authority—
25 (i) that it has approved the plan; and
26 (ii) the date the plan was approved (the *approval date*).

- 1 (4) If the council is not satisfied that a conservation management plan
2 adequately manages a threat, or potential threat, to a heritage place
3 or object the council must, in writing—
4 (a) refuse to approve the plan; and
5 (b) tell the authority responsible for the plan the reasons why the
6 council is not satisfied with the plan; and
7 (c) state a completion date for the plan.
8 (5) The council must tell the public authority about the council's
9 decision under subsection (3) or (4) as far as practicable within
10 15 working days after making the decision.
11 (6) The authority responsible for a plan that is not approved under
12 subsection (4) must take into account the council's reasons for not
13 approving the plan, and give a revised plan to the council by the
14 completion date stated under subsection (4) (c).
15 (7) A public authority must comply, and promote compliance by other
16 entities, with a conservation management plan approved under this
17 section.
18 (8) The council or Minister must not give a direction to an authority
19 under subsection (1) in relation to a heritage place or object if—
20 (a) a direction has been given under subsection (1) in relation to
21 the place or object and the council has not yet approved a
22 conservation management plan for the place or object; or
23 (b) a conservation management plan for the place or object has
24 been approved by the council within the previous 5 years.

68 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*.

1 **114 Applications for review**

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

4 *Note* If a form is approved under the *ACT Civil and Administrative Tribunal*
5 *Act 2008* for the application, the form must be used.

6 **114A Stay of decision under review**

7 (1) This section applies if—

8 (a) the council makes a decision under section 40 (Decision about
9 registration) or section 47 (Decision about cancellation
10 proposal); and

11 (b) an interested person for the decision applies to the ACAT for a
12 review of the decision.

13 (2) The decision is stayed until the review, or an appeal to a court
14 arising from the review—

15 (a) has been finally decided; and

16 (b) the final decision on the review, or appeal arising from the
17 review, is consistent with the council's decision.

18 **69 Repository for Territory-owned Aboriginal objects**
19 **Section 115**

20 *omit*

70 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 or Minister—
 - (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 or Minister 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 or Minister 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.

- 1 **71 Delegation**
2 **Section 121**
- 3 *after*
4 Act
5 *insert*
6 or another territory law

- 7 **72 New part 20**
8 *insert*

9 **Part 20 Transitional—Heritage**
10 **Legislation Amendment Act 2013**

11 **200 Meaning of *commencement day*—pt 20**

12 In this part:

13 *commencement day* means the day the *Heritage Legislation*
14 *Amendment Act 2013*, section 23 commences.

15 **201 Application for provisional registration not determined**
16 **before commencement day**

- 17 (1) This section applies if immediately before the commencement
18 day—
19 (a) a place or object is nominated for provisional registration in an
20 application under section 28; and
21 (b) the application complies with section 28; and
22 (c) the council has not—
23 (i) dismissed the application under section 30; or

1 (ii) made a decision about whether or not to provisionally
2 register the nominated place or object; and

3 (d) the application has not been withdrawn.

4 (2) The application is taken to be accepted by the council under
5 section 29 (1) (b).

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

9 **202 Decisions or proposals made before commencement day**

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

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

17 (b) if the public consultation period has begun under section 37 for
18 a decision about registration under section 40—the decision
19 under section 40 and any matter under part 6 (including a
20 decision or action by the council or any other person) resulting
21 from the decision;

22 (c) if the public consultation period has begun under section 46 for
23 a decision about a cancellation proposal under section 47—the
24 decision under section 47 and any matter under part 7
25 (including a decision or action by the council or any other
26 person) resulting from the proposal.

1 **203 Transitional regulations**

- 2 (1) A regulation may prescribe transitional matters necessary or
3 convenient to be prescribed because of the enactment of the
4 *Heritage Legislation Amendment Act 2013*.
- 5 (2) A regulation may modify this part (including in relation to another
6 territory law) to make provision in relation to anything that, in the
7 Executive's opinion, is not, or is not adequately or appropriately,
8 dealt with in this part.
- 9 (3) A regulation under subsection (2) has effect despite anything
10 elsewhere in this Act or another territory law.

11 **204 Expiry—pt 20**

12 This part expires 5 years after the commencement day.

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

16 **73 Schedule 1**

17 *substitute*

18 **Schedule 1 Reviewable decisions**

19 (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

column 1 item	column 2 section	column 3 decision	column 4 decision-maker
5	62	revoke, or not revoke, heritage direction	council
6	95	give information discovery order	council

1 **74 Dictionary, note 2**

2 *insert*

- 3 • commissioner for revenue
- 4 • interest
- 5 • notification
- 6 • territory land

7 **75 Dictionary, new definitions**

8 *insert*

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

11 *appeal period* means the period within which an appeal may be
12 made.

13 **76 Dictionary, definitions of *cancellation proposal* and
14 *conservation management plan***

15 *substitute*

16 *cancellation proposal*—see section 43.

17 *conservation management plan*—see section 61J.

- 1 **77 Dictionary, new definitions**
- 2 *insert*
- 3 *conservator* means the conservator for flora and fauna.
- 4 *consultation notice*—see section 26.
- 5 *cultural heritage significance*—see section 10B.
- 6 *decision-maker*, for part 17 (Notification and review of decisions)—
- 7 see section 112.
- 8 *excavation application*—see section 61E.
- 9 *excavation permit*—see section 61F.
- 10 *Flora and Fauna Committee* means the committee established
- 11 under the *Nature Conservation Act 1980*, section 13.
- 12 *heritage decision* means a decision under—
- 13 (a) section 32 (Decision about provisional registration); or
- 14 (b) section 40 (Decision about registration); or
- 15 (c) section 47 (Decision about cancellation proposal).
- 16 *heritage finding*—see section 19A.
- 17 *heritage report*—see section 108.
- 18 **78 Dictionary, definition of *interested person***
- 19 *substitute*
- 20 *interested person*—see section 13.

- 1 **79 Dictionary, new definitions**
- 2 *insert*
- 3 *natural heritage significance*—see section 10A.
- 4 *nominated*, place or object, means a place or object the subject of a
- 5 nomination application that is accepted by the council under
- 6 section 29 (1) (b) (Decision about nomination application).
- 7 *Note 1* A nominated place or object is eligible to be considered for provisional
- 8 registration, but is not yet provisionally registered under s 32.
- 9 *Note 2* A place or object is taken to be a *nominated* place or object under
- 10 s 36 (End of period of provisional registration without decision).
- 11 **80 Dictionary, definition of *nomination***
- 12 *omit*
- 13 **81 Dictionary, new definition of *nomination application***
- 14 *insert*
- 15 *nomination application*—see section 28.
- 16 **82 Dictionary, definition of *nomination details***
- 17 *omit*
- 18 **83 Dictionary, new definition of *notice of finding***
- 19 *insert*
- 20 *notice of finding*—see section 19B.
- 21 **84 Dictionary, definition of *object***
- 22 *omit*
- 23 (2)

1 **85 Dictionary, definition of *place***

2 *omit*

3 (1)

4 **86 Dictionary, new definitions**

5 *insert*

6 ***precinct*** means an area that contains buildings, structures or other
7 constructed features that—

8 (a) are spatially or thematically connected; and

9 (b) have a distinct identity; and

10 (c) are located in, or make up, a discernable zone.

11 **Example—precinct**

12 1 a brick furnace, chimney and adjoining clay quarry

13 2 a powerhouse with adjoining railway track and rail yard

14 3 a homestead with associated structures, sheds and surrounding property

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

18 ***referable heritage matter*** means a matter requiring a decision
19 about—

20 (a) provisional registration under section 32 (Decision about
21 provisional registration)—

22 (i) for a place or object that the council's heritage finding
23 states should not be provisionally registered; or

24 (ii) required in the time stated under section 30 (Request for
25 urgent provisional registration); or

26 (b) registration of a place or object under section 40 (Decision
27 about registration); or

1 (c) cancellation of the registration of a place or object under
2 section 47 (Decision about cancellation proposal).

3 *register amendment application*—see section 24 (3).

4 **87 Dictionary, definition of *representative Aboriginal***
5 ***organisations***

6 *omit*

7 **88 Dictionary, new definition of *representative Aboriginal***
8 ***organisation***

9 *insert*

10 *representative Aboriginal organisation*—see section 14.

11 **89 Dictionary, definition of *restricted information***

12 *substitute*

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

15 **90 Dictionary, new definitions**

16 *insert*

17 *statement of heritage effect*—see section 61G.

18 *tree damaging activity*, for part 10A (Tree damaging activity etc)—
19 see section 61A.

20 *tree management plan*, for part 10A (Tree damaging activity etc)—
21 see the *Tree Protection Act 2005*, dictionary.

22 *urgent provisional registration application*—see section 30.

1 **Part 3 Tree Protection Act 2005**

2 **91 New sections 24A to 24C**

3 *insert*

4 **24A Approval application may need to be referred to other**
5 **entities**

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

1 **24B Time for referral entity to give advice on application**

2 (1) This section applies if an application is referred to an entity under
3 section 24A.

4 (2) The entity must give the conservator the entity's advice on the
5 application not later than 10 working days after the day the
6 conservator gives the application to the entity or, if a shorter period
7 is prescribed by regulation, not later than the end of the shorter
8 period.

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

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

13 **24C Effect of no response by referral entity**

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

17 **92 Decision on approval application**
18 **New section 25 (3) (ba)**

19 *insert*

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

93 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.

- 1 **34B Time for referral entity to give advice on proposal or**
2 **application**
- 3 (1) This section applies if a proposal or application is referred to an
4 entity under section 34A.
- 5 (2) The entity must give the conservator the entity's advice on the
6 proposal or application not later than 10 working days after the day
7 the conservator gives the proposal or application to the entity or, if a
8 shorter period is prescribed by regulation, not later than the end of
9 the shorter period.
- 10 *Note 1* A written agreement to an activity proposed in the proposal or
11 application is taken to be advice given in accordance with this section in
12 relation to an application (see s 34A (3)).
- 13 *Note 2* For how documents may be given, see the [Legislation Act](#), pt 19.5.
- 14 **34C Effect of no response by referral entity**
- 15 If an entity does not give advice on a proposal or application
16 referred to the entity in accordance with section 34B, the entity is
17 taken to have given advice that the entity supports the proposal or
18 application.
- 19 **94 Decision on tree management plan**
20 **New section 35 (4) (ba)**
- 21 *insert*
- 22 (ba) the advice (if any) of an entity to which the application was
23 referred under section 34A; and

1 **95 Schedule 1, part 1.1**

2 *substitute*

3 **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 2013.

3 Republications of amended laws

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

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