

2019

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for the Environment and Heritage)

Heritage Amendment Bill 2019

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(Minister for the Environment and Heritage)

Heritage Amendment Bill 2019

A Bill for

An Act to amend the *Heritage Act 2004*

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

1 **1 Name of Act**

2 This Act is the *Heritage Amendment Act 2019*.

3 **2 Commencement**

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

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

7 **3 Legislation amended**

8 This Act amends the *Heritage Act 2004*.

9 **4 Meaning of *interested person***
10 **New section 13 (2) (da) and (db)**

11 *insert*

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

- 14 (i) the person to whom the direction is given;
- 15 (ii) if the decision relates to a place—a person mentioned in
16 subsection (1) (d) (i);
- 17 (iii) if the decision relates to an object—a person mentioned in
18 subsection (1) (e) (i);

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

21 **5 Establishment of heritage register**
22 **New section 20 (4) (ba)**

23 *insert*

24 (ba) each repair damage direction;

1 **6 Application of heritage guidelines**
2 **New section 27 (2) (ba)**

3 *insert*

4 (ba) the giving of a repair damage direction;

5 **7 Heritage direction by council**
6 **Section 62 (3) (a)**

7 *omit*

8 a serious and imminent

9 *substitute*

10 an imminent

11 **8 Extension of heritage direction**
12 **Section 64 (1) (a)**

13 *omit*

14 a serious and imminent

15 *substitute*

16 an imminent

17 **9 New part 11A**

18 *insert*

19 **Part 11A Repair damage directions**

20 **67A Repair damage direction by council**

21 (1) This section applies if—

22 (a) a person causes damage to—

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

- 1 (ii) an Aboriginal place or an Aboriginal object; and
2 (b) the damage can be repaired; and
3 (c) the damage is not caused by conduct engaged in, in accordance
4 with any of the following:
5 (i) a heritage guideline;
6 (ii) a heritage direction;
7 (iii) a heritage agreement;
8 (iv) a conservation management plan approved by the council;
9 (v) development approval under the *Planning and*
10 *Development Act 2007*, chapter 7;
11 (vi) an excavation permit;
12 (vii) a statement of heritage effect approved by the council.
- 13 (2) The council may give any of the following people a written direction
14 (a *repair damage direction*) to do or not do something to repair
15 damage to the place or object:
16 (a) the owner or occupier of the place;
17 (b) the owner or custodian of the object;
18 (c) a person whose work affects a place or object that has heritage
19 significance.
- 20 **Examples—person whose work affects a place or object**
21 1 developer of a place
22 2 tradesperson providing trade services for a place or object
- 23 (3) A repair damage direction must be in writing and state—
24 (a) the place or object; and
25 (b) the damage to be repaired; and

- 1 (c) when the direction must be complied with, being a day at least
2 1 month after the direction is given to the person.

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

7 **67B Extension of repair damage direction**

- 8 (1) A person who has been given a repair damage direction may apply to
9 the council for an extension of time to comply with the direction.
- 10 (2) The application must—
11 (a) be in writing; and
12 (b) state the reasons why the extension is required.
- 13 (3) In deciding whether to extend the time, the council must consider the
14 reasons set out in the application.
- 15 (4) The council must—
16 (a) extend the time; or
17 (b) refuse to extend the time.
- 18 (5) If the council extends the time, the extension must not be for longer
19 than the time the council considers necessary for the damage to be
20 repaired.
- 21 (6) If the council refuses to extend the time, the council must give the
22 applicant—
23 (a) written notice of the refusal; and
24 (b) reasons for the refusal.

- 1 **67C Offence—fail to comply with repair damage direction**
- 2 (1) A person commits an offence if the person—
- 3 (a) is subject to a repair damage direction; and
- 4 (b) fails to comply with the direction within the later of—
- 5 (i) the time stated in the direction; and
- 6 (ii) if the council extends the time under section 67B—the
- 7 extended time.
- 8 Maximum penalty: 500 penalty units.
- 9 (2) This section does not apply to a person if the person has a reasonable
- 10 excuse for failing to comply with the repair damage direction.
- 11 *Note* The defendant has an evidential burden in relation to the matters
- 12 mentioned in s (2) (see [Criminal Code](#), s 58).
- 13 **67D Repair of damage by Territory**
- 14 (1) This section applies if a person—
- 15 (a) is subject to a repair damage direction; and
- 16 (b) fails to comply with the direction within the later of—
- 17 (i) the time stated in the direction; and
- 18 (ii) if the council extends the time under section 67B—the
- 19 extended time.
- 20 (2) An authorised person, with necessary assistance, may enter the
- 21 premises where the place or object to which the repair damage
- 22 direction applies is 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 has
- 26 asked to carry out a task mentioned in paragraph (a) or (b).

- 1 (3) However, the authorised person may only—
- 2 (a) enter the premises—
- 3 (i) between 8am and 6pm on a day; or
- 4 (ii) at any reasonable time with the occupier’s consent; and
- 5 (b) enter the premises necessary to carry out the task mentioned in
- 6 subsection (2); and
- 7 (c) remain at the premises until the task mentioned in subsection (2)
- 8 is complete.
- 9 (4) The reasonable costs incurred by the Territory in doing anything
- 10 under subsection (2) is a debt owing to the Territory by the person to
- 11 whom the direction was given.
- 12 *Note* An amount owing under a law may be recovered as a debt in a court of
- 13 competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).
- 14 (5) The council must, at least 7 days before the proposed action is to
- 15 begin—
- 16 (a) give the person written notice of the action proposed under
- 17 subsection (2); and
- 18 (b) endeavour to give each interested person for the place or object
- 19 written notice of the action proposed under subsection (2).
- 20 (6) The notice must include the following:
- 21 (a) a statement about the operation of this section;
- 22 (b) the purpose and nature of the proposed action;
- 23 (c) the parts of the place likely to be affected;
- 24 (d) the time or times when the action is proposed to be taken;
- 25 (e) a statement about the obligations of the authorised person and
- 26 the Territory under subsection (7).

- 1 (7) Section 97 (Damage etc to be minimised) and section 98
2 (Compensation for exercise of enforcement powers) apply to any
3 action taken under subsection (2) as if—
- 4 (a) it were the exercise of a function under part 14 (Enforcement)
5 by an authorised person or a person assisting an authorised
6 person; and
- 7 (b) all other necessary changes, including changes prescribed by
8 regulation, were made.
- 9 (8) In this section:
- 10 *necessary assistance*, for an authorised person entering premises,
11 includes the attendance of 1 or more people who, in the opinion of
12 the authorised person, have knowledge or skills that could assist in
13 carrying out the authorised person’s functions.

14 **10 Heritage order**
15 **New section 69 (3) (ba)**

16 *insert*

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

19 **11 Exceptions to part 13 offences**
20 **New section 76 (2) (a) (iia)**

21 *insert*

- 22 (iia) a repair damage direction;

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

3 *substitute*

4 (ii) give a heritage direction to—

5 (A) the person to whom the direction is given; or

6 (B) the owner or occupier; or

7 (iii) give a repair damage direction to—

8 (A) the person to whom the direction is given; or

9 (B) the owner or occupier; or

10 **13 Criminal liability of executive officers**
11 **Section 116 (6), definition of *relevant offence*, new**
12 **paragraph (aa)**

13 *insert*

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

16 **14 Reviewable decisions**
17 **Schedule 1, new items 5A and 5B**

18 *insert*

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

19 **15 Dictionary, new definition of *repair damage direction***

20 *insert*

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

Endnotes

1 Presentation speech

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

2 Notification

Notified under the [Legislation Act](#) on 2019.

3 Republications of amended laws

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

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