

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

REVISED

HERITAGE BILL 2004

EXPLANATORY STATEMENT

Presented by
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Minister for Urban Services

HERITAGE BILL 2004

EXPLANATORY STATEMENT

Outline

The Heritage Bill 2004 presents a new set of principles and processes for conserving significant heritage places and objects in the ACT. The approach provided in the *Land (Planning and Environment) Act 1991* (Land Act) has given rise to concern that has led to a review of the heritage provisions. The review commenced in 1999 as part of a wider review of the heritage function in the ACT, including consultation with the community and key stakeholders. A discussion paper was circulated to the community in 2001. The early legislative basis for reform was the release of the *Exposure Draft Heritage Bill 2002*. Following the release of the Exposure Draft, substantial further consultation took place. The Heritage Bill 2004 incorporates some elements of the exposure draft bill but makes significant reforms to processes dealing with the registration of heritage places and objects and the conservation of heritage places and objects in the ACT.

The Bill also incorporates, where practicable, the latest developments and practices dealing with heritage conservation that have been adopted by other jurisdictions around Australia in recent years.

This Bill contains provisions for the establishment of the Heritage Council; a Heritage Register (separate from the Territory Plan); registration processes for entry of significant heritage places and objects in the Register; heritage guidelines (which set out requirements for conserving the heritage significance of a place or object), offences relating to damaging heritage; heritage directions and enforcement; obligations of public authorities; and incentives for heritage conservation. It covers natural and cultural heritage (including Aboriginal heritage) and deals with both heritage places and objects.

This Bill sets out new provisions for protection and conservation of heritage places and objects in the Territory. The current provisions relating to heritage are in Part 3 of the *Land (Planning and Environment) Act 1991* (the Land Act), numerous other provisions in that Act and the *Heritage Objects Act 1991* (the Objects Act). This Bill repeals Part 3 of the Land Act (and many other provisions throughout the Land Act relating to the registration of heritage places) and establishes a new scheme for the conservation of heritage places and objects and heritage registration. The consequential amendments to the Land Act also deal with the integration of heritage matters into the development assessment process, providing opportunities for a more efficient and flexible scheme but involving the role of the Heritage Council in conservation of heritage values. The Objects Act is to be repealed, as heritage objects will be treated in the same manner as heritage places in the Heritage Act 2004.

The Bill establishes the Heritage Council that has the principal functions of conserving significant heritage places and objects in the Territory. The Council has specific functions in the registration process of nominated, provisionally registered and registered heritage places and objects. It keeps the Heritage Register and makes heritage guidelines on the conserving the heritage significance of places and objects.

It has an important advisory role in the protection of significant heritage places and objects affected by land development in the Territory.

The new Heritage Register will be on-line and available to the ACT Planning and Land Authority to enable the Authority to instantly be informed of changes in the Heritage Register and aspects relating to land, planning and development in the Territory, eg issuing of any heritage guidelines.

This explanatory statement includes an appendix on the new registration process, outlining all of the steps in the process, and an appendix explaining the involvement of the Heritage Council in providing advice on a development application within the land development and approval process of the ACT Planning and Land Authority.

Offences

The Bill contains a number of penalties. These offences dealing mainly with damage to heritage places and objects, publishing restricted information and regarding enforcement provisions. There is also a number of strict liability offences. A strict liability offence under section 23 of the Criminal Code means that there are no fault elements for any of the physical elements of the offence. That means that conduct alone is sufficient to make the defendant culpable. However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the Criminal Code provides that other defences may still be available for use in strict liability offences. Strict liability offences do not have a mental element, termed 'mens rea'. However, the actus reus, the physical actions, do have a mental element of their own, for example, voluntariness. For that reason, the general common law defences of insanity and automatism still apply as they go towards whether a person has done something voluntarily, as well as whether they intended to do the act.

Revenue/Cost Implications

There are no additional costs involved in the Bill as any costs related to the administration of the new system are to be met within existing financial resources.

Formal Clauses

Part 1- Preliminary

Clauses 1 and 2 are formal requirements. They deal with the short title of the Bill and its commencement provisions.

Clause 3 specifies the main objects of the Act. It also provides that functions must be exercised under the Act with the notion of retaining the natural and cultural heritage significance of the places and objects to which the legislation applies and also to achieve the greatest sustainable benefit to the community.

Clause 4 specifies that the Heritage Council must not register an individual tree under this Bill. This is to avoid duplication with provisions of the Tree Protection Act 2004. This does not prevent the registration of a place at which a tree or trees forms part of the heritage significance of the place.

Clause 5 provides for a dictionary of terms used within the Bill and notifies that the dictionary is located at the end of the Bill.

Clause 6 advises that the notes included within the Bill are explanatory and do not form part of the Bill .

Clause 7 provides that other legislation applies in relation to offences against this Act, in particular the Criminal Code.

Part 2 Important Concepts

This part defines the major concepts used in the Act that relate to heritage and heritage conservation. Most other definitions are included in the dictionary.

Clause 8 defines “place” and “object”. A place can be for example, a natural site or a structure made by people. Most of the entries in the ACT Heritage Register will be places.

Clause 9 defines “Aboriginal place” and “Aboriginal object.” The definition of Aboriginal place and object refers to places with their significance derived from Aboriginal tradition or the history, including contemporary history of any Aboriginal people.

Clause 10 provides for the meaning of “heritage significance” based on the criteria of heritage significance. These criteria are applied to the assessment of a place or object to determine whether the place or object has heritage significance.

Clause 11 defines the meaning of “registered” places and objects to be if they are provisionally registered or registered under Part 6 of the Act.

Clause 12 specifies the meaning of “registration details” in the registration of a place or object including the provision of a statement of heritage significance.

Clause 13 defines the meaning of “interested person” in terms of the Act. This term is used in relation to the registration process and of various stages when information is to be provided for opportunity to comment.

Clause 14 defines “representative Aboriginal organisation” to be those organisations declared as such by the Minister. It also establishes an arrangement where the Minister can set criteria to assess whether an organisation is a representative Aboriginal organisation. After setting these criteria, any declaration about representative organisations must be made in accordance with them. The criteria are to be disallowable in the Legislative Assembly.

Clause 15 specifies the use and application of the term “conservation management plan”.

Part 3 **Heritage Council**

Part 3 deals with provisions on the membership and functions of the Heritage Council.

Clause 16 establishes the ACT Heritage Council (the Council).

Clause 17 establishes the composition of the Council. This provision seeks to establish the expert and representative nature of the Council. The Council is to have eleven members.

Clause 18 defines the functions of the Council, and provides examples that do not limit the power of the Council.

Clause 19 allows for the procedures of the Council to be set by regulation.

Part 4 **Heritage Register**

This Part establishes the ACT Heritage Register and the recording of information to be entered in the Register. The Heritage Register is now not part of the Territory Plan. There are consequential amendments to the Land Act to allow for the Heritage Register to be removed from the Territory Plan. The Heritage Council is to be responsible for the Heritage Register and the heritage registration process. The Heritage Register will include heritage objects.

Clause 20 provides that the Council must keep a register of heritage places and heritage objects. It also specifies the details that must be included in the process of registering a place or object, including a statement of heritage significance. The Heritage Register must also include each heritage guideline, each heritage direction and each enforcement order.

Clause 21 enables the Council to approve an internet site for this Act and to publish a copy of the Heritage Register on the internet site. The public can have access and inspect the heritage register.

Clause 22 provides that restricted information on the register must not be disclosed publicly. It may be made available for inspection or copying only if approved by the Heritage Council.

Clause 23 provides that proof is not required about a matter recorded in the register if a copy of the matter is published on the internet site as approved in section 20.

Clause 24 provides that the Council may correct a mistake or an omission in the heritage register subject to the requirements of the regulations.

Part 5 Heritage guidelines

The legislation provides for the development and application of Heritage Guidelines. These are formulated by the Heritage Council and set the policy for how registered places and objects with heritage significance are to be conserved. They may control how development is to take place in an area which is a heritage place or contains a heritage object. They will be performance-based but may include mandatory provisions.

Clause 25 allows the Heritage Council to make heritage guidelines about how the heritage significance of a registered place or object is to be conserved. Guidelines may also be made about places or objects nominated for provisional registration. Such guidelines are disallowable instruments.

Clause 26 provides for the application of heritage guidelines to functions under the Heritage Act 2004 in relation to heritage places and objects. The application of guidelines is especially relevant in the giving of advice to the ACT Planning and Land Authority about the impact of development applications under section 58, the making of a heritage order, the making of a heritage agreement and the giving of a heritage direction.

Part 6 Registration of places and objects

This Part provides for the process of registration of heritage places and objects. There are a number of steps and time periods involved in the nomination and final registration of a heritage place or object. These steps are the initial nomination, provisional registration, public consultation, report to the Minister and then final registration which is subject to a potential appeal to the Administrative Appeals Tribunal. The process of determining registration entails notification and consultation.

Provisional registration is a process to put in place immediate protection while the more extended registration process, including consultation and possible appeals, is undertaken. Protection of these provisionally-registered places is provided through the notification process (s 32) and through the operation of Part 10.

The Heritage Council will administratively provide a notice of each nomination to the ACT Planning and Land Authority and each interested person. There are particular provisions concerning consultation for the registration of Aboriginal places and objects.

These steps are illustrated in a flow chart at Appendix A.

Division 6.1 Provisional registration

Clause 27 allows anyone to make a nomination to the council for a provisional change to the register.

Clause 28 allows anyone to apply to the Council for an urgent decision on the nomination for a place or object. A member of the Legislative Assembly can apply to obtain an urgent decision on a nominated place or object. The Council must use its best endeavours to decide within 20 working days after receiving the application whether or not to provisionally register the nominated place or object.

Clause 29 provides that where a nomination is made in relation to an Aboriginal place or object before making a decision about the nominated provisional change to the register, the Heritage Council must consult and consider the views of each representative Aboriginal organisation about the nomination.

Clause 30 requires the Heritage Council to decide whether or not to provisionally register each nominated place or object only if it is satisfied that the place or object may have heritage significance. A decision by the Council not to provisionally register a place or object is appellable to the Administrative Appeals Tribunal.

Clause 31 requires the Heritage Council in provisionally registering a place or object, to enter the registration details of the place or object in the register and indicate that the entry is provisional.

Clause 32 requires the Heritage Council to prepare a written notice about each provisional registration. The notice which is a notifiable instrument must be published in a daily newspaper as soon as possible.

Clause 33 states that the provisional registration is for a period of five months beginning on the day the place or object is provisionally registered.

Clause 34 provides for the extension of provisional registration by the Heritage Council making an application to the Minister to extend the period of provisional registration. The Minister would then make an extension. An extension would end after eight months after the place or object was provisionally registered. The decision concerning an extension is reviewable by the AAT.

Div 6.2 Registration

Clause 35 requires that a notice under section 34 (notice of decision about provisional registration) must include an invitation to make comments about the registration of the place or object within 4 weeks after the day it is notified. The Heritage Council is required to consider any comments made to the Council about the registration before the end of the consultation period.

Clause 36 requires the Council to report to the Minister after the period of provisional registration on the place or object and provide the Council's view on whether the place or object should be registered.

Clause 37 allows the Minister to direct the Council to give further consideration to the matters raised in or arising from a report given by the Council to the Minister in relation to the proposed registration of a place or object. The Minister must give the Council a direction in writing within 15 working days after the report is received by the Minister.

Clause 38 requires the Council to decide whether or not to register a provisionally registered place or object. Registration can only occur after the Council has considered any direction by the Minister under section 37 and it is satisfied that it has heritage significance. This decision is reviewable by the Administrative Appeals Tribunal.

Clause 39 requires the Council in registering a place or object to enter the registration details in the heritage register and remove any indication that the earlier registration was provisional. Registration can only occur if the appeal period has expired or any appeal has been finally decided and is unsuccessful.

Clause 40 requires the Council to prepare a written notice about its decision concerning the registration of a place or object within three working days. The notice is a notifiable instrument. The Council must apply its best endeavours to give a copy of the notice to each interested person within ten working days.

Part 7 Cancellation of Registration

Part 7 provides for the cancellation of an entry in the Heritage Register of a registered place or object. This Part is to provide for cases where a place or object has lost its heritage significance through processes or events such as damage or destruction, eg loss in a bushfire.

Clause 41 allows anyone to make a proposal to the Heritage Council to cancel the registration of a place or object under Division 6.2. The Heritage Council may refuse to consider frivolous or vexatious cancellation proposals.

Clause 42 requires the Heritage Council to give written notice of a proposal to cancel a registration. The notice is a notifiable instrument. The notice must be published in a daily newspaper as soon as practicable.

Clause 43 requires the Heritage Council to consult and consider the views of each representative Aboriginal organisation about a proposal to cancel a registration.

Clause 44 provides that a notice under section 44 must invite comments on the proposal to the Heritage Council within four weeks after the day the notice is notified. The Heritage Council must have regard to any such comments about the proposed cancellation.

Clause 45 requires the Heritage Council to consider whether or not to cancel the registration of the place or object. The Heritage Council's decision to cancel is based on the assessment that the place or object has no longer heritage significance. This decision is reviewable by the AAT.

Clause 46 specifies that the Heritage Council must enter in the register an indication that the registration has been cancelled.

Clause 47 provides for the notification of a decision about cancellation and the procedures to be followed by the Heritage Council in notifying interested persons.

Clause 48 deals with the partial cancellation of a place. The Heritage Council must amend the registration details for the place if a place is partially cancelled.

Part 8 Reporting discovery of unregistered Aboriginal places and objects

This Part contains provisions dealing with the reporting of the discovery of unregistered Aboriginal places and objects.

Clause 49 requires a person who discovers a place or object and has reasonable grounds for believing it is an Aboriginal place or object, to report the discovery to the Heritage Council within one week after the discovery. It is an offence of strict liability to contravene this section.

Clause 50 provides specific exceptions to Clause 49 regarding the obligation to report unregistered Aboriginal places and objects.

Part 9 Restricted information

This part deals with restricted information on the register pertaining to registered heritage places and objects. There may be limited access to information of registered places and objects on the register. In general, restricted information is mainly concerned with information relating to Aboriginal places and objects.

Clause 51 provides that the Heritage Council may in writing declare particular information about a place or object's location to be restricted information. The Council may make the declaration only if it is satisfied that public disclosure of the information would be likely to have a substantial adverse effect on the heritage significance of the place or object.

Clause 52 provides that information about the location or nature of an Aboriginal place or object is restricted information unless the Heritage Council declares in writing that it is not restricted.

Clause 53 provides that a person must not publish restricted information about a place or object unless the information is published in accordance with an approval under section 56. It is an offence to publish restricted information.

Clause 54 allows the Heritage Council to approve the publication of restricted information about a place or object if it is satisfied on reasonable grounds that the publication will not have a substantial adverse effect on the heritage significance of the place or object. This decision is reviewable by the Administrative Appeals Tribunal.

Clause 55 provides that if land is offered for sale the interested person for the land or someone considering an interest in the land can apply to the Heritage Council for access to restricted information relevant to the conservation and use of the land. The Council must give the applicant the restricted information.

Part 10 Land Development Applications

This Part deals with the conservation of heritage places and objects in the land development process in the Territory. The provisions reflect the relationship between the ACT Planning and Land Authority and the Heritage Council in dealing with land development applications and approvals. The consequential amendments to the Land Act will have the effect of obliging the Planning and Land Authority to notify the Heritage Council of a development application related to a nominated or registered place. The Heritage Council in turn provides advice to the Planning and Land Authority about the effect of the proposed development on the heritage significance of the place or object and on any conditions to be applied to the development approval to avoid or minimise such impacts. In the case of a nominated place, the advice will reflect what is known about the heritage values of the place or object. The Planning and Land Authority will be obliged to ensure that the impact of any proposed development on the heritage significance of the place is avoided or minimised, that is, reduced to the smallest possible amount or degree. A flow chart illustrating these steps is at Appendix B.

Clause 56 defines the meaning of “development” as a development application under Part 6 of the Land Act.

Clause 57 provides a simplified outline of Part 10 of this Act and the link to and operation of Part 6 of the Land Act.

Clause 58 applies where the Heritage Council decides that a development would affect the heritage significance of a nominated or registered place or object. It allows the Council to consider development applications as notified to the Council by the ACT Planning and Land Authority. The Heritage Council must consider the development application and notify the ACT Planning and Land Authority within 15 working days of the receipt of the written notice on the development application.

Section 59 requires the Heritage Council in providing advice under section 58 to include an assessment of the effect of the development on the heritage significance of the place or object and the basis for its decision. The advice may set out proposed conditions on the approval of a development with conditions requiring compliance.

Part 11 Heritage directions

These provisions establish a range of directions dealing with heritage matters. They allow the Minister to make directions to intervene in situations where the heritage values of places and objects in the Territory are at risk, or are being adversely affected by the actions (or inaction) of the owner of the place or object in question.

Clause 60 empowers the Minister to give directions to the owner or occupier of a place to do or not to do something to conserve the heritage significance of the place or object. The Council is required to recommend the giving of the direction and the Minister is required to be satisfied that there is a serious and imminent threat to the heritage significance of the place or object. The direction can be given in relation to an unregistered place or object as well as a registered place or object. The decision of the Minister to make a direction is reviewable by the Administrative Appeals Tribunal.

Clause 61 specifies that a heritage direction may only be given to the owner or occupier of a place by leaving it secured in a conspicuous position at the place.

Clause 62 allows the Supreme Court on application by the Minister to extend the period for which a heritage direction is in force.

Clause 63 provides that it is an offence to intentionally contravene a heritage direction. It is a strict liability offence if a person commits an offence in contravening a requirement of a heritage direction.

Clause 64 enables the Territory, where a person served with a heritage direction contravenes the direction, to enter the place or land where the place or object is located and take action as stated in the heritage direction. The Minister is required to endeavour to give each interested person written notice of the action proposed before the action is commenced.

Clause 65 provides that an authorised person may apply to the Magistrates Court to make an order to enable the officer to exercise functions under section 64(2).

Part 12 Civil Protection of heritage

This Part provides civil remedies for the protection of heritage by giving the Heritage Council standing to take action on behalf of the Territory in the Supreme Court or someone else with the Supreme Court's leave.

Clause 66 enables the Heritage Council on behalf of the Territory or someone else with the leave of the Supreme Court to apply for a heritage order. A person other than the Council can only get standing if they have asked the Heritage Council to apply for a heritage order and the Council has failed to do so within a reasonable time, and it is in the public interest that the person be given standing.

Clause 67 enables the Court to make an order, on an application under section 65, restraining the respondent from contravening a defined offence and about anything else the Court considers appropriate for giving effect to the order. The Court must be satisfied that the respondent has contravened, is contravening, or is likely to contravene a defined offence and an order is necessary to avoid material harm to the heritage significance of a place or object. The section states what a "defined offence provision" means with respect to sections 49, 53, 63, 71, 72, 73 and 92 of the Heritage Act 2004.

Clause 68 allows the Court to make an interim order under section 67 before deciding an application for an order.

Clause 69 provides that in deciding the amount of costs to be awarded against a party to a proceeding under section 67, the Supreme Court must have regard to whether the proceeding brought before it is in the public interest.

Clause 70 enables the Supreme Court to order an applicant for a heritage order under section 71 to give (i) security for the payment of costs that may be awarded against the applicant if the application is subsequently dismissed or (ii) an undertaking about the payment of an amount that may be awarded against the applicant under section 70.

Clause 71 empowers the Court to award damages against an applicant for heritage orders where it is satisfied that there was no relevant contravention, the respondent suffered loss or damage as a result of the order being made, and it is otherwise appropriate to do so.

Part 13 Heritage Offences

This Part establishes a number of heritage offences related to the act or conduct of diminishing the heritage significance of places and objects.

Clause 72 provides that it is an offence if a person engages in conduct that diminishes the heritage significance of a registered place or object. There are three situations related to the act of the offence: the person is reckless about whether the conduct diminishes the heritage significance; the person is negligent or the person directly engages in conduct that diminishes the heritage significance of a place or object an offence is committed. The latter situation is a strict liability offence.

Clause 73 provides that it is an offence if a person engages in conduct that causes damage to an Aboriginal place or object and is reckless about whether the conduct would diminish the heritage significance of the place. It is also an offence if a person is negligent about whether the conduct would diminish the heritage significance of the place or object. If a person directly commits the offence it is a strict liability offence.

Clause 74 provides a number of exceptions to the offences under this Part.

Part 14 Enforcement

This part provides for a number of powers to enable authorised officers to enforce the provisions of the Act.

Division 14.1 General

Clause 75 provides for the definitions of “connected”, “occupier” and “offence” as applied to this Part of the legislation.

Division 14.2 Authorised people

Clause 76 empowers the chief executive to appoint persons as authorised persons for the Act.

Clause 77 requires the chief executive to give each authorised person an identity card that states the person's name and appointment as an authorised person. An offence is committed if the authorised person on ceasing to be an authorised person does not return the person's identity card to the chief executive.

Division 14.3 Powers of authorised people

Clause 78 establishes the procedures required for an authorised officer to obtain consent to entry, and the requirement for giving acknowledgement of that consent to the occupier of the premises.

Clause 79 prevents an authorised officer from remaining at an entered premises if the authorised person does not produce his or her identity card when asked by the occupier.

Clause 80 establishes the procedures required for an authorised officer to obtain consent to entry, and the requirement for giving acknowledgement of that consent.

Clause 81 specifies the general powers an authorised person who enters premises may do on entry to premises.

Clause 82 specifies the powers under which an authorised person who enters premises may seize things. A person commits an offence if the person interferes with a seized thing or anything containing a seized thing to which access has been restricted.

Clause 83 enables an authorised person to require a person to state their name and address providing the authorised officer has tell the person the reason for the requirement. It is an offence for a person to contravene this requirement.

Division 14.4 Search warrants

Clause 84 makes provision for an authorised person to apply to a magistrate for a warrant to enter premises. The section also sets out the power for a magistrate to issue a warrant. The warrant expires after 14 days of the warrant's issue.

Clause 85 enables an authorised person to apply for a warrant by fax, phone, radio or other form of distant communication if the authorised person considers it necessary because of urgent circumstances or other special circumstances. The section also sets out the procedures for recording a warrant issued by a distant application (fax, phone radio or other form of communication).

Clause 86 requires that before an authorised person enters premises under a search warrant announce that the authorised person is authorised person to enter the

premises. Such an announcement is not required if the authorised person believes on reasonable grounds that immediate entry is required on safety grounds.

Clause 87 provides that the authorised person or a person assisting must make available to the occupier of the premises a copy of the warrant and a document setting out the rights and obligations of the person.

Clause 88 entitles the occupier of a premises to be present while the search is being conducted, providing the person does not impede the search.

Division 14.5 Return and forfeiture of things seized

Clause 89 requires the authorised person to give as soon as practicable a receipt to the person whose thing has been seized.

Clause 90 provides for the circumstances in which a thing found at a premises entered under a search warrant may be moved to another place for examination or processing. The thing may be moved to another place for examination or processing for no longer than 72 hours but an extension may be sought if the thing cannot be examined or processed within 72 hours.

Clause 91 provides that a person is entitled to inspect a thing that has been seized and if it is a document to take extracts from it or make copies of it.

Clause 92 sets out the circumstances in which that a thing that has been seized must be returned to its owner or reasonable compensation be paid to the owner by the Territory for the loss of the thing

Division 14.6 Miscellaneous

Clause 93 enables the Council where there are reasonable grounds to give an order requiring a person to give information or produce documents to the Council required for the administration of the Act. These are termed information discovery orders.

Clause 94 that it is an offence if a person contravenes an information discovery order.

Clause 95 requires that in the exercise of a function under this Part, an authorised person must take all reasonable steps to ensure that the authorised person and any person assisting the authorised person causes as little damage or detriment as practicable.

Clause 96 enables a person to claim compensation from the Territory if the person suffers a loss or expense due to the exercise or purported exercise of a function under this Part by an authorised person.

Part 15 **Heritage agreements**

This Part deals with the provision of heritage agreements. These allow the Minister to enter into an agreement with a person to conserve the heritage significance of a registered place or object.

Clause 97 allows the Minister to enter into a heritage agreement with the owner of a registered place or object, on the advice of the Council, and to make regulations exempting that place (or land where a place or object is located) from specified provisions of a Territory law. Where it is proposed to introduce such regulations, consultation will occur with the relevant government agencies and authorities.

Clause 98 sets out what provisions that may be included in a heritage agreement.

Clause 99 provides that the Minister may, in the advice of Heritage Council amend or end a heritage agreement by consent of the parties, or as provided in the original agreement.

Clause 100 provides that heritage agreements are to last for the time stated in the agreement.

Clause 101 provides that a heritage agreement will also bind future owners of the land.

Clause 102 allows a party to an agreement to seek Supreme Court orders to require the other party to comply with the agreement.

Clause 103 allows the Heritage Council to provide financial, technical or other assistance to owners of heritage places and objects, as it considers necessary.

Part 16 **Heritage and public authorities**

These provisions relate to how ACT public authorities are to take action to identify and manage heritage places and objects that are their responsibility.

Clause 104 adopts the meaning of “public authority” as defined in the *Annual Reports (Government Agencies) Act 2004*.

Clause 105 defines heritage place and object in relation to a public authority. Places and objects controlled, owned or occupied by an authority that are registered, meet the significance criteria or are Aboriginal places and objects meet the definition.

Clause 106 obliges public authorities to give a report each year as to what heritage places and objects they have held during the course of the year. The report will not need to be given in the first year after the provision commences (allowing time for an audit) and after the first report, subsequent reports need only be on changes to what is held.

Clause 107 establishes a requirement for public authorities to conduct a heritage audit within 2 years of the commencement of the Act. A written report must be prepared about the audit to the Council within 3 years of the commencement of the Act.

Clause 108 empowers the Council to require public authorities to prepare conservation management plans for places and objects held by the authority.

Part 17 **Review of decisions**

This Part provides for the review of decisions of the Heritage Council by the Administrative Appeals Tribunal.

Clause 109 provides that a decision listed in respect to the following sections is a reviewable decision: sections 30, 34, 38, 46, 54, and 60(including a decision to make or not a heritage direction or a decision to revoke or not revoke a heritage direction).

Clause 110 requires the decision maker of a reviewable decision to provide a written notice of the decision to each interested person for the place or object to which the decision relates. The notice to the person must conform with the requirements of the *Administrative Appeal Tribunal Act 1989*.

Clause 111 enables a person to apply to the Administrative Appeals Tribunal for a review of a reviewable decision.

Part 18 **Miscellaneous**

Clause 112 provides that the Minister must ensure the keeping or provide for the keeping of a repository for Aboriginal objects owned by the Territory.

Clause 113 provides that an executive officer of a corporation commits an offence where the corporation contravenes a provision of the act and under specified circumstances in the legislation. There are certain specified factors that a court must have regard to in deciding whether the executive officer has contravened the Act.

Clause 114 provides that a document may be given to the Heritage Council if it is given to the chief executive.

Clause 115 provides legal immunity for members of the heritage Council and authorised officers who act in good faith in the exercise of their powers.

Clause 116 empowers the Council to approve forms for the Act. This will include forms for nomination of places and objects, if it becomes necessary. An approved form is a notifiable instrument.

Clause 118 provides the standard power for the Minister to determine fees for the Act.

Clause 116 allows the Heritage Council to delegate its functions to the chief executive (of the Department administering the Act).

Clause 119 establishes a general regulation-making power for the Executive for this Act. Specific issues to be dealt with by regulation are dealt with in the body of the Act.

Clause 120 establishes a requirement for review of the Act in 5 years, with a report to be made to the Assembly in 6 years.

Part 19 **Transitional provisions**

Clause 121 defines commencement day, Heritage Objects Act, old heritage register objects, old heritage register places, the Land Act and the Territory Plan for this Part.

Clause 122 provides for the repeal of the *Heritage Objects Act 1991*.

Clause 123 makes provision for the consequential amendments of Acts and statutory instruments in schedule 1 of this Act.

Clause 124 deals with the application for registration of old heritage places under the Land Act.

Clause 125 provides that a place on the old register is to be treated as registered under division 6.2 of the Heritage Act with relevant details of the old registration to be entered accordingly. To overcome any doubt the Heritage Council may amend the register to reflect the operation of this section.

Clause 126 provides that a conservation requirement specified in an old heritage places register is taken to be a heritage guideline for the place.

Clause 127 provides that an object included in an old heritage objects register is treated as registered under 6.2 of the Heritage Act with relevant details of the old registration to be entered accordingly. To overcome any doubt the Heritage Council may amend the register to reflect the operation of this section.

Clause 128 provides that a conservation requirement specified in an old heritage objects register is taken to be a heritage guideline for the object.

Clause 129 provides that restricted information on an old heritage places register or an old heritage object register continues to be restricted information.

Clause 130 provides that transitional regulations may prescribe savings or transitional matters that are necessary or convenient for the enactment of the Heritage Act 2004.

Clause 131 provides that the regulations may modify the operation of this Part to make provision in relation to any matter that is not already or not adequately dealt with in this Part.

Clause 132 provides that Part 19 expires one year after the commencement day of the Heritage Act 2004.

Schedule 1 Consequential amendments

Part 1.1 Administrative Appeals Tribunal Act 1989

Item 1.1 provides for the inclusion of the Heritage Act 2004 as a statute in which an application for review can be made to the Tribunal under Division 4.5.

Item 1.2 provides for the inclusion of the Heritage Act 2004 as a statute in which an application for review can be made to the Tribunal under Division 4.5.

Part 1.2 Administrative Decisions (Judicial Review) Act 1989

Item 1.3 omits in section 9(2)(b)(iii) the Heritage Objects Act 1991 and substitutes the Heritage Act 2004.

Part 1.3 Community Title Act 2001

Item 1.4 omits section 10(3) and substitutes the following: “the Planning and Land Authority may refuse to approve a community title scheme if the proposal is inconsistent with conservation requirements under the Heritage Act or the Land Act.”

Part 1.4 Environment Protection Act 1997

Item 1.5 substitutes in section 4(1) paragraph (b) the definition of “area of high conservation value”, the following the “a place, other than a structure or group of structures, registered under the Heritage Act 2004; or”

Item 1.6 in section 4(1) substitutes the definition of “heritage register” for “heritage places register” as provided in section 18 of the Heritage Act 2004.

Item 1.7 in section 164(2) substitutes the following: “A certificate purporting to be signed by the Planning and Land Authority stating that an area is an area in the Territory Plan for the definition of area of high conservation value, paragraph (a), paragraph (c), or paragraph (d) is evidence of the matters stated.”

Part 1.5 Land (Planning and Environment) Act 1991

These amendments mainly result from omitting the Heritage Part (Part 3) and related provisions from the Land Act.

Item 1.8 replaces in Section 5 in the definition of background papers, paragraph (b) (iii) the following “any recommendation or submission made under section 17 Consultation with Heritage Council and”. The change is required because the Heritage Register is now not part of the Land Act and because there is now a process in which recommendations or submissions can be made to the Minister for Planning on development proposals.

Item 1.9 replaces in Section 5 in the definition of background papers, paragraph (c)(i) with “a direction mentioned in paragraph (b)(i); or”

Item 1.10 replaces in Section 5 in the definition of background papers, paragraph (c)(iii) with the following “any recommendation or submission made under section 17 Consultation with Heritage Council and”. The change is required because the Heritage Register is now not part of the Land Act and because there is now a process in which recommendations or submissions can be made to the ACT Planning and Land Authority.

Item 1.11 Section 5 in the definition of background papers, paragraph (d) is omitted as the process is no longer operative.

Item 1.12 provides for the renumbering of paragraphs and subparagraphs of section 5.

Item 1.13 provides for the re-naming of section 7 to be Object of plan

Item 1.14 provides in Object of Plan for the omission of section 7(3)(d) as the heritage register is now not to be part of the Territory Plan.

Item 1.15 provides for the renumbering of paragraphs and subparagraphs of section 7 (3) when the Act is next published.

Item 1.16 omits subsection 9(3) as the heritage register is no longer to be part of the Territory Plan.

Item 1.17 provides for the renumbering when the Act is next published.

Item 1.18 omits sections 10 and 11 as the interim heritage register will no longer exist and the heritage register is no longer to be part of the Territory Plan.

Item 1.19 omits section 17 to be replaced by this section which deals with consultation with the Heritage Council. It provides that when preparing a draft variation plan ACTPLA must consult the Heritage Council and consider any recommendation or submission made by the Heritage Council in relation to the variation.

Item 1.20 substitutes for section 19A(1) “A consultation notice under section 19 must state whether or not section 9 (Effect of draft variation) applies in relation to the draft variation.”

Item 1.21 omits from section 24(1)(e) “or the heritage council”.

Item 1.22 omits Part 3 as provisions dealing with heritage are now covered by the Heritage Act 2004.

Item 1.23 substitutes in the definition of development in section 222, paragraph (c) “the carrying out of work that would affect the landscape of the land except if the land (i) is leased for residential purposes only; and (ii) is not registered, or nominated for provisional registration, under the Heritage Act 2004”.

Item 1.24 inserts new paragraphs 227(1)(ba) and (bb) dealing with each notice given to the Heritage Council under section 229 of a development application that relates to place or object that is registered, or a nominated for provisional registration, and the giving of advice by the Heritage Council to the ACT Planning and Land Authority about the effect of each development.

Item 1.25 provides for the renumbering of paragraphs and subparagraphs of section 227(1) when the Act is next published.

Item 1.26 substitutes in section 229(4)(a) the requirement that the ACTPLA must give the Heritage Council a notice of each application, a copy of each application and a copy of each objection or comments about the development that relates to a place registered, or nominated for registration, under the Heritage Act 2004.

Item 1.27 inserts a new section 229(2)(1A) requiring the ACTPLA, if an application relates to a place or object that is registered, or nominated for provisional registration, to give a copy of the direction that applications be submitted to the Minister, to the Heritage Council.

Item 1.28 substitutes in section 229(2)(a) the requirement that ACTPLA must give the Minister information and documents received by ACTPLA in relation to an application including any advice received under the Heritage Act 2004.

Item 1.29 substitutes in section 229B(6) new provisions for dealing with the call-in powers of the Minister in relation to development applications and ACTPLA. The provision requires the Minister to have the advice of the Heritage Council about the effect of a development on the heritage significance of a place and has the comments of the ACT Planning and Land Authority.

Item 1.30 provides for the renumbering of paragraphs and subparagraphs of section 229B(6) when the Act is next published.

Item 1.31 substitutes a revised section 231 dealing with matters to be considered by the ACT Planning and Land Authority. This includes advice given by the Heritage Council to the Authority and on how the Authority is to minimise the impact on the heritage significance of the proposed development. It includes a requirement for ACTPLA to consult with representative Aboriginal organisations if advice from the Heritage Council indicates development would be affected by heritage guidelines relating to a place or object of significance to Aboriginal people.

Item 1.32 inserts a new section 244A which provides that if an application relates to a place registered, or nominated for provisional registration, under the Heritage Act 2004, the Minister must tell the Heritage Council about the decision to approve or refuse the application and give the Council a copy of the decision.

Item 1.33 amends subsection 245(3)(g) by inserting the heritage significance of a place registered, or nominated for provisional registration, under the Heritage Act 2004.

Item 1.34 substitutes in section 253(b) approval with respect to a place registered, or nominated for provisional registration, under the Heritage Act 2004.

Item 1.35 inserts new section 254(3)(ba) to provide the ACT Planning and Land Authority to give a written notice to the Heritage Council if the order sought relates to a place or object registered, or nominated for provisional registration, under the Heritage Act 2004.

Item 1.36 provides for the renumbering of paragraphs of section 254(3) when the Act is next published under the Legislation Act.

Item 1.37 inserts a new section 255 (2)(ba) to require the ACT Planning and Land Authority to give a written notice to the Heritage Council if the order sought relates to a place or object registered, or nominated for provisional registration, under the Heritage Act 2004.

Item 1.38 provides for the renumbering of paragraphs of section 255(2)(ba) when the Act is next published under the Legislation Act.

Item 1.39 inserts a new section 275(1A) removing any doubt that the Heritage Council to apply to the Administrative Appeals Tribunal for a review of a decision mentioned in subsection 275 (1).

Item 1.40 provides for the renumbering of subsections when the Act is next published under the Legislation Act.

Item 1.41 substitutes in section 282A(1) that the application may be made to the AAT for review of a decision mentioned in subsection (3) or (4) or a decision mentioned in schedule 4, part 4.2, column 4.

Item 1.42 inserts a new section dealing with the omission of the heritage places register through a Territory Plan Variation. The ACT Planning and Land Authority is required to make amendments to the Territory Plan as a result of the omission of the heritage places register through the Heritage Act 2004. This is to be done by a disallowable instrument.

Item 1.43 omits Schedule 2 from the Land Act as it is now placed as a section in the Heritage Act 2004.

Item 1.44 omits in schedule 4, part 4.2, items 1-9.

Item 1.45 provides for the renumbering of paragraphs and subparagraphs of schedule 4, part 4.2 when the Act is next published.

Item 1.46 substitutes in schedule 5, item 1 (Activities subject to orders) the reference to the Heritage Act 2004.

Item 1.47 omits from the Dictionary the definitions of “Aboriginal place”, “Aboriginal object”, “Aboriginal tradition”, “chairperson”, “compensation”,

“conservation”, “deputy chairperson” and “expert member”. These terms are no longer required.

Item 1.48 substitutes in the Dictionary definitions of “heritage council”, “heritage object”, “heritage objects register”, “heritage place”, “heritage places register” and “heritage significance” as per the Heritage Act 2004.

Items 1.49 omits the listed terms from the Dictionary as they are now no longer applicable.

Part 1.6 Land (Planning and Environment)(Bushfire Emergency) Regulations 1992

Item 1.50 substitutes in Regulation 7(5), definition of specified land, paragraph (b) the following “leased for residential purposes and is not a place registered under the Heritage Act 2004”.

Part 1.7 Land (Planning and Environment) Regulations 1992

Item 1.51 substitutes the following in Regulation 40(4(b) of the Land (Planning and Environment) Regulations that “(i) affects a place that is registered or nominated for provisional registration under the Heritage Act 2004 and (ii) would be inconsistent with a heritage guideline applying to the place; or”

Part 1.7 Legislation Act

Item 1.52 inserts new definitions of “heritage council” and “heritage register”.

Part 1.8 Territory Plan

Item 1.53 omits the Heritage places register from the Territory Plan.

Part 1.9 Roads and Public Places Act 1937

Item 1.54 inserts a new section 15BA which would apply if an application under section 15B relates to the placement of an object at a place registered, or nominated for provisional registration, under the Heritage Act 2004. It requires the Minister to give a copy of the application to the Heritage Council and consider any written recommendations given by the Council.

Part 1.10 Utilities Act 2000

Item 1.55 inserts a new section 110A dealing with network operations affecting the heritage significance of a place or object whereby if a notice under section 109 or section 110 is about network operations that affect place or object that is registered, or nominated for provisional registration, under the Heritage Act 2004, the utility must give the Heritage Council a copy of the notice before the operations begin.

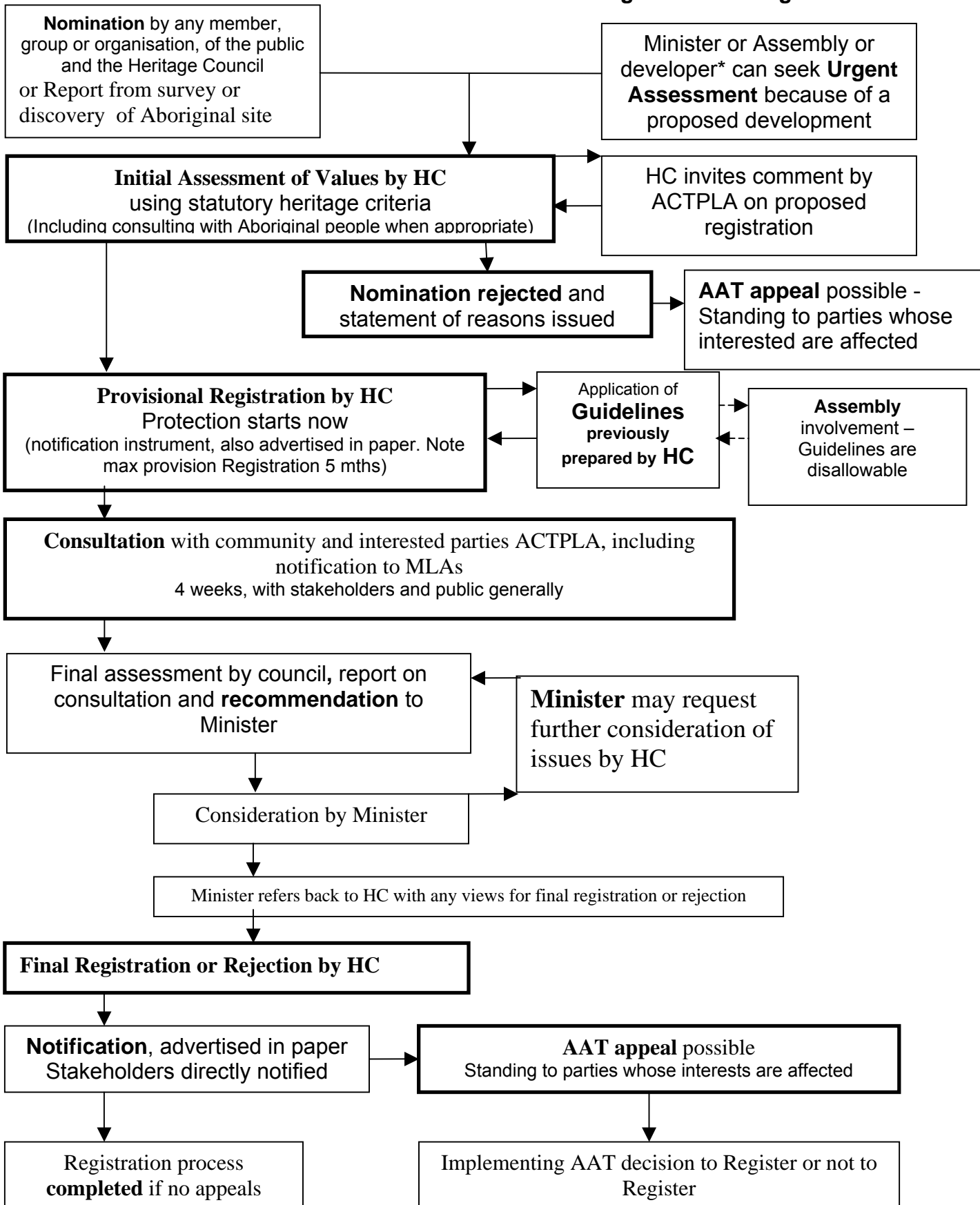
Item 1.56 inserts a new section 125A requiring if a notice under section 125 is required the utility must also give a copy of the notice to the Heritage Council as soon as practicable.

The Dictionary as provided in section 3 of the *Heritage Act 2004* sets out the definitions for the legislation.

Proposed Revised Registration Process for Heritage Places and Objects Appendix A

Normal Process

Urgent Processing



REVISED DA PROCESS

Initial Stage: Developer contacts ACTPLA with proposed development concept

- Pre Heritage Act Statutory Process**
(Regulations under Land Act)
- Discussion with all relevant parties (including developer, HC & ACTPLA)
 - Refer developer to heritage register entry and relevant guidelines
 - If nominated, may request urgent decision to clarify heritage status
 - Initial consultation by developer
 - Heritage impact statement prepared by developer to HC format
 - Sign off (by HC amongst others) on HQSD report (in principle agreement as long as the DA is consistent with HQSD)

Formal Statutory Process of development application

