

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

HERITAGE AMENDMENT REGULATION 2014 (No 1)

SUBORDINATE LAW No SL2014-24

Explanatory Statement

Circulated by authority of
Mr Mick Gentleman MLA
Minister for Planning

Outline

Under Section 19 of the *Heritage Act 2004* (the Act) (Procedures of Council) regulations may prescribe the procedures of the Council including its decision-making powers.

In 2006 Heritage Regulations were implemented, to make provision for calling Council meetings, presiding member at Council meetings, quorum at Council meetings, voting at Council meetings, conduct of Council meetings and disclosure of interests by Council members.

A recent review of the Act and subsequent amendments to it provide a timely opportunity to make amendments to the Regulation, the need for which has become apparent during the seven years of their implementation.

The Amendment Regulation clarifies provisions contained in the Regulation, but does not result in any significant change to the operation or function of the Regulation. It ensures efficient and effective procedures of the Council.

Detailed explanation of formal clauses

Clause 1 – Name of regulation

Clause 1 is a formal requirement. It names the Regulation as the *Heritage Amendment Regulation 2014 (No 1)*.

Clause 2 - Commencement

Clause 2 is a formal requirement. It states that the Regulation commences on the commencement of the *Heritage Legislation Amendment Act 2014*.

Clause 3 - Legislation amended

Clause 3 notes that the Regulation amends the *Heritage Regulation 2006*.

Clause 4 – Section 5(3)

Section 5 pertains to the calling of Heritage Council meetings. Clause 4 clarifies that the chairperson or deputy chairperson, upon calling a meeting, is considered the convenor.

This is a technical amendment only and does not alter or change the intent or meaning of this section.

Clause 5 – Section 5(4)

Section 5(4) of the *Heritage Regulation 2006* requires that five days notice is given in order to call a meeting of the Council.

Clause 5 amends this section to enable urgent meetings to be called, without the need for five days notice. Where an urgent meeting is called, clause 5 makes provision that the person calling the meeting (the chairperson or deputy chairperson) must give other members written notice of particulars of the meeting as soon as practicable before the meeting.

Clause 5 further amends the provisions at Section 5(4) such that members may not be required to attend meetings in person. For example, meetings may be held electronically, via telephone or email communication.

Existing provisions at section 5 will remain, including that if members are required to attend the meeting in person, the convenor must provide details about the meeting location. The convenor must also continue to provide an agenda for the meeting.

Clause 6 – Section 6(3)

Clause 6 amends wording from ‘appointed member’ to ‘voting member’.

The amendment introduced by clause 6 requires that, in the absence of the chairperson and deputy chairperson, a presiding member must be a voting member. The clause also clarifies that the presiding member must be chosen by a majority of voting members.

Clause 7 – Section 7

Clause 7 clarifies that a quorum of Council members is five voting members. It is the intent of this clause that five voting members must be able to participate in each decision or matter to be determined.

Clause 8 – Section 8

Section 8 of the Regulations pertains to voting at Council meetings. Clause 8 clarifies that only voting members are able to vote on a question to be decided.

Clause 9 – Section 9(4)

Clause 9 clarifies that only voting members are able to participate in making a resolution of the Council.

Clause 9 also clarifies that, where there are an equal number of votes in favour and in opposition of a proposal, the voting member presiding has a casting vote.

Clause 10 – Section 9(6), note

Clause 10 removes the note currently at Section 9(6) of the Regulation. This note states the location where the Heritage Register may be viewed. It is necessary to remove this note as the location is incorrect.

Clause 11 – Dictionary, definition of *appointed member*

Clause 11 omits the definition of ‘appointed member’ as it is replaced throughout the Regulation with the concept of ‘voting member’.

Clause 12 – Dictionary, new definition of *voting member*

Clause 12 inserts a new definition for the concept of ‘voting member’. A voting member is a member other than an ex-officio member (the conservator of flora or fauna and the chief planning officer) and other than a member who has a material interest in an issue being considered.

A voting member is a member appointed by the Minister who does not have a material interest in an issue being considered.

Throughout the Amendment Regulation, terminology is amended from ‘appointed’ to ‘voting’ member. The Council comprises nine appointed and two ex-officio members. Appointed members may, from time to time, have a material interest in matters being considered by the Council. In these instances, that member is not able to vote on a question to be decided.