

2024

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

TENTH ASSEMBLY

HERITAGE AMENDMENT BILL 2024

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
Rebecca Vassarotti MLA
Minister for Heritage
April 2024**

HERITAGE AMENDMENT BILL 2024

This explanatory statement relates to the Heritage Amendment Bill 2024 (the **bill**) as presented to the Legislative Assembly. It has been prepared to assist the reader of the bill and to help inform debate. It does not form part of the bill and has not been endorsed by the Legislative Assembly.

The statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

The bill **is not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE BILL

The objective of the bill is to make policy, technical and editorial amendments to the *Heritage Act 2004* (the **Act**).

The ACT Heritage Council (the **Council**) is established under the Heritage Act. Its role is to identify, assess, conserve, and promote places and objects in the ACT with natural and cultural heritage significance; make decisions on provisional and final registrations to the ACT Heritage Register (the **Register**), and advise the Minister for Heritage on heritage issues relating to its functions.

The amendments in the bill improve the operations of the Council in considering registrations to the Register and strengthen its membership by providing the Minister with flexibility in appointing members with other disciplines and increasing its representation of the Aboriginal community.

The bill amends the Act to:

- i. allow the Council to reject an application to nominate a place or object to the heritage register if it is not complete, that is, the nomination does not meet the requirements for submission in section 28 (2). The intent is to ensure future nominations have the required information needed for a

- registration decision. There is discretion for the Council to accept a nomination that does not fully meet the requirements, acknowledging that this information may not be available for some places or objects, for example, Aboriginal places or objects. This provision aims to improve administrative efficiency and assist in timely decision-making.
- ii. expand the grounds for dismissal of a nomination application to the Register under section 29. In addition to previous grounds, the Council can now dismiss an application if it reasonably believes it is unlikely to result in registration, if it contains insufficient information, or there have been changes to the place or object that means there are no longer grounds to accept the application. These amendments aim to facilitate the assessment of registration nominations in a way that is timely, administratively efficient, provides clarity for applicants and gives due consideration to the outcomes sought under the Act.
 - iii. enable the merit reassessment of a nomination for nominated places or objects on the Register that has not yet had a provisional registration decision. This will facilitate merit assessment of nominations made under the repealed *Land (Planning and Environment) Act 1991* that were transitioned to the Register as nominated places under the current Act in 2003 without merit assessment. Due to the age and insufficient or outdated information in many of these nominations it is difficult and resource intensive to make a registration decision. The new provision ensures that a merit assessment is undertaken based on section 29 that considers current information and circumstances, and on that basis, a decision is made to accept or dismiss the nomination. An accepted nomination would proceed to registration consideration. The nominee or interested parties will be advised of the decision and reasons for dismissal and have the option to resubmit.
 - iv. expand the list of expert disciplines in section 17 that the Minister may consider in appointing expert members to include any other discipline, skills or experience the Minister considers beneficial to or necessary for the functioning of the Council. This will allow consideration of other disciplines,

for example, business, governance or legal, either solely or in conjunction with heritage-related disciplines when appointing members. It provides flexibility to ensure that the Council membership has the most appropriate mix of disciplines, skills and experience to undertake its work.

- v. increase the number of Aboriginal Community Representatives on the Council. The bill amends section 17 (1) of the Act to require the Minister to appoint an additional public representative and section 17 (3) to require the Minister to appoint two Aboriginal Community Representatives to the Council. The Council's voting members would increase to 10 members (from the current nine). Additional representation will strengthen consideration of Aboriginal culture and history in council decision-making and provide more effective consultation with all elements of the ACT's Aboriginal community. The appointment of two Aboriginal representatives will provide the council with access to wider skills, experience and gender diversity providing increased options to consider places and objects with cultural or gender sensitivities.

CONSULTATION ON THE PROPOSED APPROACH

In developing the Bill, the Government consulted with the Heritage Council on the proposed changes.

The Government also considered feedback provided by the community as part of the public consultation on the *Jurisdictional Heritage Review – Phase 1 Report* (July 2023) relating to a proposal to remove all nominations for provisional registration to the ACT Heritage Register that were made under the repealed *Land (Planning and Environment) Act 1991*.

There was concern raised by the community and the Council about dismissing nominations without assessment and that this could dismiss worthy nominations. These views have informed the proposed approach in the bill, which now requires that a merit reassessment of a nomination be undertaken as the basis for a decision to dismiss the nomination.

In developing the provision in the bill to increase the number of Aboriginal Community Representatives on the Council, the Government consulted with relevant

stakeholders including the Office of Aboriginal and Torres Strait Islander Affairs (OATSIA), the Policy Cabinet Division (PCD) within the Chief Minister, Treasury and Economic Development Directorate (CMTEDD), and the Heritage Council.

CLIMATE IMPACT

This legislation has been assessed and it has been identified as having no material impact on climate change. None of the amendments contribute to emissions production or abatement within the ACT community nor are there any adaptation impacts against key climate risks to the ACT.

CONSISTENCY WITH HUMAN RIGHTS

During the development of the bill due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (the HRA).

The bill was not considered a significant bill. The bill does not limit any human rights. Several amendments in the bill are minor or technical in nature.

Rights Promoted

The bill promotes the right to recognition and equality before the law under section 8 of the HRA and cultural and other rights of Aboriginal and Torres Strait Islanders people under section 27 of the HRA.

This bill has a positive impact on the rights of the Aboriginal community in the ACT. Amending the Council membership to include two Aboriginal Community Representatives increases opportunity for engagement with the ACT's Aboriginal community and improves the consideration of Aboriginal cultural or gender sensitivities in decision-making and the development of heritage policy. The appointment of two Aboriginal representatives will provide the Council with access to wider skills and experience. This will have a positive impact for diversity and representation on the Council.

HERITAGE AMENDMENT BILL 2024

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the Heritage Amendment Bill 2024. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Clause 1 Name of Act

This clause provides that the name of the Act is the *Heritage Amendment Act 2024*.

Clause 2 Commencement

This clause provides the Act commences on the day after it is notified.

Clause 3 Legislation amended

This clause sets out that the Act amends the *Heritage Act 2004*.

Clause 4 Members of council Section 17 (1) (c)

This clause amends section 17 (1) (c) to require the Minister to appoint an additional public representative to the Heritage Council. It increases the number of public representatives from three to four.

Clause 5 Section 17 (3)

The Act previously included the appointment of one Aboriginal Community Representative to the Council.

This clause amends the section 17 (3) to specify that the Minister must appoint two Aboriginal Community Representative to the Council.

Clause 6 New Section 17 (4) (I) and (4A)

This clause enables the Minister to consider any other relevant discipline when appointing expert members to the Council. This provides flexibility to consider other disciplines that will benefit the Council. Only one expert can be appointed where the other discipline is the sole discipline they represent.

Clause 7 Section 20 (3) (c)

This clause updates the previous reference to section 29 to section 30.

Clause 8 New section 28 (3)

This clause enables the Council to reject a nomination application that is incomplete and does not provide the information required to consider a registration decision. There is discretion in the application of this clause as the required information may not be available for some places or objects.

Clause 9 Section 29

This clause substitutes existing section 29 to make it easier to understand the decision-making process once an application has been received and not rejected.

New section 29 (3) (b) (c) and (d) makes changes to the grounds for dismissal and adds new grounds. New grounds require the Council to consider the likelihood of registration, the sufficiency, currency and soundness of the information provided as part of the application, and any changes to the circumstances or details of the place or object from those provided in the nomination application. The Council must dismiss the application if any of these grounds apply.

New section 29 (4) requires the Council, as far as practicable, to advise of a decision to accept or dismiss a nomination application within 15 working days. This section applies the same time limit used in relation to other decisions in the Act. It provides the applicant with a clear expectation.

Section 29 (5) adds a definition of the term ***lacking in substance*** to provide clarity.

Clause 10 New section 30A

This clause allows the Council to undertake a merit assessment of a nomination application for a nominated place or object already on the Register but before a provisional registration decision has been made where information or circumstances have changed or there are grounds to dismiss the nomination. The merit assessment and grounds to dismiss are those in section 29 (3). This will allow older nominations made under previous legislation to be assessed. They were transitioned to the Register as nominated places with the introduction of the *Heritage Act 2004* but without merit assessment.

Clause 11 Dictionary, definition of *nominated*

This clause substitutes the definition of the term nominated as a result of the insertion of new section 30A.

Schedule 1 Technical amendments

Schedule 1 makes technical amendments to the notes in sections 118A (3) and 118B (2).