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PATRON: The Hon Margaret Reid AO

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Mick Gentleman MLA
Minister for the Environment and Heritage
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Dear Mick

PROPOSED AMENDMENTS TO THE ACT HERITAGE ACT

We note the proposed Planning, Building and Environment Legislation Amendment Bill changes to Section 34 of the Heritage Act and raise some concerns and make some suggestions.

It would appear that the reason for the change is the explanatory statement that:

“Currently every notice of decision must include an assessment against the heritage significance criteria. There are some circumstances where an assessment is not undertaken because a decision not to provisionally register a place or object is made on another basis. For example, if a place has natural heritage significance and is more appropriately protected under the Nature Conservation Act 2014 (see s 42A(2)(b) of the Heritage Act).”

From this statement the only circumstances indicated are issues that may also come under the Nature Conservation ACT 2014. We also believe that similar circumstances may also exist with the Tree Protection Act 2005.

However the proposed amendment goes beyond issues that relate to these two acts and includes removing the detailed reasons not to provisionally list buildings, conservation areas, objects and the like.

The consideration of any nomination needs to include an assessment under each criterion (Section 10 of the Heritage Act) as satisfying one criteria is sufficient to justify inclusion on the Heritage Register.

To not provisionally register a place must also follow this process otherwise the ACT Heritage Council is not meeting their obligations under the Act.

Therefore having made an assessment against each criteria there appears no reason why this assessment should not be made available as part of due process and good governance.

We accept that if the places are controlled by other Acts, such as the Nature Conservation Act or the Tree Protection Act, the process may need to be slightly different but the expertise in heritage rests with the ACT Heritage Council who have the responsibility of identifying all items of ACT Heritage.

The National Trust is extremely concerned with the proposal and believes that the existing act does not need to change as no detailed reasons have been provided as to why the act is not working satisfactorily.



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We therefore recommend:

- a. The act not be amended as proposed.
- b. If the concern is the Nature Conservation Act and the Tree Protection Act then reference of the nominations to the ACT Heritage Register that fall under those two acts could be made in Section 29 and 32 of the Heritage Act. However the special circumstances need to be restricted to these two others acts and not apply across all potential heritage nominations.
- c. If the above are not supported then a similar qualification could be made in Section 34 of the Heritage Act to cover the special circumstances applicable to the Nature Conservation Act and Tree Protection Act but not to apply across all potential heritage nominations.

A further suggestion is to defer this proposed amendment to enable more time to clearly define the purpose of the amendment and then address the purpose and not have the situation of unfortunate consequences as it appears at present. This will enable the long term best protection of our heritage.

Yours faithfully

Eric Martin AM