

NORTHERN TERRITORY OF AUSTRALIA

HERITAGE CONSERVATION ACT

As in force at 1 July 1996

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 July 1996

HERITAGE CONSERVATION ACT

An Act to relating to the natural and cultural heritage of the Northern Territory

Part 1 Preliminary

1 Short title

This Act may be cited as the *Heritage Conservation Act*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Principal object

The principal object of this Act is to provide a system for the identification, assessment, recording, conservation and protection of places and objects of prehistoric, protohistoric, historic, social, aesthetic or scientific value, including geological structures, fossils, archaeological sites, ruins, buildings, gardens, landscapes, coastlines and plant and animal communities or ecosystems of the Territory.

4 Interpretation

(1) In this Act, unless the contrary intention appears:

aircraft means a machine or apparatus that can derive support in the atmosphere from the reactions of the air or from buoyancy, and includes a glider or hang-glider, but does not include a vehicle designed to be supported on a cushion of air.

approved means approved by the Minister.

archaeological object means a relic pertaining to the past occupation by Aboriginal or Macassan people of any part of Australia which is now in the Northern Territory, being:

- (a) an artifact or thing of any material given shape to by man;
- (b) a natural portable object of any material sacred according to Aboriginal tradition;
- (c) human or animal skeletal remains; or
- (d) such objects, or objects of a class of objects, as are prescribed;

but does not include an artifact made for the purposes of sale or an object, or objects of a class of objects, excluded by the Regulations from the ambit of this definition.

archaeological place means a place pertaining to the past occupation by Aboriginal or Macassan people that has been modified by the activity of such people and in or on which the evidence of such activity exists, and includes such places, or place of a class of places, as are prescribed, but does not include a place, or a place of a class of places, excluded by the Regulations from the ambit of this definition.

conservation management plan means a conservation management plan brought into operation under section 31.

Council means the Heritage Advisory Council established by section 7.

Director means the Chief Executive Officer of the Agency within the meaning of the *Public Sector Employment and Management Act*, primarily responsible to the Minister for the administration of this Act.

heritage agreement means an agreement entered into in pursuance of section 36.

heritage assessment criteria means criteria prescribed in the Regulations for the assessment of places or objects to be recommended for declaration under Part 4 as heritage places or heritage objects.

heritage object means an object declared under section 26 to be a heritage object.

heritage officer means a heritage officer appointed under section 41, the Director or a member of the Police Force.

heritage place means a place in the Territory (whether or not covered by water) declared under section 26 to be a heritage place.

interim conservation order means an interim conservation order made under section 28.

occupier does not include a person in occupation as a guest or as a tenant where the term of the tenancy is for a period of less than 3 months.

place includes an area.

premises includes land.

Register means the Register kept in pursuance of section 16.

this Act includes the Regulations.

vehicle includes a vehicle designed to be supported on a cushion of air.

vessel means a ship, boat, raft or pontoon or any other thing capable of carrying persons or goods through or on water, but does not include a vehicle designed to be supported on a cushion of air.

- (2) Where in this Act the expression **Default penalty** appears at the foot of a section or subsection, a person who has been found guilty of an offence against that section or subsection is guilty of a further offence against this Act if the offence continues after the person has been so found guilty and is punishable, on being found guilty on the further offence, by a penalty not exceeding the amount of the default penalty specified after that expression for each day during which the offence continues.

5 Crown to be bound

This Act binds the Crown, not only in right of the Territory but, to the extent that the legislative power of the Legislative Assembly so permits, in all its other capacities.

6 Application, &c.

- (1) To the extent that:
- (a) the *Building Act*;
 - (b) the *Meteorites Act*;
 - (c) the *Planning Act*;
 - (d) the *Liquor Act*; or

(e) the *Territory Parks and Wildlife Conservation Act*,

is inconsistent with a provision of or under this Act, the provision of or under this Act prevails.

- (2) Parts 5, 6, 7, 8 and 9 (except so much of section 56 as is necessary to give effect to the application of Parts 3 and 4) do not apply to or in relation to a sacred site within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth.
- (3) The Minister may, by notice in the *Gazette*, subject to such conditions, if any, as he or she thinks fit, exempt a collection of objects assembled or to be assembled from the application of all or specified provisions of this Act and accordingly, on the Minister so doing, this Act or those provisions, as the case may be, do not apply except to the extent required by the conditions, if any, to which the exemption is subject.

Part 2 Administration

7 Heritage Advisory Council

There is established by this Act a council by the name of the Heritage Advisory Council.

8 Membership of Council and term of office

- (1) The Council shall consist of 9 members of whom:
- (a) one shall be appointed on the nomination of the Museums and Art Galleries Board established by the *Museums and Art Galleries Act*;
 - (b) one shall be appointed on the nomination of The National Trust of Australia (Northern Territory) established by the *National Trust (Northern Territory) Act*;
 - (c) one shall be the Director or his or her nominee;
 - (d) one shall be appointed on the nomination of the Aboriginal Areas Protection Authority established by the *Northern Territory Aboriginal Sacred Sites Act*; and
 - (e) subject to subsection (3), 5 shall be appointed for, in the Minister's opinion, such expertise or experience as the Minister thinks relevant to the administration of this Act.

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- (2) Subject to subsection (3) and section 9, the Minister may, in writing, appoint a person as a member for the purposes of subsection (1).
 - (3) In exercising his or her discretion under subsection (1)(e), the Minister shall, as far as practicable, ensure that not less than 5 members of the Council are appointed from outside the Public Sector, within the meaning of the *Public Sector Employment and Management Act*.
 - (4) A member appointed under subsection (2) holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment but is eligible for reappointment.

9 Nominations to be called to fill certain vacancies

Where the occasion for the appointment of a member of the Council referred to in section 8(1)(e) arises, the Minister shall, by notice published in such newspapers circulating in the Territory as he or she thinks fit, invite nominations for persons to be appointed to be lodged with the Minister not later than the relevant date specified in the notice (being not earlier than 14 days after its publication) and the Minister shall not make such an appointment until after the date for nominations has passed and he or she has considered the nominations, if any, received.

10 Chairman and Deputy Chairman

- (1) The Minister shall appoint a member of the Council to be its Chairman.
- (2) The members of the Council shall elect a Deputy Chairman from among their number.

11 Resignation of membership and termination

- (1) A member of the Council may resign office by writing signed by him or her and delivered to the Minister.
- (2) Where a member of the Council is absent from 3 consecutive meetings of the Council without the leave of the Council, the Minister shall, if so requested by the Council, terminate the appointment of the member.

12 Functions of Council

The functions of the Council are:

- (a) to prepare criteria for the assessment of places and objects of heritage value in accordance with the objectives specified in section 18(3);
- (b) to carry out research into, and evaluate the heritage value of, places and objects;
- (c) to recommend to the Minister places and objects of heritage value for inclusion in the Register;
- (d) to recommend to the Minister the removal of places and objects from the Register;
- (e) to advise the Minister on the conservation and use of heritage places and heritage objects;
- (f) to promote as it thinks fit the public use and enjoyment of heritage places and heritage objects in a manner consistent with the conservation of their heritage value and facilitate relevant public education and programs;
- (g) to advise the Minister on financial incentives or concessions for heritage preservation;
- (h) to advise the Minister on all matters affecting the natural and cultural heritage of the Territory;
- (j) to make recommendations to the Minister on heritage agreements in general or particular agreements;
- (k) to recommend to the Minister the imposition of an interim conservation order for the protection of a place or object;
- (m) to prepare conservation management plans in respect of heritage places; and
- (n) to perform such other functions as required by or under this or any other Act or as directed by the Minister.

13 Powers of Council

The Council has such powers as are necessary to enable it to perform its functions and exercise its powers.

14 Meetings of Council

- (1) Subject to subsection (2), the Chairman of the Council shall call such meetings of the Council as he or she considers necessary for the performance of its functions but, in any case, not less than 4 meetings in any period of 12 months.
- (2) The Chairman shall call a meeting of the Council if requested to do so by the Minister or not less than 5 members.
- (3) Subject to subsections (1) and (2), the Chairman shall determine the times and places of the meetings of the Council.
- (4) The Chairman shall preside at all meetings of the Council at which he or she is present and in the absence of the Chairman from a meeting the Deputy Chairman shall preside at the meeting.
- (5) In the absence of the Chairman and the Deputy Chairman from a meeting of the Council the members present shall elect one of their number to preside at the meeting.
- (6) Subject to section 15, at a meeting of the Council:
 - (a) 5 members constitute a quorum;
 - (b) questions arising shall be determined by a majority of the votes of the members present and voting and in the event of an equality of votes the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote; and
 - (c) subject to this Act, the Council shall determine the procedure to be followed at or in connection with the meeting.
- (7) The Council shall cause minutes to be kept of its meetings.

15 Disclosure of interest

- (1) A member of the Council who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Council (otherwise than as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 persons and of which he or she is not a director), shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

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- (2) A disclosure under subsection (1) shall be recorded in the minutes of the Council and the member:
 - (a) shall not take part after the disclosure in any deliberation or decision of the Council relating to that matter; and
 - (b) shall be disregarded for the purpose of constituting a quorum of the Council for such deliberation or decision.

16 Register of heritage places, &c.

- (1) The Council shall cause to be kept a register in which shall be recorded the decisions and actions of the Minister under section 26, details of all interim conservation orders, conservation management plans and heritage agreements, details of heritage places and heritage objects (except to the extent that they are required by Aboriginal tradition to be kept secret) and such other information as is required by or under this Act to be recorded.
- (2) A member of the public may inspect the Register at any time during the normal office hours of the principal office of the Director, on payment of the prescribed fee.

17 Annual report

- (1) The Council shall, as soon as practicable after 30 June in each year, submit to the Minister a report on the performance of its functions during the previous 12 months to and including 30 June of that year.
- (2) Without limiting the matters with which a report under subsection (1) may deal, the report shall identify and comment on every direction given to the Council by the Minister during the period to which it relates.
- (3) The Minister shall lay a copy of the report before the Legislative Assembly within 6 sitting days of the Assembly after the Minister receives it.

Part 3 Heritage assessment criteria

18 Establishment of heritage assessment criteria

- (1) As soon as practicable after the commencement of this Act and from time to time as the occasion or the Minister requires, the Council shall prepare draft heritage assessment criteria to be used by it in assessing whether a place or object has heritage significance.

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- (2) The Minister may at any time require the Council to prepare or consider revising heritage assessment criteria either generally or in relation to a particular class of places or objects.
 - (3) In preparing draft heritage assessment criteria, the objectives of the Council should be to ensure as far as practicable that, by the application of the criteria, places and objects:
 - (a) of significance in the evolution and pattern of the Territory's natural or cultural history;
 - (b) possessing rare, endangered or uncommon aspects of the Territory's natural or cultural history;
 - (c) demonstrating the prime characteristics of a class of the Territory's heritage places or objects;
 - (d) of significance for their strong association with the life or works of a notable person or persons associated with the Territory;
 - (e) possessing technical, design or aesthetic qualities of significance;
 - (f) of significance because of special association with a Territory community for social, cultural or spiritual reasons; or
 - (g) of significance for their potential to yield information which will contribute to a better understanding of Territory heritage,

are most likely to be identified.

19 Exhibition of draft heritage assessment criteria

- (1) The Council shall, as soon as practicable after preparing draft heritage criteria under section 18, cause the criteria to be notified in such newspapers circulating in the Territory as it thinks fit.
- (2) A notice under subsection (1) shall invite the public to make written comments and recommendations to the Council on the draft criteria within 28 days after the publication of the notice and indicate an address to which the comments and recommendations should be sent.

20 Acceptance or modification of criteria

- (1) As soon as practicable after the expiration of the 28 days referred to in section 19, the Council shall consider all comments and recommendations made to it under that section and forward to the Minister a copy of those criteria or those criteria as amended after

considering the comments and recommendations received in pursuance of section 19, if that be the case, or further modified after considering the suggestions of the Minister referred to it under subsection (3).

- (2) Subject to subsection (3) the Minister may, in his or her discretion, accept or reject the criteria forwarded under subsection (1).
- (3) The Minister shall not reject the criteria forwarded under subsection (1) until he or she has referred the matter back to the Council, making such suggestions as to the modification of the criteria as the Minister thinks fit, and has considered any comments the Council makes as a result.
- (4) Where the Minister accepts the criteria forwarded under subsection (1) (whether or not modified as a result of suggestions by the Minister under subsection (3)), the Minister shall recommend to the Administrator the prescribing of the criteria in the Regulations.

Part 4 Identification, assessment and declaration of heritage places and objects

21 Application to have place or object declared

- (1) A person may, in the approved form, apply to the Council to have a place in the Territory or object declared to be a heritage place or heritage object and a copy of the application shall be provided by the Council to the Minister.
- (2) An application under subsection (1) shall be in writing and contain or be accompanied by the prescribed information.
- (3) Before carrying out an assessment of a place or object the subject of an application under subsection (1), the Council may request from the applicant such additional information relating to the matter as it thinks fit and shall not proceed with the assessment until the information is provided.
- (4) Where it appears to the Council that a place or object the subject of an application under subsection (1) is more likely than not to be recommended by it for inclusion in the Register it may recommend to the Minister action under section 28(1) in relation to the place or object.

22 Assessment of application

- (1) Subject to subsection (3), the Council shall, as soon as practicable after receiving an application under section 21, by applying the relevant heritage assessment criteria, if any, assess a place or object the subject of the application.
- (2) In assessing a place or object under subsection (1) the Council may carry out or cause to be carried out such research as it thinks necessary for the purpose.
- (3) The Council shall not assess a place or object under subsection (1) where, in its opinion, the application seeking the declaration is frivolous or vexatious.

23 Council may initiate own assessment

- (1) The Council may, of its own motion, and shall if so directed by the Minister, assess or at any time re-assess the heritage value of any place or object (whether or not it is a heritage place or heritage object) in the Territory and this Part, with the necessary changes, applies to and in relation to that assessment or re-assessment as if it were as the result of an application under section 21(1) or 27(1).
- (2) The Minister may give a direction to the Council for the purposes of subsection (1).

24 Recommendation to Minister

- (1) As soon as practicable after it completes an assessment of a place or object under section 22(1), the Council may recommend to the Minister the inclusion in the Register of such details of the place or object as it thinks fit and any such recommendation shall be accompanied by a statement of the heritage value of the place or object.
- (2) Before making its recommendation to the Minister the Council shall give to the owner and/or occupier of a place, or the owner and/or person having the lawful possession of an object the subject of the proposed recommendation, and to all persons who are likely to be directly affected by the decision of the Minister in relation to the recommendation, a reasonable opportunity to make written comments to the Council on the proposed recommendation, and for that purpose shall:
 - (a) send by post to the owner and occupier of the place and to each person shown in the Register kept under the *Real Property Act* as having or claiming an interest in land comprising the place, or the owner and person in lawful

possession of the object, as the case may be, at the last known address of that owner, occupier or person; and

- (b) shall publish in such newspapers in the Territory as it thinks fit,

a notice:

- (c) advising that the recommendation is to be made;
- (d) indicating where copies of the recommendation can be obtained; and
- (e) inviting comments on the recommendation to be given to the Council within 28 days after the publication of the notice.

25 Consideration of comments on recommendations

Before making its recommendation under section 24(1) the Council shall consider all comments received as a result of the notices under section 24(2) and shall forward with its recommendation a copy of those comments and the Council's suggestions, if any, on possible ways of resolving any conflict which may arise as the result of the proposed registration.

26 Decision of Minister

- (1) As soon as practicable after receiving a recommendation under section 24, but in any case not later than 90 days, the Minister shall:
- (a) by notice in the *Gazette*, declare the place (or part of the place) or object to which the recommendation relates, to be a heritage place or heritage object or, in the case of an object associated with a heritage place but which is not itself declared to be a heritage object, to be part of the Northern Territory heritage;
- (b) by notice in writing to the Council, refuse to make such a declaration, giving his or her reasons for so refusing; or
- (c) subject to subsection (4), refer the matter back to the Council with the request that the Council provide further information or make a further recommendation relating to the matter or a suggested variation and giving the Minister's reasons for requiring the further information or recommendation.

- (2) Where under subsection (1)(a) the Minister declares a place (or part of a place) or object to be a heritage place or heritage object, he or she shall, as soon as practicable after so doing, cause a copy of the notice of declaration:
 - (a) to be sent by post to the owner and occupier of the place and to each person shown in the Register kept under the *Real Property Act* as having or claiming an interest in land comprising the place, or the owner and person in lawful possession of the object, as the case may be, at the last known address of that owner, occupier or person; and
 - (b) to be published in at least one newspaper circulating in that part of the Territory in which the place is situated or object located.
- (3) Where a matter is referred back to the Council under subsection (1)(c), the Council shall provide the further information or make the further recommendation accordingly and, in the case of a further recommendation, subsections (1) and (4) apply as if it were the first recommendation made under section 24.
- (4) A matter the subject of a recommendation under section 24 may be referred back to the Council under subsection (1)(c) twice only before the Minister must take an action referred to in subsection (1)(a) or (b).
- (5) Where the Minister declares a place to be a heritage place under subsection (1)(a) and, to the Minister's knowledge, the place is or contains a sacred site within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth, that fact shall be recorded in the Register.

27 Revocation of declaration

- (1) Subject to subsection (2), the owner of a heritage place or heritage object may apply in the approved form to the Council to have the declaration of the place or object as a heritage place or heritage object revoked and this Part, with the necessary changes, applies to and in relation to that application as if it were an application under section 21.
- (2) An application under subsection (1) may be made only in the prescribed circumstances.

Part 5 Protection of places and objects

28 Interim conservation orders

- (1) The Minister may, of his or her own motion or on the recommendation of the Council, by notice in writing, declare a place or object that is not a heritage place or heritage object to be subject to an interim conservation order.
- (2) As soon as practicable after making a declaration under subsection (1) the Minister shall:
 - (a) cause the declaration to be notified in the *Gazette*; and
 - (b) in writing, direct the Council to assess the heritage value of the place or object.
- (3) An interim conservation order remains in force until:
 - (a) the expiration of 90 days after the place or object is declared under subsection (1) to be subject to the order; or
 - (b) the Minister, in pursuance of section 26(1)(a), declares the place or object to which it relates to be a heritage place or heritage object or, having in pursuance of section 26(1)(b) refused to make such a declaration, notifies that fact in the *Gazette*,whichever is the sooner.
- (4) The Minister shall where, in pursuance of section 26(1)(b), he or she refuses to make a declaration in respect of a place or object to which an interim conservation order relates, cause a notice of that fact to be published in the *Gazette*.

29 Work on place or object subject to interim conservation order

- (1) Subject to subsection (2), the Minister or the Minister's delegate may, by instrument in writing, after seeking and taking into account the recommendations of the Council, permit a person to:
 - (a) carry out such work or do anything on a place, or to or in relation to an object, in respect of which an interim conservation order is in force as the Minister or the Minister's delegate, as the case may be, thinks fit; or
 - (b) remove such an object from one location to another, including to a place outside of the Territory,

subject to such conditions, if any, as are specified in the instrument.

- (2) The Minister or the Minister's delegate shall not permit an action in relation to an archaeological object prescribed for the purposes of Part 6 which is sacred according to Aboriginal tradition unless he or she has sought and taken into account the advice, if any, of the Aboriginal Areas Protection Authority established by the *Northern Territory Aboriginal Sacred Sites Act* given after consultation with those Aboriginals it considers to be the traditional owners of the object.

30 Conservation management plans

- (1) The Council may prepare a conservation management plan in respect of a heritage place or heritage object taking into account the opinion of the owner and/or occupier of the place, or the owner and/or person in lawful possession of the object, and such public opinion as is known to it.
- (2) A conservation management plan shall contain a description of work to be permitted to be carried out on a heritage place or heritage object and the places where the heritage object may be located and the conditions, if any, subject to which the work may be carried out or object moved from one place to another.
- (3) Where the Council has prepared a conservation management plan it shall, by notice in a newspaper circulating in the area in which the heritage place or heritage object is situated:
 - (a) state that the plan has been prepared;
 - (b) invite interested persons to make representations in connection with the plan by such date, being not earlier than 28 days after the date of publication of the notice in the newspaper, as is specified in the notice;
 - (c) specify an address or addresses at which copies of the plan may be inspected or purchased; and
 - (d) specify an address to which representations in connection with the plan should be sent.
- (4) A person may, not later than the date specified in the notice under subsection (3), make representations to the Council in connection with the conservation management plan and the Council shall give due consideration to any representations so made and, if it thinks fit, alter the plan accordingly.

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- (5) As soon as practicable after the expiration of the time referred to in a notice under subsection (3), the Council shall forward to the Minister for presentation to the Administrator:
- (a) the conservation management plan; and
 - (b) if representations have been made under subsection (4), those representations, together with the comments, if any, of the Council on those representations.
- (6) The Administrator may accept the conservation management plan as so submitted or after making such alterations as the Administrator thinks fit.
- (7) Where, under subsection (6), the Administrator makes alterations to a conservation management plan, the Administrator shall prepare a report specifying the alterations and the report shall accompany the plan when it is laid before the Legislative Assembly under section 31.

31 Conservation management plan to be laid before Legislative Assembly

- (1) The Minister shall, within 3 sittings days of the Assembly after a conservation management plan has been accepted under section 30(6), cause it to be laid before the Legislative Assembly.
- (2) The Legislative Assembly may, in pursuance of a motion notice of which is given within 7 sittings days after the conservation management plan is laid before it, pass a resolution disallowing the plan.
- (3) If the Legislative Assembly does not pass a resolution in accordance with subsection (2), the conservation management plan comes into operation on the day immediately following the last day on which such a resolution could have been passed.
- (4) If before the expiration of 7 sitting days after the conservation management plan has been laid before the Legislative Assembly:
- (a) the Assembly expires or is prorogued; and
 - (b) notice of motion for the disallowance of the plan has not been given,

the plan shall, for the purposes of this section, be deemed to have been laid before the Legislative Assembly on the first sitting day of the Assembly after the Assembly so expires or is prorogued.

- (5) If the Legislative Assembly passes a resolution in accordance with subsection (2) disallowing the conservation management plan, the Administrator shall direct the Council to prepare a new conservation management plan and the Council shall reconsider the matter and prepare a new plan and, for that purpose, section 30 applies accordingly.
- (6) As soon as practicable after a conservation management plan comes into operation, the Minister shall publish a notice in the *Gazette* and in such newspapers circulating in the Territory as the Minister thinks fit, stating that the plan has come into operation and specifying an address or addresses where copies of the plan may be inspected or purchased.

32 Amendment of conservation management plan

The Council may at any time amend a conservation management plan, and sections 30 (other than subsection (3) and (4)) and 31, with the necessary changes, apply to and in relation to any such amendment in like manner as they apply to and in relation to a conservation management plan.

33 Offences relating to heritage places or objects

- (1) Subject to subsection (2), a person shall not, except as prescribed or in accordance with a conservation management plan:
 - (a) carry out work of any sort on, or damage, desecrate or alter, a heritage place or heritage object;
 - (b) remove from a heritage place a heritage object or an object associated with the place declared under section 26(1)(a) to be part of the Northern Territory heritage; or
 - (c) remove a heritage object from the Territory,

without the consent in writing of the Minister or the Minister's delegate.

Penalty: In the case of an individual - \$10,000 or imprisonment for 12 months.

Default penalty: \$1,000.

In the case of a body corporate – \$200,000.

Default penalty: \$20,000.

- (2) Consent under subsection (1) to an action referred to in that subsection does not relieve a person from a requirement to obtain the necessary consent for that action under any other law in force in the Territory.

34 Offences relating to place or object subject to interim conservation order

A person shall not carry out work of any sort on, or damage, desecrate or alter, a place or object in respect of which an interim conservation order is in force, or remove from its location such an object, except in accordance with an instrument under section 29.

Penalty: In the case of an individual - \$10,000 or imprisonment for 12 months.

Default penalty: \$1,000.

In the case of a body corporate – \$200,000.

Default penalty: \$20,000.

35 Restrictions on use of property is registrable under *Real Property Act*

For the avoidance of doubt, a restriction under section 33 or 34 on the use of property is a restriction to which section 191B of the *Real Property Act* applies.

36 Agreements for protection of places on private land and objects

- (1) The Director, on the directions of the Minister, may negotiate and enter into a heritage agreement on behalf of the Territory with:
- (a) a land-owner, relating to the protection and conservation of a heritage place (including an object declared under section 26(1)(a) to be part of the Northern Territory heritage associated with the heritage place on the land-owner's land) or the lawful development or use of the land; or
 - (b) the owner or person having lawful possession of a heritage object, relating to the protection and conservation of the object.
- (2) In giving his or her directions under subsection (1), the Minister shall take into account the recommendations, if any, of the Council relating to the proposed agreement.

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- (3) In this section and section 37, **land-owner** includes a person who is a lessee or mortgagee of, or who holds any other interest in, the land.

37 Nature of agreement relating to heritage places

- (1) A heritage agreement under section 36(1)(a) is binding on the land-owner according to its tenor but may be varied by further agreement.
- (2) The burden of a heritage agreement, to the extent that it relates to the preservation, maintenance, development or care of land (including a fixture on the land) and is consented to in writing by each person who, at the time the agreement was entered into, was shown in the Register kept under the *Real Property Act* as having a registered interest in the land, is an interest registrable under that Act and operates as a covenant that runs with the land, and the Minister has power to enforce the covenant against persons deriving title from the person who entered into the agreement as if it were a restrictive covenant, notwithstanding that it may be positive in nature or that it is not for the benefit of any land of the Territory.
- (3) Notwithstanding anything in this section, where a provision of a heritage agreement is inconsistent with a conservation management plan in respect of the land to which it relates, the plan shall prevail and, to the extent of the inconsistency, the provision of the agreement has no effect.

38 Financial and other incentives

- (1) The Minister may take or cause to be taken, under a law in force in the Territory, such steps as the Minister considers appropriate for the protection or conservation of a heritage place (including an object declared under section 26(1)(a) to be a part of the Northern Territory heritage associated with the heritage place) or heritage object:
- (a) where a person has an estate or interest in the heritage place or a proprietary or possessory interest in the object, by recommending, and assisting with the funding of special measures for, the protection and conservation of the heritage place or the object;
- (b) where the land is vested in, or is under the care, control or management of, a statutory corporation, by recommending the taking of special measures, including the making of by-laws, for the protection and conservation of the heritage place or the object;

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- (c) for the vesting of title to an area of Crown land in the Conservation Land Corporation within the meaning of the *Parks and Wildlife Commission Act*;
 - (d) for the reservation of an area of Crown land; or
 - (e) for the acquisition of land or the object.
- (2) In exercising a power under a law in force in the Territory, a minister or statutory corporation shall take into account any recommendation made by the Minister in pursuance of subsection (1) and as far as possible exercise his, her or its power so as to give effect to the recommendation.

Part 6 Protection of archaeological places and archaeological objects

39 Protection of archaeological places and objects

- (1) A prescribed archaeological place or prescribed archaeological object shall, for the purposes of sections 29 and 34, be deemed to be a place or object in respect of which an interim conservation order is in force and shall be deemed to remain so until the Minister, as the result of an application made under section 21, makes or refuses to make a declaration under section 26(1) in respect of the place or object.
- (2) The Regulations may prescribe the procedure to be followed in making an application in relation to a prescribed archaeological place or prescribed archaeological object for the permission of the Minister or the Minister's delegate to do a thing referred in section 29(1) and where such regulations are in force, permission shall not be granted except in accordance with them.

Part 7 Heritage officers, &c., and powers

40 Arrangements for performance of functions

- (1) The Administrator may make arrangements with the Commonwealth or a State or another Territory of the Commonwealth for the performance of functions and the exercise of powers under this Act by its officers or employees or by officers or employees of an authority of the Commonwealth or that State or Territory, as the case may be.

(2) The Minister may make arrangements with:

- (a) the Chief Executive Officer of an Agency within the meaning of the *Public Sector Employment and Management Act*;
- (b) a statutory corporation; or
- (c) a municipal or community government council, within the meaning of the *Local Government Act*,

for the performance of functions or the exercise of powers under this Act by officers or employees of the department, statutory corporation, municipal or community government council.

41 Appointment of heritage officer, &c.

The Director may, in writing, appoint an officer or employee:

- (a) employed in the Agency of which that Director is Chief Executive Officer; or
- (b) referred to in section 40,

as a heritage officer.

42 Heritage officer, &c., ex officio

By force of this section:

- (a) the Director; and
- (b) each member of the Police Force,

is a heritage officer.

43 Functions of heritage officer

It is the function of a heritage officer to assist the Director with the protection and conservation of heritage places and heritage objects.

44 Identity cards

- (1) The Director shall cause to be issued to each heritage officer, other than a member of the Police Force, an identity card containing a photograph and the signature of the holder.
- (2) A person who ceases to be a heritage officer shall forthwith return his or her identity card to the Director.

Penalty: \$100.

45 Powers of search

- (1) Subject to this section, where a heritage officer is satisfied that there are reasonable grounds for suspecting that an offence against this Act has been, is being or is about to be committed, the heritage officer may, without warrant, and with such assistance as he or she thinks necessary:
 - (a) enter, with such force as is reasonably necessary, at any time, any premises (not being premises that are principally residential premises), vehicle, vessel, aircraft or place, and for that purpose stop and detain any vehicle, vessel or aircraft, in or on which the heritage officer believes, on reasonable grounds, there is evidence related to that offence;
 - (b) search the premises, vehicle, vessel, aircraft or place; and
 - (c) take such action as is reasonably necessary to prevent the commission of an offence against this Act.
- (2) The Director may, by notice in writing served on a heritage officer, direct the heritage officer not to exercise a specified power under subsection (1) or not to exercise that power except subject to specified conditions or in specified circumstances, or in specified localities.
- (3) Before doing anything under subsection (1), if there is a person present who is or appears to be in charge of the premises, vehicle, vessel, aircraft or place, a heritage officer shall produce his or her identity card to the person.

46 Person to stop when called on to do so

A person who is called on to do so by a heritage officer acting in the course of his or her duty shall stop and cause a vehicle or vessel in the person's control to stop.

Penalty: \$500 or imprisonment for 3 months.

47 Minister's delegate

The Minister may in writing, subject to such conditions, if any, as he or she thinks fit, appoint a person as the Minister's delegate for the performance of a function or exercise of a power under a provision of this Act specifically providing for its performance or exercise by the Minister's delegate, and a reference in such a provision to the Minister's delegate is a reference to a person so appointed.

Part 8 Appeals

48 Aggrieved person may appeal to Local Court

- (1) A person who has an appealable interest and who is aggrieved by a decision or action of the Minister under section 26, 27, 28 or 49 may, in the prescribed manner, appeal to the Local Court against that decision or action, but only on a question of law, and the Local Court has jurisdiction to hear and determine the appeal.
- (2) For the purposes of subsection (1), an appealable interest is a proprietary or possessory interest in the land or object the subject of the decision or action complained of or a proprietary or possessory interest in any other land or object the use or value of which is directly affected by the decision or action.
- (3) After hearing an appeal under subsection (1) the Local Court may:
 - (a) dismiss the appeal; or
 - (b) direct the Minister to do or refrain from doing anything under this Act which, in its opinion, the Minister should have done or refrained from doing, and the Minister shall comply with that direction.

Part 9 Miscellaneous

49 Direction to repair or maintain heritage place

- (1) The Minister may, by instrument in writing served on the owner, direct the owner of a heritage place or object to carry out at his or her own expense, for the purpose of repairing or maintaining the place or object, such work on the place or object, and within such time, as is specified in the notice.
- (2) A direction under subsection (1) may specify the materials to be used and the manner in which they should be used.
- (3) A person on whom an instrument under subsection (1) has been served shall comply with and not contravene the direction.

Penalty: \$1,000.

Default penalty: \$100.

- (4) Where a person on whom an instrument under subsection (2) has been served fails to comply with the direction in the specified time, the Minister may authorise a person to enter the heritage place or

site or location of the heritage object, with or without employees, vehicles, plant, equipment or materials and carry out the work specified in the instrument, and the person may enter and carry out the work accordingly.

- (5) The costs reasonably incurred by a person carrying out work in pursuance of subsection (4) is a debt due and payable to the Territory by the person on whom the instrument referred to in that subsection was served and, where the debt is incurred in relation to a heritage place, it is an overriding statutory charge, within the meaning of the *Real Property Act*, on the land comprising the place.

50 Confiscation and forfeiture

- (1) Where a court finds a person guilty of an offence against this Act, it may order the forfeiture to the Territory of a vehicle, aircraft, vessel or thing used or otherwise involved in the commission of the offence.
- (2) A vehicle, aircraft, vessel or thing forfeited under this section may be sold or otherwise disposed of as the Director thinks fit.

51 Saving

Although the doing of an act or the possession of a thing is prohibited by this Act, it is lawful for that act to be done or that thing to be possessed by a heritage officer if the doing of the act or the possession of the thing is for the purposes of this Act.

52 Power to enter land

- (1) The Minister may authorise the Director, with such assistants, plant, machinery and equipment as the Director thinks fit, to enter any premises to investigate their suitability for protection and conservation under this Act and, subject to subsection (2), the Director may enter the premises accordingly.
- (2) The Director shall not enter private land or a building in pursuance of an authority under subsection (1) until after the Minister has given reasonable notice to the person in occupation of the land or building that the Director has been authorised under this section to carry out the investigation and the Minister has taken into account the representations, if any, of the person relating to the proposed entering.
- (3) Where the Director enters premises in pursuance of an authority under subsection (1), the Director may do such things as he or she thinks necessary for the purpose of carrying out the investigation.

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- (4) The Territory is liable to pay reasonable compensation for any damage or loss suffered in consequence of the carrying out of an investigation under this section.

53 Payment for restoration

- (1) A court before which a person is found guilty of an offence against this Act may order the person to pay the amount of any damage, or the cost of restoring, servicing or repairing any damage, done by the person in committing the offence.
- (2) An order made under subsection (1) is in addition to any penalty imposed in respect of the offence and the amount ordered to be paid is a debt due and payable by the person to the person who suffered the damage.

54 Offences by bodies corporate

- (1) Where an offence against this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to a wilful neglect on the part of, an employee or an officer of the body corporate or person purporting to act as such an employee or officer, that employee, officer or person is also guilty of that offence and liable to the penalty for that offence.
- (2) Where in proceedings under this Act it is necessary to establish the intention of a body corporate, it is sufficient to show that an employee, officer or agent of the body corporate had that intention.
- (3) In this section **officer**, in relation to a body corporate, means:
- (a) a director, secretary or executive officer of the body corporate;
 - (b) a person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act; or
 - (c) a person concerned in the management of the body corporate.

55 Compensation and liability

Except as provided by this Act, the Territory is not liable to pay compensation to a person as a result of the operation of, or of the due exercise of, a power, function, authority or discretion conferred by this Act unless, in a particular case, it is determined to be an acquisition of property within the meaning of section 50 of the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, in which case the Territory shall pay just compensation.

56 Regulations

- (1) The Administrator may make Regulations, not inconsistent with this Act, prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the Regulations may:
 - (a) prescribe or provide for the Minister, by notice, to prescribe, archaeological places and archaeological objects for the purposes of Part 6;
 - (b) prohibit or regulate access to archaeological places;
 - (c) provide for the identification and marking-off of archaeological places;
 - (d) require the whereabouts of archaeological places and archaeological objects to be revealed; and
 - (e) provide for a penalty, not exceeding \$1,000, for an offence against the Regulations.

57 Repeal and transitional

- (1) The *Native and Historical Objects Preservation Ordinance 1955* (being Ordinance No. 15, 1955) and the *Native and Historical Objects and Areas Preservation Ordinance 1960* (being Ordinance No. 11, 1961) are repealed.
- (2) Where immediately before the commencement of this Act there was in force in relation to a place or object which, on that commencement, became a prescribed archaeological place or a prescribed archaeological object an exemption under section 5 of the *Native and Historical Objects and Areas Preservation Act* as then in force, or a consent under section 7 of that Act, that exemption and consent and any condition to which it was subject shall, after the commencement of this Act, continue to apply as if contained in an instrument in writing (with the necessary changes) of the Minister under section 29 of this Act, but may be varied or revoked at any time by the Minister.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION

Heritage Conservation Act 1991 (Act No. 39, 1991)

Assent date	26 September 1991
Commenced	1 November 1991 (<i>Gaz</i> S58, 1 November 1991)

Statute Law Revision Act (No. 2) 1993 (Act No. 70, 1993)

Assent date	9 November 1993
Commenced	9 November 1993

Real Property (Statutory Charges Consequential Amendments) Act 1993 (Act No. 77, 1993)

Assent date	23 November 1993
Commenced	1 October 1994 (s 2, s 2 <i>Real Property Amendment Act (No. 2) 1993</i> (Act No. 76, 1993) and <i>Gaz</i> G37, 14 September 1994, p 2)

Local Government (Consequential Amendments) Act 1993 (Act No. 84, 1993)

Assent date	31 December 1993
Commenced	1 June 1994 (s 2, s 2 <i>Local Government Act 1993</i> (Act No. 83, 1993) and <i>Gaz</i> S35, 20 May 1994)

Parks and Wildlife Commission (Consequential Amendments) Act 1995 (Act No. 46, 1995)

Assent date	15 November 1995
Commenced	29 November 1995 (s 2, s 2 <i>Conservation Commission Amendment Act 1995</i> (Act No. 43, 1995) and <i>Gaz</i> S42, 29 November 1995)

Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)

Assent date	19 April 1996
Commenced	s 7: 19 April 1996; rem: 1 July 1996 (s 2, s 2 <i>Sentencing Act 1995</i> (Act No. 39, 1995) and <i>Gaz</i> S15, 13 June 1996)

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LIST OF AMENDMENTS

s 4	amd No. 46, 1995, s 3; No. 17, 1996, s 6
s 8	amd No. 46, 1995, s 3
s 18	amd No. 70, 1993, s 8
s 38	amd No. 46, 1995, s 3
s 40	amd No. 84, 1993, s 6; No. 46, 1995, s 3
s 41	amd No. 46, 1995, s 3
s 49	amd No. 77, 1993, s 7
s 50	amd No. 46, 1995, s 3; No. 17, 1996, s 6
s 53	amd No. 17, 1996, s 6