

# NORTHERN TERRITORY OF AUSTRALIA

## HERITAGE ACT 2011

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Act No. 34 of 2011

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# NORTHERN TERRITORY OF AUSTRALIA

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Act No. 34 of 2011

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An Act about the Territory's cultural and natural heritage

*[Assented to 15 November 2011]*

*[Second reading 10 August 2011]*

The Legislative Assembly of the Northern Territory enacts as follows:

## Chapter 1 Introduction

### Part 1.1 Preliminary matters

#### 1 Short title

This Act may be cited as the *Heritage Act 2011*.

#### 2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

#### 3 Object of Act

- (1) The object of this Act is to provide for the conservation of the Territory's cultural and natural heritage.
- (2) The object is achieved by:
  - (a) declaring places and objects of heritage significance to be heritage places and objects; and

- (b) declaring classes of places and objects of heritage significance to be protected classes of heritage places and objects; and
- (c) establishing the Heritage Council; and
- (d) providing for heritage agreements to encourage the conservation, use and management of heritage places and objects; and
- (e) regulating work on heritage places and objects; and
- (f) establishing enforcement and offence provisions.

## **Part 1.2 Interpretation**

### **Division 1 Defined terms**

#### **4 Definitions**

In this Act:

***Aboriginal or Macassan archaeological object***, see section 8(2).

***Aboriginal or Macassan archaeological place***, see section 6(2).

***Aboriginal tradition***, see section 3(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

***acting in an official capacity***, in relation to a heritage officer, means the officer is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

***affected person***, for:

- (a) a reviewable decision – see section 90(2); or
- (b) an appealable decision – see section 93(2).

***appealable decision***, see section 93(1).

***appointed heritage officer***, see section 141(1)(a).

***appointed members***, see section 128(1)(a).

***approved form*** means a form approved under section 145.

***archaeological object***, see section 8(1).

***archaeological place***, see section 6(1).

***assessment period***, see section 23.

***building*** includes a structure of any kind.

***cause damage***, to a heritage place or object, includes:

- (a) destroy the place or object; and
- (b) diminish the heritage significance of the place or object.

***CEO*** means the Chief Executive Officer.

***chairperson*** means the chairperson of the Council.

***connected***, for Chapter 5, see section 100.

***conservation***, of a place or object, see section 12(1).

***Council*** means the Heritage Council established by section 124.

***decision maker*** means:

- (a) for an application for major work – the Minister; or
- (b) for another application – the Council.

***deputy chairperson*** means the deputy chairperson of the Council.

***exempt work***, see section 78(1).

***heritage agreement***, see section 68(1).

***heritage assessment criteria***, see section 11.

***heritage nomination***, see section 20(1).

***heritage object*** means:

- (a) an object declared under Part 2.1 or 2.2 to be a heritage object; or
- (b) an object of a protected class of heritage objects.

***heritage officer***, see section 141.

***heritage place*** means:

- (a) a place declared under Part 2.1 or 2.2 to be a heritage place;  
or

(b) a place of a protected class of heritage places.

***heritage significance***, see section 10.

***information notice***, see section 94.

***interested person***, for:

(a) a place – means each of the following persons:

- (i) the owner of the place and, if the place is occupied by someone else, the occupier;
- (ii) for land entered in the land register under the *Land Title Act* – the holder of a registered interest in the land under that Act;
- (iii) for land covered by a resources interest – the holder of the interest; or

(b) an object – means the owner of the object and, if the object is in the lawful possession of someone else, the person in possession of the object.

***interpretation***, of a place or object, see section 12(2).

***land*** includes:

- (a) land that is, or is at any time, covered by Territory waters; and
- (b) Territory waters.

***major work*** means work that is likely to:

- (a) cause significant damage to a heritage place or object; or
- (b) to significantly alter the heritage significance of a heritage place or object.

***member*** means a member of the Council, and includes the chairperson and deputy chairperson.

***object***, see section 7.

***on***, in relation to a place, includes at and in the place.

***occupier***, of a place:

- (a) means:
  - (i) a person in occupation of the place; or

- (ii) the person in control of the place; or
- (iii) if the place has different parts occupied or controlled by different persons – each person in occupation or control of the part concerned; and

(b) for Chapter 5 – see section 99.

**owner**, for Part 3.1, see section 67.

**place**, see:

- (a) generally – section 5; or
- (b) for Chapter 5 – section 99.

**protected class**, for a heritage place or object, means a place or object of a class of places or objects of heritage significance declared under Part 2.3 to be a protected class of places or objects.

**public consultation period**, for:

- (a) Part 2.2 – see section 26(2)(b); or
- (b) Part 2.3 – see section 45(2)(b); or
- (c) Part 2.4 – see section 59(3).

**register** means the register kept under section 139.

**relic**, see section 9.

**repair order**, see section 86(1).

**resources interest**, in land, means:

- (a) a registered licence or permit under the *Energy Pipelines Act*, or
- (b) a geothermal authority under the *Geothermal Energy Act* (other than a geothermal exploration permit); or
- (c) a mineral title under the *Mineral Titles Act* (other than a mineral exploration licence or extractive mineral exploration licence); or
- (d) a petroleum interest under the *Petroleum Act* (other than an exploration permit).

**reviewable decision**, see section 90(1).

***review notice***, see section 91.

***revocation request***, for Part 2.4, see section 56(1) and (2).

***revoke***, for Part 2.4, see section 55.

***sacred site***, see section 3(1) of the *Aboriginal Land Rights Act (Northern Territory) Act 1976* (Cth).

***stop work order***, see section 80.

***Tribunal*** means the Lands, Planning and Mining Tribunal.

***use*** includes proposed use.

***work*** includes:

- (a) a physical act that results in, or may result in, a change to the nature, appearance or physical nature of a heritage place or object; and
- (b) the subdivision or consolidation of land.

*Examples of work for paragraph (a)*

- 1 Construction, removal or demolition of a building.
- 2 Alteration or decoration of a building.
- 3 Archaeological excavation.
- 4 Removal, destruction or lopping of trees.
- 5 Removal of topsoil.
- 6 Erection of a sign or hoarding.

***work approval***, see section 72(1).

## Division 2      Important concepts

### 5      Meaning of *place*

- (1) A ***place*** is an area of land.
- (2) A ***place*** includes:
  - (a) a building or, a part of a building, on the place; and
  - (b) an item historically or physically associated with the place if the primary importance of the item derives (completely or partly) from that association; and

- (c) equipment, furniture, fittings and articles on, or historically or physically associated with, the place.

*Examples of places for section 5*

- 1 A reef or a cliff, cutting, gorge, spring or other landform.
- 2 A plant or animal community.
- 3 Fossil beds.
- 4 A park or garden.
- 5 A lighthouse, church, homestead, railway station or gaol.
- 6 A stock well.
- 7 A cemetery, burial site or grave.
- 8 An airstrip, magazine, storage tunnel or other military installation.
- 9 The site of a shipwreck or aircraft crash.

**6      Meaning of *archaeological place* and *Aboriginal or Macassan archaeological place***

- (1) An ***archaeological place*** is a place that:
  - (a) relates to the past human occupation of the Territory; and
  - (b) has been modified by the activity of the occupiers.
- (2) An ***Aboriginal or Macassan archaeological place*** is a place that:
  - (a) relates to the past human occupation of the Territory by Aboriginal or Macassan people; and
  - (b) has been modified by the activity of those people.

**7      Meaning of *object***

- (1) An ***object*** is a natural or manufactured object that is moveable.
- (2) An ***object*** includes an archaeological object but does not include a place.

**8      Meaning of *archaeological object* and *Aboriginal or Macassan archaeological object***

- (1) An ***archaeological object*** is a relic that:
  - (a) relates to the past human occupation of the Territory; and
  - (b) is in an archaeological place.



- (2) An ***Aboriginal or Macassan archaeological object*** is a relic that:
- (a) relates to the past human occupation of the Territory by Aboriginal or Macassan people; and
  - (b) is:
    - (i) in an Aboriginal or Macassan archaeological place; or
    - (ii) stored in a place in accordance with Aboriginal tradition, including, for example, in an Aboriginal keeping place.

## 9      **Meaning of *relic***

- (1) A ***relic*** is:
- (a) an artefact or thing given shape by a person; or
  - (b) human or animal skeletal remains; or
  - (c) something else prescribed by regulation.
- (2) An artefact or thing can be of any material.
- Examples for subsection (2)*
- 1    *A secret or ceremonial object.*
  - 2    *A log or bark coffin.*
  - 3    *Human remains.*
  - 4    *Rock or wood carvings or engravings.*
  - 5    *Stone tools.*
- (3) However, an artefact or thing made for sale is not a relic.
- (4) In addition, a thing prescribed by regulation is not a relic.

## 10      **Meaning of *heritage significance***

The ***heritage significance*** of a place or object includes its aesthetic, historical, scientific and social significance.

## 11      **Meaning of *heritage assessment criteria***

The ***heritage assessment criteria*** for a place or object are as follows:

- (a) whether it is important to the course, or pattern, of the Territory's cultural or natural history;
- (b) whether it possesses uncommon, rare or endangered aspects of the Territory's cultural or natural history;

- (c) whether it has potential to yield information that will contribute to an understanding of the Territory's cultural or natural history;
- (d) whether it is important in demonstrating the principal characteristics of a class of cultural or natural places or environments;
- (e) whether it is important in exhibiting particular aesthetic characteristics;
- (f) whether it is important in demonstrating a high degree of creative or technical achievement during a particular period;
- (g) whether it has a strong or special association with a particular community or cultural group for social, cultural or spiritual reasons, including the significance of a place to Aboriginal people as part of their continuing and developing cultural traditions;
- (h) whether it has a special association with the life or works of a person, or group of persons, of importance in the Territory's history.

*Note for section 11*

*Under section 24, the heritage assessment criteria are applied to assess the heritage significance of a place or object to decide whether or not to declare the place or object a heritage place or object.*

## 12      **Meaning of *conservation* and *interpretation* of places and objects**

- (1) The ***conservation*** of a place or object includes the maintenance, preservation, restoration, reconstruction, adaptation and interpretation of the place or object for the retention of its heritage significance.
- (2) The ***interpretation*** of a place or object is the way of presenting the heritage significance of the place or object.

## Division 3      **Criminal responsibility**

### 13      **Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note for section 13*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It*

*also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

## **Part 1.3              Application of Act**

### **14              Act binds Crown**

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

### **15              Sacred sites**

Part 3.1 does not apply in relation to:

- (a) a place that is a sacred site; or
- (b) an object that is in a sacred site.

### **16              Native title rights and interests**

- (1) This Act is not intended to affect native title rights and interests otherwise than in accordance with the Native Title Act.
- (2) This Act must be interpreted in a way that does not prejudice native title rights and interests to the extent those rights and interests are recognised and protected by the Native Title Act.
- (3) In this section:

*affect*, see section 227 of the Native Title Act.

*Native Title Act* means the *Native Title Act 1993* (Cth).

*native title rights and interests*, see section 223 of the Native Title Act.

## **Chapter 2 Declaration of heritage places and objects**

### **Part 2.1 Declaration of Aboriginal and Macassan heritage places and objects**

#### **17 Aboriginal or Macassan archaeological heritage places**

An Aboriginal or Macassan archaeological place is a heritage place.

#### **18 Aboriginal or Macassan archaeological heritage objects**

An Aboriginal or Macassan archaeological object is a heritage object.

### **Part 2.2 Declaration of other heritage places and objects**

#### **Division 1 Preliminary matter**

##### **19 Purpose of Part**

This Part provides for the conservation of particular places and objects by establishing a process for declaring them to be heritage places and objects.

#### **Division 2 Nomination and Council initiation process for assessment of heritage significance**

##### **20 Nomination of place or object for assessment**

- (1) Anyone may nominate a place or object for assessment of its heritage significance for declaration as a heritage place or object (a *heritage nomination*).
- (2) The nomination must:
  - (a) be made in the approved form; and
  - (b) be given to the Council; and
  - (c) be accompanied by the information necessary to enable the assessment to be made.

## **21 Council to accept or refuse to accept nomination**

- (1) The Council must accept, or refuse to accept, the heritage nomination of the place or object for assessment as soon as practicable after receiving it.
- (2) The Council may refuse to accept the nomination only if it:
  - (a) is satisfied the nomination is frivolous or vexatious; or
  - (b) is prevented, under section 41, from making the assessment.
- (3) If the Council refuses to accept the nomination, it must give written notice of the decision, and the reasons for the decision, to the person who made the nomination.

## **22 Council may initiate assessment of heritage significance**

The Council may, on its own initiative, decide to assess the heritage significance of a place or object if it considers the place or object may be of heritage significance.

# **Division 3 Assessment of heritage significance of places and objects**

## **23 Assessment period**

- (1) The *assessment period* for the assessment of the heritage significance of a place or object is 6 months after:
  - (a) the heritage nomination for the place or object is accepted by the Council; or
  - (b) the Council decides on its own initiative to make the assessment; or
  - (c) the Council is directed, under section 36(3), to make the assessment of a provisionally declared heritage place or object.
- (2) However, the Council may extend the assessment period if:
  - (a) the Council and the owner of the place or object agree to do so; or
  - (b) the Council is satisfied it is not possible to complete the assessment in the period because of:
    - (i) the remoteness of the place or object; or

(ii) other reasons it considers appropriate.

- (3) If the assessment is to be made on a heritage nomination the Council must give written notice of the extension and the reasons for it to the person who made the nomination.
- (4) If the Council extends the period other than with the agreement of the owner of the place or object, it must:
  - (a) give written notice to the owner of the extension and the reasons for it; and
  - (b) complete the assessment as soon as practicable.

## **24 Assessment of place or object to be made**

- (1) The Council must assess the heritage significance of a place or object by applying the heritage assessment criteria to the place or object.
- (2) In assessing the place or object, the Council may carry out the research and make the inquiries it considers appropriate.
- (3) In addition, for an assessment of the place or object on a heritage nomination, the Council may ask the person making the nomination to give it additional information relevant to the assessment.

## **25 Deciding assessment**

- (1) The Council must, before the end of the assessment period, decide whether or not the place or object is of heritage significance.
- (2) If the Council decides the place or object is of heritage significance, the Council must, before the end of the assessment period:
  - (a) prepare a statement of heritage value for the place or object; and
  - (b) give a copy of the statement to the Minister.
- (3) However, if the Council decides the place or object is not of heritage significance and the assessment was made on a heritage nomination, the Council must give the person who made the nomination a review notice for the decision before the end of the assessment period.

## **26 Public consultation on heritage significance of place or object**

- (1) As soon as practicable after preparing the statement of heritage value for the place or object, the Council must invite submissions on the heritage significance of the place or object by:
  - (a) giving a written notice to:
    - (i) each interested person for the place or object; and
    - (ii) anyone else the Council considers is likely to be directly affected if the place or object is declared to be a heritage place or object; and
  - (b) publishing a notice in a newspaper circulating generally throughout the Territory.
- (2) The notice must state:
  - (a) where copies of the statement of heritage value can be obtained; and
  - (b) submissions are to be made to the Council in writing within 28 days after the public notice is given (the *public consultation period*).
- (3) The Council must make available, without fee, copies of the statement of heritage value.

## **27 Council's decision**

- (1) Within 60 days after the end of the public consultation period, the Council must decide whether or not to recommend that the Minister declare the place or object to be a heritage place or object.
- (2) In making the decision, the Council:
  - (a) must consider the submissions made to it in the public consultation period; and
  - (b) may carry out the research and make the inquiries it considers appropriate.

## **Division 4      Decision not to recommend declaration of place or object to be heritage place**

### **28      Application of Division**

- (1) This Division applies if, under Division 3, the Council decides not to recommend that the Minister declare a place or object to be a heritage place or object.
- (2) However, this Division does not apply if the Council cannot, under section 41, make an assessment of the heritage significance of the place or object.

### **29      Notice of Council's decision**

- (1) As soon as practicable after making the decision, the Council must give a review notice for the decision to:
  - (a) each interested person for the place or object; and
  - (b) each person who made a submission in relation to the place or object in the public consultation period; and
  - (c) if the assessment was made on a heritage nomination made by a person other than the Minister – the person who made the nomination.
- (2) If the assessment was made on a heritage nomination made by the Minister, the Council must give written notice of the decision, and the reasons for it, to the Minister.

## **Division 5      Decision to recommend declaration of place or object to be heritage place**

### **30      Application of Division**

This Division applies if, under Division 3, the Council decides to recommend that the Minister declare a place or object to be a heritage place or object.

### **31      Recommendation to be given to Minister**

- (1) As soon as practicable after making the decision, the Council must give the Minister a recommendation to declare the place or object to be a heritage place or object.



- (2) When giving the Minister the recommendation, the Council must also give the Minister the following:
  - (a) the statement of heritage value for the place or object;
  - (b) a copy of each submission made in relation to the place or object in the public consultation period;
  - (c) other information the Council considers appropriate (for example, suggestions about possible ways of dealing with any objections to the declaration).

### **32 Minister's decision on recommendation**

- (1) The Minister must decide whether or not to permanently declare the place or object to be a heritage place or object.
- (2) In making a decision on the Council's recommendation, the Minister must consider all relevant documents and information.
- (3) The Minister must make the decision within 30 days after:
  - (a) receiving the recommendation; or
  - (b) if, under section 33, the Minister asks the Council to give further relevant information or to vary the recommendation – the Minister receives the information or varied recommendation.

### **33 Minister may ask for further relevant information or variation of recommendation for heritage place or object**

- (1) The Minister may, by written notice, ask the Council:
  - (a) to give further relevant information before making a decision on the Council's recommendation for the place or object; or
  - (b) to vary the recommendation in a stated way.
- (2) The notice must include:
  - (a) the Minister's reasons for asking for the information or variation; and
  - (b) a date, at least 30 days after the date of the notice, by which the information or varied recommendation is to be given to the Minister.

### **34 Permanent declaration of heritage place or object**

- (1) If the Minister is satisfied the place or object is of heritage significance and should be conserved, the Minister must, by *Gazette* notice, permanently declare the place or object to be a heritage place or object.
- (2) The declaration may authorise:
  - (a) stated work that may be carried out on the heritage place or object without a work approval; or
  - (b) the removal of:
    - (i) part of the heritage place; or
    - (ii) the object or part of it.

### **35 Minister's decision not to declare heritage place or object**

- (1) This section applies if, on the Council's recommendation for the place or object, the Minister decides not to declare the place or object to be a heritage place or object.
- (2) The Minister must give written notice to the Council of the Minister's decision and the reasons for it.
- (3) In addition, the Minister must give an information notice for the decision to:
  - (a) each interested person for the place or object; and
  - (b) each person who made a submission in relation to the place or object in the public consultation period; and
  - (c) if the assessment of the place or object was made on a heritage nomination made by another person – the person.
- (4) Also, if the Minister has, under Division 6, made a provisional declaration for the place or object to be a heritage place or object, the Minister must:
  - (a) by *Gazette* notice, revoke the declaration; and
  - (b) publish notice of the revocation in a newspaper circulating in the part of the Territory in which the place or object is located.

## **Division 6          Provisional declaration of place or object to be heritage place or object**

### **36          Provisional declaration – Minister's initiative**

- (1) This section applies if the Minister is satisfied:
  - (a) a place or object is likely to be of heritage significance; and
  - (b) a declaration under this section is necessary to ensure its conservation.
- (2) The Minister may, by *Gazette* notice, provisionally declare the place or object to be a heritage place or object.
- (3) If, when the declaration is made, an assessment of the heritage significance of the place or object has not been started, the Minister must direct the Council to assess the heritage significance of the place or object.

### **37          Provisional declaration – after Division 3 assessment**

- (1) This section applies if the Minister is given notice of the Council's decision on an assessment under Division 3 that a place or object is of heritage significance.
- (2) Within 7 days after the Council invites submissions on the heritage significance of the place or object under section 26(1)(a), the Minister must, by *Gazette* notice, provisionally declare the place or object to be a heritage place or object.

### **38          Provisional declaration may authorise work or removal**

The provisional declaration of a place or object to be a heritage place or object may authorise:

- (a) stated work that may be carried out on the heritage place or object without a work approval; or
- (b) the removal of:
  - (i) part of the heritage place; or
  - (ii) the object or part of it.

### **39 Duration of provisional declaration**

The provisional declaration of a place or object to be a heritage place or object has effect until the earlier of the following:

- (a) the permanent declaration of the place or object to be a heritage place or object;
- (b) the revocation of the provisional declaration.

## **Division 7 General matters**

### **40 Notice of declaration of heritage place or object**

- (1) Within 7 days after the provisional or permanent declaration of a heritage place or object, the Minister must give written notice of the declaration to:
  - (a) each interested person for the place or object; and
  - (b) for a permanent declaration – each person who made a submission in relation to the place or object in the public consultation period.
- (2) The notice must include an information notice.
- (3) In addition, the Minister must, as soon as practicable after the declaration is made:
  - (a) publish notice of the provisional or permanent declaration in a newspaper circulating in the part of the Territory in which the place or object is located; and
  - (b) for the declaration of a heritage place – give written notice of the declaration to the Registrar-General.
- (4) Immediately after receipt of the notice, the Registrar-General must enter details of the declaration in the record of administrative interests kept under section 38 of the *Land Title Act*.

### **41 No further assessment of place or object for 5 years**

- (1) This section applies if the Minister decides not to permanently declare a place or object to be a heritage place or object.

Chapter 2	Declaration of heritage places and objects
Part 2.3	Protected classes of places and objects of heritage significance
Division 2	Assessment and declaration process for protected classes of places and objects
Subdivision 1	Council assessment process

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- (2) The Council must not make an assessment of the heritage significance of the place or object within 5 years after the decision is made except on a heritage nomination for the place or object made:

- (a) by the owner of the place or object; or
- (b) with the owner's consent.

## **Part 2.3 Protected classes of places and objects of heritage significance**

### **Division 1 Preliminary matter**

#### **42 Purpose of Part**

- (1) This Part provides for the conservation of places and objects by establishing a process for declaring protected classes of places and objects of heritage significance.

*Examples of classes of places and objects*

- 1 *The remains of World War II aircraft wrecks.*
- 2 *World War II coastal fortification sites.*
- 3 *Shipwrecks, including the remains of a ship or anything associated with a ship (whether or not they are attached to the ship).*
- 4 *Places and objects associated with the Australian Overland Telegraph Line.*

- (2) The declaration may be made even if the location of places or objects of the declared class is not known.

### **Division 2 Assessment and declaration process for protected classes of places and objects**

#### **Subdivision 1 Council assessment process**

#### **43 Council may initiate assessment of heritage significance**

If the Council considers a class of places or objects may be of heritage significance, the Council may assess the heritage significance of places or objects of the class.

#### **44 How assessment made**

- (1) The Council must assess the heritage significance of a class of places or objects by applying the heritage assessment criteria to places or objects of the class.

- (2) In assessing the places or objects, the Council may carry out the research and make the inquiries it considers appropriate.

**45 Public consultation on heritage significance of places or objects**

- (1) If, on completing the assessment, the Council considers places or objects of the class are of heritage significance, it must:
- (a) prepare a statement of heritage value for places or objects of the class; and
  - (b) give written notice to the municipal or shire council in whose area the places or objects are known to be situated; and
  - (c) invite submissions on the heritage significance of places or objects of the class by publishing notice in a newspaper circulating generally throughout the Territory.
- (2) The notice must state:
- (a) where copies of the statement of heritage value can be obtained; and
  - (b) submissions are to be made to the Council in writing within 28 days after the public notice is given (the *public consultation period*).
- (3) The Council must make available, without fee, copies of the statement of heritage value.

**46 Council's decision**

- (1) Within 60 days after the end of the public consultation period, the Council must decide whether or not to recommend that the Minister declare the class of places or objects to be a protected class of places or objects.
- (2) In making the decision, the Council:
- (a) must consider the submissions made to it in the public consultation period; and
  - (b) may carry out the research and make the inquiries it considers appropriate.

**47 Recommendation for declaration**

- (1) If the Council decides to recommend the Minister declare a class of places or objects to be a protected class of places or objects, it must give the Minister its recommendation.
- (2) The Council must also give the Minister the following:
  - (a) the statement of heritage value for places and objects of the class;
  - (b) a copy of each submission made in relation to the class of places or objects in the public consultation period.

**Subdivision 2 Minister's decision on recommendation for declaration**

**48 When Minister to make decision on recommendation**

The Minister must make a decision on the Council's recommendation for the class of places or objects to be a protected class of places or objects within 30 days after:

- (a) receiving the recommendation; or
- (b) if, under section 49, the Minister asks the Council to give further relevant information or to vary the recommendation – the Minister receives the information or varied recommendation.

**49 Minister may ask for further relevant information or variation of recommendation**

- (1) The Minister may, by written notice, ask the Council:
  - (a) to give further relevant information before making a decision on the Council's recommendation for the class of places or objects; or
  - (b) to vary the recommendation in a stated way.
- (2) The notice must include:
  - (a) the Minister's reasons for asking for the information or variation; and
  - (b) a date, at least 30 days after the date of the notice, by which the information or varied recommendation is to be given to the Minister.

**50 Declaration of protected class of places or objects**

If the Minister is satisfied places or objects of the class are of heritage significance, the Minister must, by *Gazette* notice, declare the class to be a protected class of places or objects.

**51 Notice of declaration**

As soon as practicable after making the declaration of the protected class of places or objects, the Minister must publish notice of the declaration in a newspaper circulating generally in the Territory.

**52 Effect of declaration**

- (1) On the making of the declaration of the protected class of places or objects, a place or object of the class is a heritage place or object.
- (2) However, the declaration does not affect the declaration of a particular place or object to be a heritage place or object regardless of when the particular place or object is declared to be a heritage place or object.

**53 Minister's decision not to declare protected class of places or objects**

If, on the Council's recommendation for the class of places or objects, the Minister decides not to declare the class to be a protected class of places or objects, the Minister must give written notice to the Council of the decision and the reasons for it.

**Part 2.4 Revocation of declaration of heritage places and objects**

**Division 1 Preliminary matters**

**54 Application of Part**

This Part applies to a heritage place or object that:

- (a) is permanently declared under Part 2.2; or
- (b) is of a protected class of heritage places or objects.



## 55 Definition

In this Part:

***revoke***, for a declaration of:

- (a) a heritage place or object under Part 2.2 – includes partially revoke the declaration by excluding part of the heritage place or object; or
- (b) a protected class of heritage places or objects – means partially revoke the declaration by excluding a particular heritage place or object of the class.

## Division 2 Assessment for revocation of declaration of heritage places and objects

### 56 Request for assessment

- (1) The Minister may ask the Council to assess whether the declaration for a heritage place or object should be revoked (a ***revocation request***).
- (2) In addition, the owner of a particular heritage place or object may ask the Council to assess whether the declaration for the heritage place or object should be revoked (also a ***revocation request***).
- (3) However, the owner of the heritage place or object may make a revocation request only if:
  - (a) a revocation request for the place or object has not been made during the preceding 12 months; and
  - (b) any of the following applies:
    - (i) the place or object no longer exists or is no longer of heritage significance;
    - (ii) information is available about the heritage value of the place or object that has not previously been considered by the Council;
    - (iii) other relevant information is available that does not appear to have been taken into account by the Minister when deciding previously whether or not to make or revoke the declaration.

- (4) A revocation request by the owner of a heritage place or object must:

- (a) be made in the approved form; and
- (b) be accompanied by the information necessary to enable the assessment to be made.

**57 Council may initiate assessment**

The Council may, on its own initiative, decide to assess whether the declaration for a heritage place or object should be revoked.

**58 Council to notify Minister of assessment**

- (1) If the Council receives a revocation request from the owner of a heritage place or object, the Council must give the Minister a copy of the request.
- (2) If the Council decides to assess whether the declaration for a heritage place or object should be revoked, the Council must give the Minister its reasons for the decision.

**59 Public consultation on assessment**

- (1) This section applies if the Council:
  - (a) receives a revocation request for a heritage place or object; or
  - (b) decides to assess whether the declaration for a heritage place or object should be revoked.
- (2) Within 7 days after receiving the request or making the decision, the Council must invite submissions on the assessment of the place or object by:
  - (a) giving written notice to:
    - (i) each interested person for the place or object; and
    - (ii) anyone else the Council considers is likely to be directly affected if the declaration for the place or object is revoked; and
  - (b) publishing notice in a newspaper circulating generally throughout the Territory.
- (3) A notice must state submissions are to be made to the Council in writing within 28 days after the public notice is given (the *public consultation period*).

(4) The Council must make available, without fee:

- (a) for an assessment made on a revocation request – copies of the request; or
- (b) for an assessment on the Council's initiative – copies of the Council's reasons for its decision to make the assessment.

## **60 How assessment made**

In assessing whether the declaration for the heritage place or object should be revoked, the Council:

- (a) must have regard to the heritage assessment criteria for the place or object; and
- (b) must consider the submissions made to it in the public consultation period; and
- (c) may carry out the research and make the inquiries it considers appropriate; and
- (d) may ask the owner of the place or object to give it information relevant to the assessment.

## **61 Council's decision**

- (1) Within 30 days after the end of the public consultation period, the Council must recommend the Minister revoke or not revoke the declaration for the place or object.
- (2) When giving the Minister the recommendation, the Council must also give the Minister the following:
  - (a) a statement of its reasons for the recommendation;
  - (b) a copy of each submission made in relation to the place or object in the public consultation period;
  - (c) the other information the Council considers appropriate.

## **Division 3 Minister's decision on Council recommendation**

### **62 Minister's decision**

- (1) The Minister must decide whether or not to revoke the declaration of the heritage place or object.
- (2) In making a decision on the Council's recommendation, the Minister must consider all relevant documents and information.

(3) The Minister must make the decision within 30 days after:

- (a) receiving the recommendation; or
- (b) if, under section 63, the Minister asks the Council to give further relevant information or to vary the recommendation – the Minister receives the information or varied recommendation.

**63 Minister may ask for further relevant information or variation of recommendation**

(1) The Minister may, by written notice, ask the Council:

- (a) to give further relevant information before making a decision on the Council's recommendation for the heritage place or object; or
- (b) to vary the recommendation in a stated way.

(2) The notice must include:

- (a) the Minister's reasons for asking for the information; and
- (b) a date, at least 30 days after the date of the notice, by which the information or varied recommendation is to be given to the Minister.

**64 Revocation of declaration of heritage place or object**

- (1) This section applies if on the Council's recommendation the Minister decides to revoke the declaration for the heritage place or object.
- (2) As soon as practicable after making the decision, the Minister must, by *Gazette* notice, revoke the declaration.

**Division 4 Notice of decisions**

**65 Notice of revocation of declaration of heritage place or object**

- (1) This section applies if the Minister revokes the declaration for a heritage place or object.
- (2) Within 7 days after publication of the notice revoking the declaration for the place or object, the Minister must give written notice of the decision to:
  - (a) each interested person for the place or object; and

- (b) each person who made a submission in relation to the place or object in the public consultation period.
- (3) The notice must include an information notice.
- (4) In addition, the Minister must:
  - (a) publish notice of the revocation in a newspaper circulating in the part of the Territory in which the place or object is located; and
  - (b) for the revocation of a heritage place entered in the record of administrative interests kept under section 38 of the *Land Title Act* – give written notice of the declaration to the Registrar-General.
- (5) Immediately after receipt of the notice, the Registrar-General must remove details of the declaration from the record of administrative interests.

**66 Notice of decision not to revoke declaration of heritage place or object**

- (1) This section applies if on the Council's recommendation the Minister decides not to revoke the declaration for a heritage place or object.
- (2) As soon as practicable after making the decision, the Minister must give written notice to the Council of the Minister's decision and the reasons for it.
- (3) In addition, the Minister must give an information notice for the decision to:
  - (a) each interested person for the place or object; and
  - (b) each person who made a submission in relation to the place or object in the public consultation period.

## Chapter 3      Conservation of heritage places and objects

### Part 3.1      Heritage agreements

#### 67      Definition

In this Part:

**owner**, of a heritage place that comprises land entered in the land register under the *Land Title Act*, means the registered owner of the land under that Act.

#### 68      Agreement for conservation of heritage place or object

- (1) The Minister may enter into an agreement (a **heritage agreement**) on behalf of the Territory with the owner of a heritage place or object.
- (2) The Minister may enter into the agreement only after considering the Council's advice.
- (3) The owner of a heritage place that comprises land may enter into the agreement only with the written consent of each of the following persons:
  - (a) for land entered in the land register under the *Land Title Act* – the holder of a registered interest in the land under that Act;
  - (b) for land covered by a resources interest – the holder of the interest.

#### 69      Provisions of heritage agreement

- (1) A heritage agreement may contain provisions about the conservation, use and management of the heritage place or object.
- (2) The agreement may, for example, provide for the following:
  - (a) restricting the use of the heritage place or object;
  - (b) carrying out, or restricting the carrying out, of work on the place or object;
  - (c) opening of the place for public inspection and regulating charges for admission;
  - (d) financial, technical or other professional advice or help to the owner of the place or object.

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**70 Effect of heritage agreement**

- (1) A heritage agreement is binding on:
  - (a) the parties to the agreement; and
  - (b) to the extent it affects the use of a heritage place, the occupier of the place.
- (2) The agreement may be varied or terminated by agreement of the parties.
- (3) If the heritage place comprises land entered in the land register under the *Land Title Act*, the agreement:
  - (a) is a registrable interest under the *Land Title Act*; and
  - (b) on registration under that Act:
    - (i) has effect as if it were an instrument of covenant over the land; and
    - (ii) may be enforced by the Territory.

**71 Heritage agreement for more than one heritage place or object**

A heritage agreement may be entered into with the owner or owners of more than one heritage place or object or any combination of them.

**Part 3.2 Work approvals**

**72 Application for approval**

- (1) A person may apply to the CEO for an approval (a *work approval*) to carry out work on a heritage place or object.
- (2) The application must:
  - (a) be made in the approved form; and
  - (b) if the applicant is not the owner of the place or object – include the owner's consent.

**73 Referral of application to Minister or Council**

- (1) On receipt of the application, the CEO must:
  - (a) if the application is for carrying out major work – request the Council's advice on it; or

- (b) otherwise – refer it to the Council for decision.
- (2) The Council must give the advice to the CEO within 30 days after receiving the request.
- (3) On receipt of the advice, the CEO must:
  - (a) refer the application to the Minister for decision; and
  - (b) give the Minister a copy of the Council's advice.

#### **74 When decision on application to be made**

- (1) The decision maker must decide the application:
  - (a) for an application for major work – within 30 days after the Minister receives the application; or
  - (b) for an application for other work – within 14 days after receiving the application.
- (2) However, the decision maker may extend the time for deciding the application if the decision maker:
  - (a) considers it necessary to consult with affected persons or others; or
  - (b) requests further information relating to the application.
- (3) If the decision maker extends the time for deciding the application, the decision maker must give written notice of the extension to:
  - (a) the applicant; and
  - (b) if the applicant is not the owner of the place or object – the owner.

#### **75 Consideration of application**

- (1) In deciding an application for a work approval, the decision maker must consider the following:
  - (a) the extent to which the application, if approved, would affect the heritage significance of the heritage place or object;
  - (b) the extent to which the application, if refused, would:
    - (i) affect the reasonable or economic use of the place or object; or
    - (ii) cause a person undue financial hardship;



- (c) for an application for major work – the Council's advice on the application;
  - (d) if the heritage place or object is, or is in, a sacred site – the advice of the Aboriginal Areas Protection Authority;
  - (e) other matters relating to the conservation, use and management of the place or object the decision maker considers relevant.
- (2) For subsection (1), the decision maker may ask the applicant to give the decision maker additional information relevant to the application.

## **76 Conditions may be imposed on work approval**

- (1) If the decision maker approves the application, the decision maker may impose reasonable conditions on the work approval.
- (2) Without limiting subsection (1), a condition may provide for the following:
- (a) the removal of an archaeological object from the heritage place;
  - (b) what happens to the removed object.

## **77 Notice of decision**

- (1) The decision maker must, within 14 days after deciding the application, give written notice of the decision to:
- (a) the applicant; and
  - (b) if the applicant is not the owner of the place or object – the owner.
- (2) The notice must include a review notice.

# **Part 3.3 Exempt work**

## **78 Regulation may exempt work**

- (1) A regulation may declare work to be exempt from the requirement for a work approval (*exempt work*).
- (2) However, the declaration may be made only for work that will not detrimentally affect the heritage significance of a heritage place or object.

- (3) Without limiting subsection (1), the declaration may be made for repair or maintenance work.

*Examples of repair or maintenance work*

- 1 *Painting a place in a colour that conforms to the existing colour scheme.*
- 2 *Repairs to a place using the same types of materials and construction methods as originally used.*

## Part 3.4      Stop work orders

### 79      Application of Part

This Part applies if a heritage officer is satisfied:

- (a) a person is carrying out, or is about to carry out, work; and
- (b) the work constitutes a serious and imminent threat to the heritage significance of a heritage place or object; and
- (c) an order under this Part is necessary for the conservation of the place or object.

### 80      Issuing order

The heritage officer may, by written notice (a ***stop work order***), given to the person:

- (a) order the person to stop the work stated in the notice; or
- (b) prohibit the person from starting the work stated in the notice.

### 81      Application to Tribunal

- (1) Within one business day after issuing the stop work order, the heritage officer must apply to the Tribunal for an order confirming it.
- (2) In this section:

***business day*** means a day other than a Saturday, Sunday or public holiday.

*Note for section 81*

*For provisions about the proceeding for the application for the confirmation of the stop work order, see Part 3, Division 1A, Subdivision 3 of the Lands, Planning and Mining Tribunal Act.*

**82      Revocation of order**

If, after issuing the stop work order, a heritage officer is no longer satisfied grounds exist for issuing the order, the officer must immediately:

- (a) revoke the order by written notice given to the person; and
- (b) if application has been made to the Tribunal for the confirmation of the order – lodge with the Registrar of the Tribunal a copy of the notice.

**83      Duration of order**

- (1) The stop work order ends 30 days after it is given to the person unless confirmed by the Tribunal.
- (2) However, the Tribunal may extend the duration of the order pending the hearing of the application for an order confirming it.

**84      Offence to contravene order**

- (1) A person commits an offence if:
  - (a) the person knows a stop work order has been issued for a place or object; and
  - (b) the person engages in conduct that results in a contravention of the order.

Maximum penalty:      200 penalty units or imprisonment for 12 months.

- (2) If a court finds a person guilty of an offence against subsection (1), the court may, in addition to a penalty imposed for the offence, impose a penalty not exceeding 10 penalty units for each day during which the offence continues after the day the offence is committed.

**Part 3.5      Repair orders**

**85      Application of Part**

This Part applies if the Minister is satisfied:

- (a) repair or maintenance work is required to be carried out on a heritage place or object; and
- (b) an order under this Part is necessary for the conservation of the place or object.

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**86 Issuing order**

- (1) The Minister may, by written notice (a *repair order*), require the owner of the heritage place or object to carry out stated work at the owner's expense.
- (2) However, the Minister may issue the order only if the Minister:
  - (a) has consulted with the owner about the nature and extent of the work required to be carried out; and
  - (b) is satisfied the owner has the financial capacity to carry out the work.
- (3) The order may state the materials to be used to carry out the work and the way in which the work is to be carried out.
- (4) The order must include an information notice.

**87 Offence to contravene order**

- (1) A person commits an offence if:
  - (a) the person knows a repair order has been issued for a heritage place or object; and
  - (b) the person engages in conduct that results in a contravention of the order.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

- (2) If a court finds a person guilty of an offence against subsection (1), the court may, in addition to a penalty imposed for the offence, impose a penalty not exceeding 10 penalty units for each day during which the offence continues after the day the offence is committed.

**88 Territory may carry out work if owner contravenes order**

- (1) This section applies if:
  - (a) the owner of a heritage place or object does not comply with a repair order for the place or object; and
  - (b) either:
    - (i) the period allowed for starting an appeal against the decision to issue the repair order has ended and no appeal has been started; or

- (ii) an appeal against the decision to issue the repair order has been finally decided and is unsuccessful.
- (2) A heritage officer may enter the place, or place where the object is located, and have the work carried out.
- (3) The reasonable cost incurred by the Territory in carrying out the work is a debt owing to the Territory by the owner.
- (4) In addition, if the order relates to a heritage place comprising land, the order is an overriding statutory charge, as defined in section 4 of the *Land Title Act*, on the land.

## **Part 3.6            Removal of heritage objects from Territory**

### **89            CEO may give approval for removal**

- (1) The CEO may give approval for a heritage object to be removed from the Territory for one of the following purposes:
  - (a) public display, for example, in a museum;
  - (b) scientific research or educational purposes;
  - (c) a purpose prescribed by regulation.
- (2) The CEO may give the approval subject to the conditions, and for the period, the CEO considers appropriate.
- (3) However, if the object is an Aboriginal or Macassan archaeological object, the approval may be given only if the person or group who, according to Aboriginal tradition, have a right to possess it, consent to the removal in accordance with the approval.

## Chapter 4      Reviews and appeals

### Part 4.1      Tribunal reviews

#### 90      Reviewable decisions and affected persons

- (1) A ***reviewable decision*** is a decision mentioned in Schedule 1.
- (2) An ***affected person***, for a reviewable decision, is a person mentioned in Schedule 1 for the decision.

#### 91      Review notice

- (1) A ***review notice***, for a reviewable decision, is a written notice stating the following:
  - (a) the decision and the reasons for it;
  - (b) that an affected person may apply to the Tribunal for a review of the merits of the decision;
  - (c) the period allowed for applying for the review;
  - (d) how to apply for the review.
- (2) The validity of a reviewable decision is not affected by a failure to give a review notice to an affected person for the decision.

#### 92      Application for review

- (1) An affected person for a reviewable decision may apply to the Tribunal for a review of the merits of the decision.
- (2) The application must be made within 28 days after:
  - (a) the affected person receives a review notice for the decision;  
or
  - (b) if the affected person does not receive a review notice for the decision – the day the person becomes aware of the decision.

*Note for section 92*

*For provisions about the proceeding for the review of the reviewable decision, see Part 3, Division 1A, Subdivision 2 of the Lands, Planning and Mining Tribunal Act.*

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## Part 4.2 Appeals to Supreme Court

### 93 Appealable decisions and affected persons

- (1) An *appealable decision* is a decision mentioned in Schedule 2.
- (2) An *affected person*, for an appealable decision, is a person mentioned in Schedule 2 for the decision.

### 94 Information notice

- (1) An *information notice*, for an appealable decision, is a written notice stating the following:
  - (a) the decision and the reasons for it;
  - (b) that an affected person may appeal against the decision to the Supreme Court on a question of law only;
  - (c) the period allowed for starting the appeal;
  - (d) how to start the appeal.
- (2) The validity of an appealable decision is not affected by a failure to give an information notice to an affected person for the decision.

### 95 Appeal on question of law

- (1) An affected person for an appealable decision may appeal against the decision to the Supreme Court.
- (2) The appeal may be made in relation to a question of law only.

### 96 Starting appeal

The appeal is started by filing a notice of appeal in the Supreme Court in accordance with applicable rules of court.

### 97 Appeal procedure

The appeal must be decided on the evidence before the Minister when the appealable decision was made.

### 98 Decision on appeal

In deciding the appeal, the Supreme Court may:

- (a) make any incidental order it considers appropriate; and

- (b) if it allows the appeal:
  - (i) refer the matter back to the Minister for reconsideration;  
and
  - (ii) give any directions in law and recommendations it  
considers appropriate.



## Chapter 5      Enforcement

### Part 5.1      Preliminary matters

#### 99      Definitions

In this Chapter:

***connected***, see section 100.

***enter***, a place, includes re-enter and board the place.

***occupier***, of a place, includes a person who reasonably appears to be an occupier of the place.

***place*** includes an aircraft, vehicle or vessel.

*Note for section 99*

*Section 4 defines "on to include at or in a place and so a reference in a provision to a thing on an aircraft, vehicle or vessel includes a thing in the aircraft, vehicle or vessel.*

#### 100      When thing is ***connected*** with offence

For this Part, a thing is ***connected*** with an offence if:

- (a) the offence has been committed in relation to the thing; or
- (b) the thing will afford evidence of the commission of the offence;  
or
- (c) the thing was used, is being used or is intended to be used for the purpose of committing the offence.

### Part 5.2      Powers of heritage officers to enter places

#### 101      Entry of place – general

- (1) For the administration or enforcement of this Act, a heritage officer may enter:
  - (a) a place (other than residential premises) at any reasonable time; or
  - (b) any place at any time:
    - (i) with the consent of the occupier of the place; or

- (ii) under a search warrant issued under this Part for the place.

- (2) An appointed heritage officer who enters a place under subsection (1) must not remain on the place if the officer does not produce the officer's identity card when asked by the occupier of the place.

## **102      Consent to entry**

- (1) A heritage officer seeking the consent of an occupier of a place to enter the place must:
  - (a) give the occupier the reasons why entry is sought; and
  - (b) inform the occupier that the occupier may refuse to give consent; and
  - (c) if the officer is an appointed heritage officer – show the officer's identity card to the occupier.
- (2) If:
  - (a) it is material in proceedings for a court to be satisfied the occupier consented to entry under this Part; and
  - (b) written consent of the occupier is not produced in evidence;

the court may presume, in the absence of evidence to the contrary, the occupier did not give consent.

## **103      Entry of place – search warrant**

- (1) A heritage officer may apply to a magistrate, by information on oath, for a search warrant for a place if the officer reasonably believes an offence against this Act is about to be, is being or has been committed on the place.
- (2) The magistrate may issue a search warrant only if satisfied about the matters set out in the information.
- (3) The warrant authorises the officer named in the warrant, and any other person helping the officer, to enter the place and to exercise a heritage officer's powers under this Chapter.
- (4) The warrant must state:
  - (a) the purpose for which it is issued; and
  - (b) the nature of the offence or contravention for which the entry is authorised; and

- (c) the hours during which entry to the place is authorised or state that the entry is authorised at any time of the day or night; and
  - (d) the date, within 30 days after the warrant's issue, the warrant ceases to have effect.
- (5) The heritage officer executing the warrant must, if asked by the occupier of the place or another person on the place, produce the warrant for the person's inspection.

#### **104 Additional powers for entry of aircraft, vehicle or vessel**

- (1) This section applies if a heritage officer has reasonable grounds for suspecting:
- (a) an aircraft, vehicle or vessel is being, has been or is likely to be, used in the commission of an offence against this Act; or
  - (b) an aircraft, vehicle or vessel, or a thing on an aircraft, vehicle or vessel, may provide evidence of the commission of an offence against this Act.
- (2) For entering the aircraft, vehicle or vessel under this Part, the heritage officer may require the person in control of the aircraft, vehicle or vessel:
- (a) to stop, move or not to move it; or
  - (b) to bring it to a stated place and remain in control of it until the officer permits it to depart; or
  - (c) to give the officer reasonable help.
- (3) A person commits an offence if the person engages in conduct that results in a contravention of the heritage officer's requirement.

Maximum penalty: 100 penalty units.

- (4) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes a reasonable excuse.

### **Part 5.3 Powers of heritage officers on entry of places**

#### **105 Powers on entry of place**

- (1) A heritage officer who enters a place under Part 5.2 may do any of the following:
- (a) inspect or examine the place or anything found on the place;

- 
- (b) break open and search fixtures and fittings, furniture and furnishings or boxes, packages and other containers found on the place;
  - (c) take measurements of, or conduct tests in relation to, the place or anything found on the place;
  - (d) take photographs, films or audio, video or other recordings of the place or anything found on the place;
  - (e) take and remove from the place:
    - (i) an object the officer reasonably believes is a heritage object for the purpose of the conservation of the object; or
    - (ii) samples for analysis of anything found on the place;
  - (f) take copies of, or extracts from, documents found on the place;
  - (g) require a person on the place to:
    - (i) answer questions or provide information; or
    - (ii) make available documents kept on the place; or
    - (iii) give the officer reasonable help to exercise powers under this section;
  - (h) subject to section 106:
    - (i) seize anything found on the place; or
    - (ii) if the place is an aircraft, vehicle or vessel – seize it
- (2) After taking a sample under subsection (1)(e)(ii) or seizing a thing under subsection (1)(h), the heritage officer must give a receipt for the sample or thing to:
- (a) the occupier of the place; or
  - (b) the person whom the heritage officer reasonably believes was in possession of the sample or thing immediately before it was taken or seized.
- (3) A requirement under subsection (1)(g) must be given by written notice.

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(4) When making the requirement, the heritage officer must inform the person it is an offence not to comply with the requirement unless the person establishes a reasonable excuse.

(5) A person commits an offence if the person engages in conduct that results in a contravention of the requirement.

Maximum penalty: 100 penalty units.

(6) It is a defence to a prosecution for an offence against subsection (5) if the defendant establishes a reasonable excuse.

(7) Without limiting subsection (6), it is a reasonable excuse for an individual to fail to answer a question under subsection (1)(g)(i) if complying with the requirement might tend to incriminate the individual.

## **106 Seizure of things**

(1) A heritage officer may seize a thing under section 105(1)(h) only if the officer reasonably believes the thing:

(a) is connected with an offence against this Act and the seizure is necessary to prevent the thing from being:

(i) concealed, lost, damaged or destroyed; or

(ii) used to commit the offence; or

(b) is connected with an offence against this Act and the seizure is necessary to conduct tests for adducing evidence for a prosecution for the offence.

(2) After seizing the thing, the heritage officer may:

(a) take, or direct another person to take, the thing to the place stated by the officer; or

(b) give directions about handling and storing the thing that the officer considers appropriate.

(3) A person commits an offence if the person:

(a) interferes with or disposes of the seized thing; or

(b) removes the seized thing from:

(i) the place on which it was seized; or

- (ii) the place to which it was taken by or under the direction of the heritage officer.

Maximum penalty:      100 penalty units.

- (4) Subsection (3) does not apply if the person has the written consent of the CEO.

#### **107      Retention of things seized**

The following provisions apply in relation to a thing seized:

- (a) it must be held by the heritage officer for adducing evidence for a prosecution for an offence against this Act unless the CEO authorises its release to its owner or the person who had possession of it immediately before its seizure;
- (b) if, on a prosecution for an offence against this Act, the defendant is found guilty of the offence, the court may order the thing be forfeited to the Territory;
- (c) the officer must release the thing to its owner or the person who had possession of it immediately before its seizure if:
  - (i) a prosecution for an offence against this Act is not started within the period provided by section 52 of the *Justices Act*, or
  - (ii) on a prosecution being started within that period, the defendant is not found guilty or the court does not make an order under paragraph (b).

#### **108      Heritage officer may use help and force in exercising powers**

A heritage officer may exercise a power under this Chapter with the help, and using the force, that is reasonable in the circumstances.

### **Part 5.4      Other powers of heritage officers**

#### **109      Power to require name and address**

- (1) This section applies if a heritage officer:
  - (a) finds a person committing an offence against this Act; or
  - (b) finds a person in circumstances that lead the officer to reasonably suspect the person has just committed an offence against this Act; or

- (c) has information that leads the officer to reasonably suspect a person has just committed an offence against this Act.
- (2) The heritage officer may require the person to state the person's name and address.
- (3) When making the requirement, the heritage officer must inform the person it is an offence to contravene the requirement unless the person establishes a reasonable excuse.
- (4) The heritage officer may require the person to give evidence of the correctness of the person's name or address if the officer reasonably suspects the name or address given is false.
- (5) A person commits an offence if the person engages in conduct that results in a contravention of a requirement given to the person under this section by a heritage officer.

Maximum penalty:      100 penalty units.

- (6) An offence against subsection (5) is an offence of strict liability.
- (7) It is a defence to a prosecution for an offence against subsection (5) if the defendant establishes a reasonable excuse.

#### **110      Power to require information from certain persons**

- (1) This section applies if a heritage officer reasonably suspects:
  - (a) an offence against this Act has been committed; and
  - (b) a person may be able to give information about the offence.
- (2) The heritage officer may require the person to give information about the suspected offence.
- (3) When making the requirement, the heritage officer must inform the person it is an offence to fail to give the information unless the person establishes a reasonable excuse.
- (4) A person commits an offence if the person engages in conduct that results in a contravention of the requirement.

Maximum penalty:      100 penalty units.

- (5) It is a defence to a prosecution for an offence against subsection (4) if the defendant establishes a reasonable excuse.
- (6) Without limiting subsection (5), it is a reasonable excuse for an individual to fail to answer the question if complying with the requirement might tend to incriminate the individual.

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## Part 5.5 Heritage offences

### 111 Causing damage to heritage place or object

(1) A person commits an offence if the person:

- (a) knows a place or object is a heritage place or object; and
- (b) engages in conduct that results in damage to the place or object.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(2) A person commits an offence if the person engages in conduct that results in damage to a heritage place or object.

Maximum penalty: 100 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

(4) Subsections (1) and (2) do not apply if:

- (a) the object is in the possession of a person or group who, according to Aboriginal tradition, have a right to possess it; and
- (b) the person engages in conduct in accordance with Aboriginal tradition.

(5) In addition, subsections (1) and (2) do not apply if the person:

- (a) engages in conduct in accordance with:
  - (i) a heritage agreement; or
  - (ii) a work approval; or
  - (iii) work authorised under the declaration of heritage place or object; or
  - (iv) a repair order; or
- (b) carries out exempt work.

(6) Also, it is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.



- (7) If a court finds a person guilty of an offence against subsection (1) or (2), the court may, in addition to a penalty imposed for the offence, order the person:
  - (a) to pay an amount for the damage caused by committing the offence; or
  - (b) to make good the damage caused by committing the offence.
- (8) An amount that is not paid in accordance with the order is a debt payable by the person.

## **112      Removal of part of heritage place**

- (1) A person commits an offence if the person:
  - (a) knows a place is a heritage place; and
  - (b) removes a part of the place.

Maximum penalty:      400 penalty units or imprisonment for 2 years.
- (2) A person must not remove a part of a heritage place.

Maximum penalty:      100 penalty units.
- (3) An offence against subsection (2) is an offence of strict liability.
- (4) Subsections (1) and (2) do not apply if:
  - (a) the object is in the possession of a person or group who, according to Aboriginal tradition, have a right to possess it; and
  - (b) the person removes the part of the heritage place in accordance with Aboriginal tradition.
- (5) In addition, subsections (1) and (2) do not apply if:
  - (a) the removal is carried out in accordance with:
    - (i) a heritage agreement; or
    - (ii) a work approval; or
  - (b) the removal is authorised under the declaration of the heritage place or object; or
  - (c) a repair order; or

(d) the removal is exempt work.

(6) Also, it is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.

### **113      Removal of heritage objects from Territory**

(1) A person commits an offence if the person:

(a) knows an object is a heritage object; and

(b) removes the object from the Territory.

Maximum penalty:      400 penalty units or imprisonment for  
2 years.

(2) A person must not remove a heritage object from the Territory.

Maximum penalty:      100 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

(4) Subsections (1) and (2) do not apply if:

(a) the object is in the possession of a person or group who, according to Aboriginal tradition, have a right to possess it; and

(b) the person removes the object in accordance with Aboriginal tradition.

(5) In addition, subsections (1) and (2) do not apply if the object is removed in accordance with the CEO's approval under section 89.

(6) Also, it is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.

### **114      Discovery of archaeological places and objects**

(1) A person commits an offence if the person:

(a) discovers a place or object the person knows is an Aboriginal or Macassan archaeological place or object; and

(b) does not, as soon as practicable after the discovery, give the CEO a written report stating the following:

(i) a description of the place or object;

(ii) its location;

- (iii) the person's name and address;
- (iv) if known by the person – the name and address of the owner or occupier of the place or place where the object is located.

Maximum penalty:      20 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.
- (3) A person is taken to have complied with subsection (1) if the person gives the report to the CEO within 7 days after the discovery.

## 115      **Alternative verdicts**

- (1) This section applies if, on the trial of a person charged with an offence against a provision mentioned in the following Table (the *prosecuted offence*), the trier of fact:
  - (a) is not satisfied beyond reasonable doubt the person committed the prosecuted offence; but
  - (b) is satisfied beyond reasonable doubt the person committed the offence, or the offence of attempting to commit the offence, mentioned in the Table opposite the prosecuted offence (the *alternative offence*).
- (2) The trier of fact may find the person not guilty of the prosecuted offence but guilty of the alternative offence.

### **Table      Alternative verdicts**

Prosecuted offence	Alternative offence
section 111(1)	section 111(2)
section 112(1)	section 112(2)
section 113(1)	section 113(2)

## **Part 5.6      Other offences**

### **116      Misleading information or document**

- (1) A person commits an offence if:
  - (a) the person gives information to another person; and
  - (b) the other person is an official; and

- (c) the person knows the information is misleading; and
- (d) the person knows the official is acting in an official capacity.

Maximum penalty:      200 penalty units or imprisonment for  
12 months.

(2) A person commits an offence if:

- (a) the person gives a document to another person; and
- (b) the other person is an official; and
- (c) the person knows the document contains misleading information; and
- (d) the person knows the official is acting in an official capacity.

Maximum penalty:      200 penalty units or imprisonment for  
12 months.

(3) Strict liability applies to subsections (1)(b) and (2)(b).

(4) Subsection (2) does not apply if the person, when giving the document:

- (a) draws the misleading aspect of the document to the official's attention; and
- (b) to the extent to which the person can reasonably do so – gives the official the information necessary to correct the document.

(4) In this section:

***misleading information*** means information that is misleading in a material particular or because of the omission of a material particular.

***official*** means:

- (a) the CEO; or
- (b) a heritage officer.

## **117      Obstruction of person acting in official capacity**

(1) A person commits an offence if the person:

- (a) obstructs a heritage officer, or person assisting a heritage officer, acting in an official capacity; and

- 
- (b) knows the heritage officer is, or person is assisting a heritage officer, acting in an official capacity.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.
- (3) In this section:

***obstruct*** includes resist and hinder.

#### **118 Falsely representing to be heritage officer**

- (1) A person commits an offence if:
- (a) the person represents, by words or conduct, that the person or another person is a heritage officer; and
  - (b) the person or other person is not a heritage officer; and
  - (c) the person makes the representation with an intention to deceive.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Strict liability applies to subsection (1)(b).

### **Part 5.7 Criminal liability for offences**

#### **119 Definitions**

In this Part:

***declared provision*** means any of the following provisions:

- (a) section 84(1), 87(1), 110(4), 111(1) and (2), 112(1) and (2), 113(1) and (2), 114(1), 116(1) or (2), 117(1) or 118;
- (b) a provision of the Regulations prescribed by regulation.

***representative***, of a person, means an employee or agent of the person.

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## 120 Conduct of representative

- (1) This section applies to a prosecution for an offence against a provision of this Act.

*Note for subsection (1)*

*This section deals with prosecutions of individuals. Part IIAA, Division 5, of the Criminal Code contains provisions about corporate criminal responsibility.*

- (2) Conduct engaged in by a representative of a person within the scope of the representative's actual or apparent authority is taken to have been also engaged in by the person.
- (3) However, subsection (2) does not apply if the person proves the person took reasonable steps to prevent the conduct.
- (4) In deciding whether the person took reasonable steps to prevent the conduct, a court must consider:
- (a) any action the person took to ensure the representative had a reasonable knowledge and understanding of the requirement to comply with the contravened provision; and
  - (b) the level of management, control or supervision that was appropriate for the person to exercise over the representative.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) If it is relevant to prove a person had a fault element in relation to a physical element of an offence, it is enough to show:
- (a) the conduct relevant to the physical element was engaged in by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the fault element in relation to the physical element.
- (7) A person may rely on section 43AX of the Criminal Code in relation to conduct by a representative that would be an offence by the person only if:
- (a) the representative was under a mistaken but reasonable belief about the facts that, had they existed, would have meant that the conduct would not have constituted an offence; and

- (b) the person proves the person exercised due diligence to prevent the conduct.

*Note for subsection (7)*

*Section 43AX of the Criminal Code provides a person is not criminally responsible if the person engaged in conduct under a mistake of fact in relation to an offence of strict liability.*

- (8) A person (the **defendant**) may not rely on section 43BA of the Criminal Code in relation to a physical element of an offence brought about by another person if the other person is a representative of the defendant.

*Note for subsection (8)*

*Section 43BA of the Criminal Code provides a person is not criminally responsible in circumstances of an intervening conduct or event.*

- (9) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (2) or (6).

- (10) In this section:

***fault element*** includes intention, knowledge, recklessness, opinion, belief and purpose, but does not include negligence.

***person*** means an individual.

## **121 Criminal liability of executive officer of body corporate**

- (1) An executive officer of a body corporate commits an offence if:
- (a) the body corporate commits an offence (a ***relevant offence***) by contravening a declared provision; and
  - (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
  - (c) the officer failed to take reasonable steps to prevent the contravention; and
  - (d) the officer was reckless about whether the contravention would happen.

Maximum penalty:      The maximum penalty that may be imposed on an individual for the relevant offence.

- (2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
    - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
    - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
    - (iii) the body corporate's representatives and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
  - (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) This section does not affect the liability of the body corporate.
- (5) This section applies whether or not the body corporate is prosecuted for, or convicted of, the relevant offence.
- (6) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (7) In this section:

***executive officer***, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

## Part 5.8      Evidentiary matters

### 122      Judicial notice

In any proceeding, a signature purporting to be the signature of the CEO is evidence of the signature it purports to be.



**123      Evidentiary certificate**

In a proceeding for an offence against this Act, a certificate signed by the CEO stating any of the following matters is evidence of the matter:

- (a) a stated place or object is a heritage place or object or is a place or object of a protected class of heritage place or object;
- (b) a stated person was a heritage officer on a stated day;
- (c) a stated notice or other document was made, given or issued on a stated day;
- (d) a stated document is a copy of a heritage agreement, work approval, stop work order or repair order.

## **Chapter 6      Administrative matters**

### **Part 6.1      Heritage Council**

#### **Division 1      Establishment, functions and powers**

##### **124      Establishment**

The Heritage Council is established.

##### **125      Functions**

The functions of the Council are as follows:

- (a) to assess the heritage significance of places and objects;
- (b) to recommend to the Minister the declaration of places and objects to be heritage places and objects;
- (c) to recommend to the Minister the revocation of the declaration for heritage places and objects;
- (d) to advise the Minister on the conservation, use and management of heritage places and objects;
- (e) to advise the Minister about the carrying out of work on a heritage place or object and to decide applications for work approvals other than applications for major work;
- (f) to promote, as it considers appropriate, the public use and enjoyment of heritage places and objects in a way that is consistent with the conservation of the heritage significance of the places and objects;
- (g) to facilitate public education and programs about the Territory's cultural and natural heritage;
- (h) to advise the Minister on financial incentives or concessions for heritage agreements (either in general or on particular agreements);
- (i) to advise the Minister on matters affecting the Territory's cultural and natural heritage;
- (j) to perform other functions conferred under this or another Act or as directed by the Minister.

**126      Powers**

The Council has the powers necessary to perform its functions.

**127      Delegation**

The Council may delegate any of its powers and functions to the CEO.

**Division 2      Provisions about membership**

**128      Membership of Council**

(1) The Council consists of:

- (a) 10 members appointed by the Minister (*appointed members*); and
- (b) the CEO or, if the CEO nominates another person to be a member in the CEO's place, the nominee.

(2) The appointed members are:

- (a) a representative of The National Trust of Australia (Northern Territory); and
- (b) a representative of the Aboriginal Areas Protection Authority; and
- (c) a representative of an organisation representing the interests of local government; and
- (d) a representative of an organisation representing the interests of land owners; and
- (e) 6 persons with expertise or experience relevant to the administration of this Act.

(3) A representative of an entity must be nominated by the entity.

(4) In appointing members, the Minister must, as far as practicable, ensure at least 2 of the appointed members are of Aboriginal descent.

**129      Nominations for appointment of member**

(1) Before appointing a member under section 128(2)(e), the Minister must invite nominations for appointment.

- (2) The invitation may be made by public advertisement or in another way the Minister considers appropriate.

**130      Duration of appointment**

An appointed member holds office for the period, not exceeding 3 years, stated in the instrument of appointment.

**131      Conditions of appointment**

An appointed member holds office on the conditions stated in the instrument of appointment.

**132      Chairperson and deputy chairperson**

- (1) The Minister must appoint an appointed member to be the chairperson.
- (2) The members must elect an appointed member to be the deputy chairperson.

**133      When appointed member ceases to hold office**

- (1) An appointed member ceases to hold office if:
- (a) the member resigns by giving written notice of resignation to the Minister; or
  - (b) the member's term of office comes to an end and the member is not reappointed; or
  - (c) the member is convicted of an indictable offence or sentenced to imprisonment for an offence; or
  - (d) the member is absent, except on leave granted by the Council, from 3 consecutive meetings of the Council; or
  - (e) the member is removed from office under subsection (2).
- (2) The Minister may remove a member from office for:
- (a) mental or physical incapacity to carry out official duties satisfactorily; or
  - (b) neglect of duty; or
  - (c) breach of a condition of appointment; or
  - (d) dishonest or dishonourable conduct.

## **Division 3      Conduct of business**

### **134      Holding meetings**

- (1) The Council must meet as often as is necessary for the exercise of its powers and the performance of its functions.
- (2) However, the Council must meet at least 4 times in each year.
- (3) The chairperson must call a meeting of the Council if asked to do so by the Minister or at least 5 members.
- (4) The chairperson must make the arrangements that enable the Council to meet.

### **135      Presiding member at meetings**

- (1) The chairperson must preside at all meetings of the Council at which he or she is present.
- (2) If the chairperson is absent from a meeting, the deputy chairperson must preside.
- (3) If the chairperson and deputy chairperson are absent from a meeting, the members present must elect a member to preside.

### **136      Procedures at meetings**

- (1) A quorum of the Council consists of 6 members.
- (2) A question arising for decision at a Council meeting must be resolved according to the opinion of a majority of the members present at the meeting and, if they are equally divided in opinion, the chairperson has a casting vote.
- (3) The Council must keep proper minutes of its proceedings and decisions.
- (4) Subject to this Part, the Council may decide its own procedures.

### **137      Disclosure of interest**

- (1) If a member of the Council has a direct or indirect interest in a matter being considered or about to be considered by the Council, the member must disclose the nature of the interest at a Council meeting as soon as practicable after the relevant facts come to the member's knowledge.
- (2) The disclosure must be recorded in the Council's minutes.

- (3) The member must not, while having that interest:
  - (a) take part in any deliberation or decision of the Council relating to that matter; or
  - (b) form part of the quorum of the Council in any deliberation or decision of the Council relating to that matter.
- (4) However, subsection (3) does not apply if the Council resolves the subsection does not apply to the member.
- (5) Despite the resolution, the member may refuse to take part in any deliberation or decision of the Council relating to the matter.

## **Division 4      Miscellaneous matters**

### **138      Annual report**

- (1) Within 3 months after the end of each financial year, the Council must report to the Minister on this Act's administration for the year.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.

### **139      Register of heritage places and objects**

- (1) The Council must keep a register for this Act.
- (2) The register may be kept in the way the Council considers appropriate, including for example, in an electronic form.
- (3) The register must contain details of the following:
  - (a) heritage places and objects declared under Part 2.2;
  - (b) protected classes of heritage places and objects;
  - (c) heritage agreements.
- (4) An entry in the register for a heritage place or object declared under Part 2.2 must:
  - (a) state its location; and
  - (b) contain a description of it; and
  - (c) contain a statement of its heritage value.
- (5) However, the register must not include information that under Aboriginal tradition must be kept secret.

**140      Public access to register**

Anyone may inspect the register and copy or take extracts from the register.

**Part 6.2      Heritage officers**

**141      Who is heritage officer**

(1) A *heritage officer* is:

- (a) a person appointed under subsection (2) as a heritage officer (an *appointed heritage officer*); or
- (b) a police officer.

(2) The CEO may appoint as a heritage officer:

- (a) a public sector employee of the Agency; or
  - (b) a public sector employee of another Agency under an arrangement with the Chief Executive Officer of that Agency; or
  - (c) an officer or employee of a statutory corporation or council under an arrangement with the corporation or council; or
  - (d) an officer or employee of another jurisdiction, or an authority of another jurisdiction, under an arrangement with the jurisdiction or authority.
- (3) An appointed heritage officer has the powers and functions of a heritage officer under this Act as stated in the appointment.
- (4) A police officer has all the powers and functions of a heritage officer.

(5) In this section:

*another jurisdiction* means the Commonwealth, a State or another Territory.

*council* means a council constituted under the *Local Government Act*.

**142      Identity cards**

- (1) The CEO must give each appointed heritage officer an identity card stating the person's name and that the person is a heritage officer.

- (2) The identity card must:
  - (a) show a recent photograph of the officer; and
  - (b) show the card's date of issue and expiry; and
  - (c) be signed by the officer.
- (3) This section does not prevent the issue of a single identity card to a person for this and another Act.

**143      Production of identity card**

An appointed heritage officer exercising a power or performing a function under this Act in relation to a person must, if asked by the person, produce the officer's identity card for the person's inspection.

**144      Return of identity card**

- (1) A person who ceases to be an appointed heritage officer must return the person's identity card to the CEO within 21 days after the cessation.

Maximum penalty:      20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the person establishes a reasonable excuse.



## **Chapter 7      Miscellaneous matters**

### **145      Approved forms**

The CEO may approve forms for this Act.

### **146      Delegations by Minister and CEO**

- (1) The Minister may delegate any of the Minister's powers and functions to the CEO.
- (2) The CEO may delegate any of the CEO's powers and functions to a heritage officer.

### **147      Acquisition on just terms**

If the operation of this Act would, apart from this section, result in an acquisition of property from a person otherwise than on just terms:

- (a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

### **148      Protection from liability**

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:
  - (a) a member of the Council;
  - (b) a member of a committee of the Council;
  - (c) a heritage officer;
  - (d) a person assisting a heritage officer under Chapter 5.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3) In this section:

*exercise*, of a power, includes the purported exercise of the power.

***performance***, of a function, includes the purported performance of the function.

**149      Regulations**

- (1) The Administrator may make regulations under this Act.
- (2) A regulation may provide for the following:
  - (a) regulating access to heritage places;
  - (b) the identification of archaeological places;
  - (c) applying, adopting or incorporating (with or without changes) a matter contained in another instrument as in force or existing at a particular time or from time to time;
  - (d) fees payable under this Act;
  - (e) an offence against a regulation to be an offence of strict or absolute liability but not with a penalty exceeding 100 penalty units.

## Chapter 8      Repeal of Acts and transitional matters

### Part 8.1      Repeal of Acts

#### 150      Repeals

The following Acts are repealed:

- (a) *Heritage Conservation Act 1991* (Act No. 39 of 1991);
- (b) *Heritage Conservation Amendment Act 1998* (Act No. 17 of 1998).

### Part 8.2      Transitional matters

#### 151      Definitions

In this Part:

***commencement day*** means the day on which section 150 commences.

***repealed Act*** means the *Heritage Conservation Act* as in force immediately before the commencement day.

#### 152      Register

The Register kept under the repealed Act is taken to be the register under this Act.

#### 153      Heritage places and objects

- (1) Subject to subsection (2), a prescribed archaeological place under the repealed Act is taken to be a heritage place declared under Part 2.1 of this Act.
- (2) A heritage place declared under section 26 of the repealed Act is taken to be a heritage place declared under Part 2.2 of this Act.
- (3) Subject to subsection (4), a prescribed archaeological object under the repealed Act is taken to be a heritage object declared under Part 2.1 of this Act.
- (4) A heritage object declared under section 26 of the repealed Act is taken to be a heritage object declared under Part 2.2 of this Act.

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**154 Pending assessments for declaration of heritage places and objects**

- (1) This section applies if:
- (a) before the commencement day:
    - (i) an application had been made under the repealed Act to have a place or object declared to be a heritage place or object; or
    - (ii) the Council had decided of its own motion, or was directed by the Minister, to assess the heritage value of a place or object; and
  - (b) immediately before the commencement day, the assessment process under Part 4 of the repealed Act had not been completed for the place or object.

*Note for subsection (1)*

*Under Part 4 of the repealed Act, the assessment process for declaring a place or object to be a heritage place or object includes the following:*

- (a) assessment of the place or object by applying relevant heritage assessment criteria;*
  - (b) seeking comments about the declaration;*
  - (c) considering comments received;*
  - (d) making a recommendation to, and decision by, the Minister about making the declaration.*
- (2) Despite its repeal, the repealed Act continues to apply in relation to the assessment process for the place or object.
- (3) However, if the Minister decides to declare the place or object to be a heritage place or object:
- (a) the declaration must be made under section 34; but
  - (b) section 40 does not apply to the declaration.

*Note for subsection (3)*

*Because of subsection (2), notice of the declaration is given under section 26(2) of the repealed Act and Part 8 (Appeals) of the repealed Act continues to apply to the decision made in relation to the assessment of the place or object.*

- 
- (4) In addition, the Council must decide whether or not to recommend the declaration of the place or object:
- (a) within 12 months after the commencement day – if the Council had complied with section 24(2) before the commencement day; or
  - (b) within 2 years after the commencement day – if:
    - (i) the application for the declaration was made under section 21 of the repealed Act; and
    - (ii) the Council had not complied with section 24(2) before the commencement day.

**155 Pending assessments for revocation of declaration of heritage places and objects**

- (1) This section applies if:
- (a) before the commencement day:
    - (i) the Minister has requested the Council to assess whether the Minister should revoke all or part of the declaration of a heritage place or object; or
    - (ii) a request or application had been made under the repealed Act for an assessment as to whether the Minister should revoke all or part of the declaration of a heritage place or object; and
  - (b) immediately before the commencement day, the assessment process under Part 6A of the repealed Act had not been completed for the place or object.

*Note for subsection (1)*

*Under Part 6A of the repealed Act, the assessment process for revoking the declaration of a heritage place or object includes the following:*

- (a) assessment of the place or object by having regard to relevant heritage assessment criteria;*
- (b) seeking comments about the revocation;*
- (c) considering comments received;*
- (d) making a recommendation to, and decision by, the Minister about making the revocation.*

- (2) Despite its repeal, the repealed Act continues to apply in relation to the assessment process for the heritage place or object.

- (3) However, if the Minister accepts the recommendation to revoke the declaration of the heritage place or object:

- (a) the declaration must be made under section 64; and
- (b) section 65 does not apply to the declaration.

*Note for subsection (3)*

*Because of subsection (2), notice of the declaration of revocation is given under section 39H(4) of the repealed Act and Part 8 (Appeals) of the repealed Act continues to apply to the decision made in relation to the assessment of the place or object.*

## **156      Interim conservation orders**

- (1) This section applies to an interim conservation order in force immediately before the commencement day for a heritage place or object.
- (2) The order is taken to be a provisional declaration of the place or object to be a heritage place or object under this Act.

## **157      Conservation management plans**

- (1) This section applies to a conservation management plan in force immediately before the commencement day for a heritage place or object.
- (2) The work permitted to be carried out on the place or object, or the moving of the object, under the plan is taken to be a work approval for the place or object subject to the conditions stated in the plan.
- (3) However, the work approval expires 2 years after the commencement day.

## **158      Heritage agreements**

A heritage agreement under the repealed Act is taken to be a heritage agreement under this Act.

## **159      Applications for approval for works etc. on heritage places and objects**

- (1) This section applies to an application that:
  - (a) was made under section 39J(1) of the repealed Act for approval to do something mentioned in the section in relation to a heritage place or object; and
  - (b) had not been decided immediately before the commencement day.

- (2) Despite its repeal, the repealed Act continues to apply in relation to the application.

**160      Authorisations for works etc. on heritage places and objects**

- (1) This section applies to an authorisation given under section 39K of the repealed Act whether given:
- (a) before the commencement day; or
  - (b) after the commencement day under section 159.
- (2) The authorisation has effect as if it were a work approval and continues in force until it would have ended under the repealed Act as if that Act had not been repealed.

**161      Directions to repair or maintain heritage places and objects**

Despite its repeal, the repealed Act continues to apply in relation to a direction under section 49 of that Act to repair or maintain a heritage place or object.

**162      Transitional regulations**

- (1) A regulation may provide for a matter of a transitional nature:
- (a) because of the enactment of this Act; or
  - (b) to otherwise allow or facilitate the transition from the operation of the repealed Act to this Act.
- (2) The regulation may have retrospective operation to a day not earlier than the commencement day.
- (3) However, to the extent to which the regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Territory or a Territory authority) by:
- (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.
- (4) The regulation must declare it is made under this section.
- (5) This section, and each regulation made under it, expire 1 year after the commencement day.

## Chapter 9      Consequential amendments

### Part 9.1      Lands, Planning and Mining Tribunal Act

#### 163      Act amended

This Part amends the *Lands, Planning and Mining Tribunal Act*.

#### 164      Section 5 amended

Before section 5(1)(a)

*insert*

(aa) to hear and decide:

- (i) applications to review reviewable decisions under the *Heritage Act*; and
- (ii) applications for the confirmation of stop work orders under that Act;

#### 165      Section 12 amended

Before section 12(1)(a)

*insert*

(aa) if the proceeding is for an application to review a reviewable decision under the *Heritage Act*.

- (i) the applicant; and
- (ii) the Territory;

(ab) if the proceeding is for an application for the confirmation of a stop work order for a heritage place or object under the *Heritage Act*.

- (i) the Territory; and
- (ii) each interested person for the heritage place or object;



**166      Section 17 amended**

After section 17(3)

*insert*

(3A) This section does not apply to a proceeding for:

- (a) an application to review a reviewable decision under the *Heritage Act*, or
- (b) an application for the confirmation of a stop work order under that Act.

**167      Part 3, Division 1A inserted**

After section 21

*insert*

**Division 1A      Heritage Act proceedings**

**Subdivision 1      Interpretation**

**21A      Definition**

In this Division:

***decision maker***, for a reviewable decision under the *Heritage Act*, means the person who made the decision.

**Subdivision 2      Tribunal reviews**

**21B      Application of Subdivision**

This Subdivision applies to a proceeding for an application for the review of a reviewable decision under the *Heritage Act*.

**21C      Operation and implementation of decision pending review**

- (1) An application for the review of the reviewable decision does not affect the operation or implementation of the decision.
- (2) However, the Tribunal may make an order staying or otherwise affecting the operation or implementation of so much of the decision as the Tribunal considers appropriate.
- (3) The order is subject to the conditions stated in it.

- (4) The order has effect for the period stated in it, or if no period is stated, until the Court decides the application.

**21D      Applications may be heard together**

If more than one application is made for the review of the reviewable decision, the Tribunal may:

- (a) hear the applications together or one immediately after the other; or
- (b) one application may be stayed until the other is decided.

**21E      Review procedure**

- (1) In hearing an application for the review of a reviewable decision, the Tribunal must review afresh the merits of the decision.
- (2) In doing so, the Tribunal is not bound by anything done by the decision maker in making the reviewable decision.
- (3) Without limiting subsection (2), the Tribunal may:
  - (a) consider evidence that was not considered by the decision maker; and
  - (b) disregard evidence that was considered by the decision maker.

**21F      Decision on review**

- (1) In deciding the application, the Tribunal may:
  - (a) confirm the reviewable decision; or
  - (b) set aside the reviewable decision and substitute its own decision; or
  - (c) set aside the reviewable decision and refer the matter to which the application relates to the decision maker for reconsideration.
- (2) In referring the matter to the decision maker, the Tribunal must give the directions it considers appropriate for the reconsideration of the matter.
- (3) The Tribunal may make the incidental orders it considers appropriate to give effect to its decision.
- (4) The Tribunal must give reasons for its decision.

- (5) If the Tribunal substitutes its own decision for the reviewable decision, the substituted decision is (other than for Part 4.1 of the *Heritage Act*) taken to be the decision maker's decision.

### **Subdivision 3      Applications for confirmation of stop work orders**

#### **21G      Application of Subdivision**

This Subdivision applies to a proceeding for an application for the confirmation of a stop work order under the *Heritage Act*.

#### **21H      Review procedure**

- (1) In hearing the application, the Tribunal must review afresh the merits of the issuing of the order.
- (2) In doing so, the Tribunal is not bound by anything done by the heritage officer in issuing the order.
- (3) Without limiting subsection (2), the Tribunal may:
  - (a) consider evidence that was not considered by the heritage officer; and
  - (b) disregard evidence that was considered by the heritage officer.

#### **21J      Decision on review**

In deciding the application, the Tribunal may:

- (a) confirm the stop work order as issued or with the variations it considers appropriate; or
- (b) revoke the stop work order.

## **Part 9.2      Planning Act**

### **168      Act amended**

This Part amends the *Planning Act*.

### **169      Section 51 amended**

Section 51(r), after "values"

*insert*

, including, for example, the heritage significance of a heritage place or object under the *Heritage Act*

## **Part 9.3            Other laws**

### **170            Laws amended**

Schedule 3 amends the laws mentioned in it.

## **Part 9.4            Expiry of Chapter**

### **171            Expiry**

This Chapter expires on the day after it commences.

## **Schedule 1      Reviewable decisions and affected persons**

section 90

<b>Reviewable decision</b>	<b>Affected person</b>
Council decision a place or object is not of heritage significance on a heritage nomination (section 25(1))	The person who made the nomination
Council decision not to recommend declaration of place or object as heritage place or object (section 27)	A person entitled under section 29(1) to be given a review notice for the decision
Council or Minister's decision on application for work approval (section 74(1))	The applicant or owner of the heritage place or object

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## Schedule 2     Appealable decisions and affected persons

section 93

**Appealable decision****Affected person**

Minister's decision not to declare a place or object to be a heritage place or object (section 32)

A person entitled under section 35(3) to be given an information notice for the decision

Minister's decision to permanently declare a place or object to be a heritage place or object (section 32)

A person entitled under section 40(1) to be given an information notice for the decision

Minister's decision to provisionally declare a place or object to be a heritage place or object (section 36 or 37)

A person entitled under section 40(1) to be given an information notice for the decision

An interested person for any place or object the use or value of which is directly affected by the decision

Minister's decision to revoke declaration for heritage place or object (section 62)

A person entitled under section 65(2) to be given an information notice for the decision

An interested person for any place or object the use or value of which is directly affected by the declaration

Minister's decision not to revoke declaration of heritage place or object (section 62)

A person entitled under section 66(3) to be given an information notice for the decision

Minister's decision to issue repair order for a heritage place or object (section 86)

Owner of the heritage place or object

## Schedule 3 Other laws amended

section 170

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
<b><i>Building Regulations</i></b>		
regulation 11(1)(c)	whole paragraph	(c) if the building work is to be carried out in relation to a heritage place or object under the <i>Heritage Act</i> , the consent of the Minister administering that Act.
regulation 12	<i>Heritage Conservation Act</i>	<i>Heritage Act</i>
<b><i>Meteorites Act</i></b>		
section 8, heading	whole heading	<b>8 Sacred sites and heritage legislation not affected</b>
section 8	all words after "from the"	<i>Northern Territory Aboriginal Sacred Sites Act</i> or <i>Heritage Act</i> .
<b><i>Valuation of Land Act</i></b>		
section 10C(7), definition <b><i>heritage place</i></b>	whole definition	<b><i>heritage place</i></b> , see section 4 of the <i>Heritage Act</i> .