

# HERITAGE BILL 2011

## SERIAL NO. 169

### LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

MINISTER FOR NATURAL RESOURCES ENVIRONMENT AND HERITAGE

## EXPLANATORY STATEMENT

### GENERAL OUTLINE

The Bill repeals the *Heritage Conservation Act 1991* and provides a new framework for heritage management in the Northern Territory.

The Bill introduces a new process for heritage listing which introduces timelines at all stages of the listing process, and allows for interim protection of places assessed as being worthy of heritage listing.

The Bill improves processes for carrying out work, including allowing the Heritage Council to make decisions about minor work.

The Bill introduces the capacity to list classes of places, thus extending the protection of places that are considered to be important aspects of our heritage but are difficult to list individually.

The Bill introduces an expanded Heritage Council which includes representation from local government and property owners, and which requires the Minister, as far as practicable, to ensure Aboriginal representation.

The Bill contains revised penalties in line with current policy, and has expanded appeal provisions.

### NOTES ON CLAUSES

#### **Chapter 1 Introduction**

##### **Part 1.1 Preliminary matters**

**Clause 1      Short Title**

This is the formal Clause which provides for the citation of the Bill. The Bill when passed will be cited as the *Heritage Act 2011*.

## **Clause 2 Commencement**

This sets the commencement date for the Act as being the date fixed by the Administrator by *Gazette* notice.

## **Clause 3 Object of Act**

This sets out the object of the Act and the means by which the object is to be achieved.

## **Part 1.2 Interpretation**

### **Clause 4 Definitions**

This defines terms that are used in the Act. In some cases, definitions appear in subsequent clauses.

### **Clause 5 Meaning of *place***

Under the heading ‘Important concepts’, this Clause defines the meaning of *place*, which importantly includes items and other things that have an association with the place. Items that are not historically or physically associated with the place are not included within the definition, and are not therefore subject to the Act.

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

This Clause defines the meaning of *archaeological place* as being a place that relates to the past human occupation of the Northern Territory and has been modified by the activities of the occupiers.

It then defines an *Aboriginal or Macassan archaeological place* as being a type of place that relates to the past occupation of the Northern Territory *by Aboriginal or Macassan people*, and has been modified by the activity of those people.

This is an important distinction because not all *archaeological places* are automatically protected by the Act, but all *Aboriginal or Macassan archaeological places* are.

### **Clause 7 Meaning of *object***

This Clause defines the meaning of *object* as being something either natural or manufactured that is moveable, and states that this definition includes archaeological objects (which are separately defined).

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

This Clause defines the meaning of *archaeological object* as a relic that relates to the past human occupation of the Northern Territory, and is in an archaeological place. *Relic* is defined in Clause 9. The fact that an archaeological object has to be in an archaeological place is important, because the Act does not purport to protect archaeological objects that have been removed from their context.

The Clause goes on to define an *Aboriginal or Macassan archaeological object* as being a type of relic that relates to the past occupation of the Northern Territory by *Aboriginal or Macassan people*.

This is an important distinction because not all *archaeological objects* are automatically protected by the Act, but all *Aboriginal or Macassan archaeological objects* are.

The Clause states that an *Aboriginal or Macassan archaeological object* is defined as such *either* if it is an Aboriginal and Macassan archaeological place *or* stored in a place in accordance with Aboriginal tradition.

**Clause 9      Meaning of *relic***

This Clause defines the meaning of *relic*. It excludes artefacts or objects that have been made for sale, and allows the regulations to define other types of artefacts and objects not specifically mentioned.

**Clause 10     Meaning of *heritage significance***

This Clause defines the meaning of *heritage significance* in terms that are widely accepted in Australia.

**Clause 11     Meaning of *heritage assessment criteria***

This Clause sets out the criteria that are to be used in assessing the heritage significance of places and objects.

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

This Clause defines the meaning of *conservation* and *interpretation* in terms that are widely accepted in Australia.

**Clause 13     Application of Criminal Code**

This Clause cites the relevant part of the *Criminal Code* that applies to offences under the Act.

## **Part 1.3    Application of Act**

### **Clause 14    Act binds the Crown**

This Clause makes it clear that the Crown is not exempt from compliance with the Act.

## **Clause 15 Sacred sites**

This Clause states that the Part in the Act that deals with Heritage Agreements does not relate to sacred sites as defined in the Commonwealth *Aboriginal Land Rights (Northern Territory) Act 1976*.

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

This Clause makes it clear that the new *Heritage Act* is not intended to affect native title rights and interests under the Commonwealth *Native Title Act*.

## **Chapter 2 Heritage places and objects**

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

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

This Clause establishes that *Aboriginal or Macassan archaeological places* are all considered to be heritage places under the Act, and therefore effectively enjoy the same protection under the Act as a particular heritage place that has gone through the process of being declared a heritage place in accordance with Part 2.2.

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

This Clause establishes that *Aboriginal or Macassan archaeological objects* are all considered to be heritage objects under the Act, and therefore effectively enjoy the same protection under the Act as a particular heritage object that has gone through the process of being declared a heritage object in accordance with Part 2.2.

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

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

This Clause sets out the purpose of Part 2.2 of the Act, which is to provide for the conservation of particular places and objects by establishing a process for declaring them to be heritage places and objects.

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

This Clause sets out the process for nominating a place or object for assessment of its heritage significance for declaration as a heritage place or object. Of note is the fact that anyone may nominate a place or object under this Clause.

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

This Clause states that the Heritage Council must accept, or refuse to accept, a nomination as soon as practicable after receiving it. Normally ‘as soon as practicable’ would mean at the next scheduled meeting of the Heritage Council.

The Clause then sets out the conditions under which the Heritage Council may refuse to accept a nomination, ie if it is satisfied that it is vexatious or frivolous, or if Clause 40 prevents it from doing so.

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

This Clause makes it clear that the Heritage Council may, on its own initiative, decide to assess the heritage significance of a place or object.

## **Clause 23 Assessment period**

This Clause says that the Heritage Council must complete the assessment of a place or object within 6 months, but also sets out circumstances in which the assessment period may be extended. If the assessment period is extended, the Clause requires the Heritage Council to give notice of this decision to the person who made the nomination. It also requires that if the Heritage Council extends the assessment period without the agreement of the owner, that it must give notice of this decision to the owner and the reasons for it; and must in any case complete the assessment as soon as practicable.

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

This Clause states that the Heritage Council must assess the heritage significance of a place or object by applying the criteria set out in the Act; also that the Heritage Council may carry out research as it sees fit, and if necessary ask the person who nominated the place or object for further information.

## **Clause 25 Deciding assessment**

This Clause states that the Heritage Council must, before the end of the assessment period, make a decision as to whether the place or object is significant or not. If so, it must prepare a Statement of Heritage Value and provide a copy to the Minister; if not it must advise the person who made the nomination of its decision.

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

This Clause sets out the requirements for public consultation in a situation where the Heritage Council has decided that a place or object *is* of heritage significance, and therefore may be considered for declaration as a heritage place or object.

Amongst other requirements, a written notice must be given to each ‘interested person’ for the place or object. ‘Interested person’ is defined in Clause 4, and it is notable that it includes not only the holder of a registered interest under the *Land Title Act* (as per the existing *Act*), but also for land covered by a pastoral or resources interest, the holder of that interest.

The Clause requires that submissions must be made to Heritage Council within 28 days of the instigation of the public consultation procedure.

#### **Clause 27 Council’s decision**

This Clause states that within 60 days after the end of the public consultation period, the Heritage Council must decide whether or not to recommend to the Minister that the place or object in question be declared a heritage place or object. It states that the Heritage Council must take into account (amongst other things) submissions made during the public consultation period.

#### **Clause 28 Application of Division**

This Clause states that Division 4 applies when the Heritage Council has decided *not* to recommend to the Minister that a place or object be declared a heritage place or object. It states that the Division does not apply in situations where the Heritage Council has not proceeded with assessment by virtue of Clause 41.

#### **Clause 29 Notice of Council’s Decision**

This Clause states who the Heritage Council must advise of its decision *not* to recommend to the Minister that a place or object be declared a heritage place or object.

#### **Clause 30 Application of Division**

This Clause states that Division 5 applies when the Heritage Council has decided to recommend to the Minister that a place or object be declared a heritage place or object.

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

This Clause states that if the Heritage Council has decided to recommend to the Minister that a place or object be declared a heritage place or object, that the Heritage Council must as soon as practicable give the Minister a recommendation to this effect, which must be accompanied by (amongst other things) a Statement of Heritage Value and a copy of each submission made during the public consultation period.

#### **Clause 32 Minister’s decision on recommendation**

This Clause states the Minister must make a decision on the Heritage Council’s recommendation within 30 days of having received it; or in the case of the Minister having asked for further information, within 30 days of having received that information.

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

This Clause allows the Minister to ask the Heritage Council for further information, or to vary the recommendation. The Minister must state the reasons for asking for the information or variation, and say when it must be received. The Heritage Council is allowed at least 30 days to provide the requested information or variation.

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

This Clause states that if the Minister is satisfied the place or object is of heritage significance and should be conserved, that the Minister must permanently declare it as a heritage place or object by notice in the *Gazette*. In doing so, the Minister may authorise certain work without a work approval.

Clause 40 states who the Minister must advise of this decision, and other actions the Minister must take.

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

This Clause states that the Minister may, upon receiving a recommendation from the Heritage Council, decide *not* to declare a place or object as a heritage place or object. It states who the Minister must advise after making such a decision. The Clause states that when advising the Heritage Council, the Minister must give reasons for his decision.

The Clause also requires that the Minister must, in this circumstance, revoke the provisional declaration of the place or object.

**Clause 36 Provisional declaration - Minister's initiative**

This Clause states that the Minister may at any time provisionally declare a place or object to be a heritage place or object, by notice in the *Gazette*. If such a declaration is made, the Minister must direct the Heritage Council to assess the heritage significance of the place or object.

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

This Clause puts into effect the intention to provide provisional protection to a place or object in a situation where, under Division 3, the Heritage Council has decided that a place or object is of heritage significance, and therefore may be considered for declaration as a heritage place or object.

The Clause requires that within 7 days of the Heritage Council having invited submissions on the heritage significance of the place or object, that the Minister must provisionally declare the place or object as a heritage place or object by notice in the *Gazette*.

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

This Clause allows, as in a situation where the Minister has permanently declared a place or object as a heritage place or object, for the Minister to authorise certain work without a work approval.

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

This Clause states that a provisional declaration stays in effect until *either* the Minister has permanently declared the place or object as a heritage place or object *or* the Minister revokes the provisional declaration for whatever reason.

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

This Clause states who the Minister must notify after the Minister has decided to provisionally or permanently declare a heritage place or object, and also sets out other actions the Minister must take including the publication of the decision in a newspaper.

In relation to the declaration of a heritage place (as opposed to a heritage object) the Clause states that the Minister must advise the Registrar-General of the decision, and requires the Registrar-General to enter relevant details onto the title of the land.

### **Clause 41 No further assessment**

This Clause states that - apart from in the circumstances set out in Clause 41(2) - the Heritage Council must not make an assessment of the heritage significance of a place or object within 5 years of the Minister having made a decision not to permanently declare that place or object as a heritage place or object.

This is intended to provide greater certainty for owners and avoid a situation whereby – for example - a place or object is renominated immediately after the Minister has made a decision not to declare it as a heritage place or object.

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

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

This Clause sets out the purpose of Part 2.3 of the Act, which is to establish a process to protect certain *classes* of places and objects. Examples are given.

This is an expansion of the concept used to protect all Aboriginal and Macassan archaeological places and objects, which are protected under the current *Heritage Conservation Act* and continue to be protected under the new Act.

The purpose of Part 2.3 is to provide a mechanism to protect places and objects where there is a high degree of consensus about their value, but where protection of individual places or objects may not be practical, in some cases because the existence of the place or object may be unknown.

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

This Clause states that the Heritage Council initiates the process of protecting a class of places or objects by deciding to assess the heritage significance of a class of places or objects.

**Clause 44 How assessment made**

This Clause states that the Heritage Council assesses the heritage significance of a class of places or objects in a similar manner to when the Council assesses the heritage significance of a particular place or object, including the application of the heritage assessment criteria set out in Clause 11.

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

This Clause states what the Heritage Council must do if it considers that places or objects of the class are of heritage significance. It is similar to what the Heritage Council must do in relation to a particular place or object, as set out in Clause 26. There are no individuals notified, but there is a requirement to notify municipal or shire councils.

**Clause 46 Council's decision**

This Clause states that within 60 days after the end of the public consultation period, the Heritage Council must decide whether or not to recommend to the Minister that the class of places or objects in question be declared to be a protected class of places or objects. It states that the Heritage Council must take into account (amongst other things) submissions made during the public consultation period.

**Clause 47 Recommendation for declaration**

This Clause states that if the Heritage Council has decided to recommend to the Minister that a class of places or objects be declared a heritage place or object, that the Heritage Council must give the Minister a recommendation to this effect, which must be accompanied by a Statement of Heritage Value and a copy of each submission made during the public consultation period.

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

This Clause states the Minister must make a decision on the Heritage Council's recommendation within 30 days of having received it; or in the case of the Minister having asked for further information, within 30 days of having received that information.

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

This Clause allows the Minister to ask the Heritage Council for further information, or to vary the recommendation. The Minister must state the reasons for asking for the information or variation, and say when it must be received. The Heritage Council is allowed at least 30 days to provide the requested information or variation.

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

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

**Clause 51 Notice of declaration**

This Clause states that the Minister must publish the decision in a newspaper.

**Clause 52 Effect of declaration**

This Clause states that the effect of the declaration is that each place or object of the class is considered to be a heritage place or object, and therefore effectively enjoys the same protection under the Act as a particular heritage place or object that has gone through the process of being declared a heritage place or object in accordance with Part 2.2.

The Clause makes it clear that a particular place or object that belongs to a class may still be separately declared as a heritage place or object.

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

This Clause states that if the Minister disagrees with the recommendation of the Heritage Council and decides *not* to declare a class of places or objects to be a protected class of places or objects, that the Minister must write to the Council giving reasons for the decision.

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

**Clause 54 Application of Part**

This Clause states that Part 2.4 of the Act applies both to a heritage place or object permanently declared under Part 2.2 of the Act, *or* a heritage place or object that is of a protected class of heritage places or objects. It does not apply to places or objects that have been provisionally declared.

**Clause 55 Definition**

This Clause makes it clear that revocation can mean partial revocation.

**Clause 56 Request for assessment**

This Clause states that either the Minister or the owner may ask the Heritage Council to assess whether a declaration should be revoked. It sets out the conditions under which the owner may make a revocation request, and how the application is to be made.

**Clause 57 Council may initiate assessment**

This Clause states that the Heritage Council may, of its own initiative, decide to assess whether a declaration should be revoked.

**Clause 58 Council to notify Minister of assessment**

This Clause states that if the Heritage Council receives a revocation request from an owner, it must provide the Minister with a copy of the request; and if the Council decides, of its own initiative, to assess whether a declaration should be revoked, it must give the Minister reasons for this decision.

**Clause 59 Public consultation on assessment**

This Clause states what the Heritage Council must do if it receives a revocation request, or if it decides, of its own initiative, to assess whether a declaration should be revoked. It is similar to what the Heritage Council must do in relation to a proposed heritage declaration.

**Clause 60 How assessment made**

This Clause sets out the matters that the Heritage Council must take into account when assessing whether a declaration should be revoked.

**Clause 61 Council's decision**

This Clause states that the Heritage Council must, within 30 days after the end of the public consultation period set out in Clause 59, make a recommendation to the Minister. It states that, when making the recommendation, the Council must give the Minister (amongst other things) its reasons for the recommendation, and a copy of each submission made during the public consultation period.

**Clause 62 Minister's decision**

This Clause states the Minister must make a decision on the Heritage Council's recommendation within 30 days of having received it; or in the case of the Minister having asked for further information, within 30 days of having received that information.

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

This Clause allows the Minister to ask the Heritage Council for further information, or to vary the recommendation. The Minister must state the reasons for asking for the information or variation, and say when it must be received. The Heritage Council is allowed at least 30 days to provide the requested information or variation.

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

This Clause states that if the Minister decides that the declaration for the heritage place or object should be revoked that the Minister must, by *Gazette* notice, revoke the declaration.

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

This Clause states who the Minister must notify after the Minister has decided to revoke the declaration of a heritage place or object, and also sets out other actions the Minister must take including the publication of the decision in a newspaper.

In relation to the revocation of the declaration of a heritage place (as opposed to a heritage object) the Clause states that the Minister must advise the Registrar-General of the decision, and requires the Registrar-General to remove relevant details from the title of the land.

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

This Clause states what the Minister must do if he decides *not* to revoke the declaration. Note that the requirement to give an information notice set out in 66(3) means that the decision is appealable.

## **Chapter 3 Conservation of heritage places and objects**

### **Part 3.1 Heritage agreements**

#### **Clause 67 Definitions**

This Clause provides definitions for terms that are used in the Chapter regarding heritage agreements.

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

This Clause allows the Minister to enter into a heritage agreement on behalf of the Territory with the owner of a heritage place or object, on the advice of the Heritage Council. It states that in the case of a heritage place, the owner may only enter into the agreement with the written consent of each person that has a registered interest in the land.

#### **Clause 69 Provisions of heritage agreement**

This Clause sets out the matters that may be covered by a heritage agreement.

#### **Clause 70 Effect of heritage agreement**

This Clause states that the agreement is binding on the parties to the agreement, as well as, in the case of a heritage place, the occupier of the place.

It explains that the agreement may be varied or terminated by agreement between the parties. In the case of a heritage place, it is registrable on the title. This means that even if ownership of the land in question changes, any new owner is still subject to the agreement.

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

This Clause ensures that an agreement is able to apply to more than one place or object.

### **Part 3.2 Work Approvals**

#### **Clause 72 Application for approval**

This Clause states that an application to carry out work to a heritage place or object must be made to the CEO, ie the Chief Executive Officer of the Department responsible for the administration of the Act. The application must be in the approved form, and if the applicant is not the owner of the place or object in question, the application must be submitted with the owner's consent.

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

This Clause distinguishes between *major work* and other work, with *major work* defined in Clause 4. In the case of *major work* the Clause requires the CEO to refer the matter to the Heritage Council for advice, and for the Council to provide advice to the CEO within 30 days of having received it. The CEO must then refer the application to the Minister for a decision, with a copy of the Council's advice.

For work other than major work, the application is simply referred to the Heritage Council for a decision.

Clause 78 also refers to *exempt work*. This then meets the intent that all proposed work should fall into one of three categories:

- *Major work* as defined in Clause 4 (Minister makes decisions);
- *Minor work* (Heritage Council makes decisions); and
- *Exempt work* as regulated (no application required).

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

This Clause states that in the case of *major work*, the Minister must make a decision within 30 days of having received the application. For other work, the decision must be taken within 14 days of the receipt of the application. However, the time for decision-making can be extended. If this happens, written notice has to be given to the applicant (and if the applicant is not the owner – also the owner).

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

This Clause sets out the range of matters that the decision-maker must take into account, and includes a requirement to seek the advice of the Aboriginal Areas Protection Authority if the heritage place or object in question is within a sacred site (as defined in Clause 4).

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

This Clause allows the decision-maker to set conditions when giving approval for work to proceed, and notes in particular that such conditions can relate to the fate of archaeological objects.

#### **Clause 77      Notice of decision**

This Clause requires the decision-maker to give written notice of the decision to the applicant (and if the applicant is not the owner – also the owner).

### **Part 3.3      Exempt work**

#### **Clause 78      Regulations may exempt work**

This Clause allows the regulations to declare certain work to be *exempt work*, ie no approval is required. It sets the overarching condition that work can only be considered exempt if it will not detrimentally affect the heritage significance of a heritage place or object.

### **Part 3.4 Stop work orders**

#### **Clause 79 Application of Part**

This Clause sets the conditions under which a heritage officer may issue a stop work order in order to deal with a threat to a heritage place or object.

#### **Clause 80 Issuing order**

This Clause states that a heritage officer may, through the use of a stop work order, order a person to stop work, or prohibit them from starting work.

#### **Clause 81 Application to Tribunal**

This Clause requires that the heritage officer must, immediately after issuing the stop work order, apply to the Lands Planning and Mining Tribunal for an order confirming it.

#### **Clause 82 Revocation of order**

This Clause states that if a heritage officer believes that the stop work order is no longer required, the officer make revoke the order. The officer must then immediately advise the Registrar of the Lands Planning and Mining Tribunal.

#### **Clause 83 Duration of order**

This Clause states that the stop work order ends after 30 days unless it is confirmed by the Tribunal. It also allows the Tribunal to extend the order pending the hearing of the application for an order confirming it.

#### **Clause 84 Offence to contravene order**

This Clause states that it is an offence under the Act for a person to contravene a stop work order, and establishes fault elements and penalties.

### **Part 3.5 Repair orders**

#### **Clause 85 Application of Part**

This Clause sets the conditions under which the Minister may issue a repair order.

**Clause 86 Issuing order**

This Clause states that the Minister may, through the use of a repair order, require the owner of a heritage place or object to carry out certain repairs at the owner's expense. However the Minister must have consulted with the owner, and must be satisfied that the owner has the financial capacity to carry out the work. The Minister may specify the manner in which the repairs are carried out..

**Clause 87 Offence to contravene order**

This Clause states that it is an offence under the Act for a person to contravene a repair order, and establishes fault elements and penalties.

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

This Clause states that if an owner does not comply with a repair order, a heritage officer may have the work carried out. Any reasonable cost incurred in doing so will be a debt owed by the owner to the Territory.

The issuing of a repair order is an appealable decision. Clause 87(1) makes it clear that work can only be carried out by the Territory if the appeal period has ended and no appeal has been started, or an appeal has been finally decided and was unsuccessful.

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

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

This Clause deals with situations where the removal of a heritage object from the Territory might be done for legitimate purposes. It allows this to occur with the CEO's approval, but in the case of the object in question being an Aboriginal or Macassan archaeological object, it requires the CEO to ensure that the removal has the consent of a person or group who, according to Aboriginal tradition, have a right to possess the object.

## **Chapter 4 Reviews and appeals**

### **Part 4.1 Tribunal reviews**

#### **Clause 90 Meaning of *reviewable decision* and *affected person***

This Clause defines key terms used in the Chapter. Importantly, the Act distinguishes between *reviewable decisions* and *appealable decisions*. *Reviewable decisions* are dealt with in this Part, which are decisions that can be reviewed by the Lands Planning and Mining Tribunal.

#### **Clause 91 Meaning of *review notice***

This Clause defines the term *review notice*, and sets out what information it must contain. Clause 91(2) notes that the validity of a reviewable decision is not affected by a failure to give a review notice to an affected person; nor a failure to comply with Clause 90.

#### **Clause 92 Application for review**

This Clause states that an affected person (as defined in Clause 89) may apply to the Lands Planning and Mining Tribunal for a review of any of the decisions set out in Schedule 1 of the Act. The Clause stipulates the time within which an application must be made.

## **Part 4.2 Appeals to Supreme Court**

### **Clause 93 Meaning of *appealable decision* and *affected person***

This Clause defines key terms used in the Chapter. *Appealable decisions* are dealt with in this Part, which are decisions which may be appealed to the Supreme Court.

### **Clause 94 Meaning of *information notice***

This Clause defines the term *information notice*, and sets out what information it must contain. Clause 94(3) notes that the validity of an appealable decision is not affected by a failure to give an information notice to an affected person; nor a failure to comply with Clause 94.

### **Clause 95 Appeal on question of law**

This Clause states that an appeal in the Supreme Court is on a question of law only.

### **Clause 96 Starting appeal**

This Clause describes how an appeal is started; that is by filing a notice of appeal with the Supreme Court.

### **Clause 97 Hearing procedure**

This Clause states that the Court may only consider the same evidence that the Minister considered at the time that the Minister made the original decision. This is in contrast to when a *reviewable decision* is being reviewed by the Lands Planning and Mining Tribunal, in which case the Tribunal has much greater scope in relation to the hearing procedure.– refer Clause 167.

### **Clause 98 Decision on appeal**

This Clause states that the Supreme Court, in deciding an appeal, has a range of options, that is: confirm the Minister's decision; vary the decision; substitute its own decision; or dismiss the appeal.

## **Chapter 5 Enforcement**

### **Part 5.1 Preliminary matters**

#### **Clause 99 Definitions**

This Clause defines key terms used in the Chapter. Importantly, a place includes a vehicle.

#### **Clause 100 When thing is connected to an offence**

This Clause clarifies in what circumstances a thing is considered to be connected with an offence.

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

#### **Clause 101 Entry of place - general**

This Clause clarifies the circumstances in which a heritage officer may enter a place pursuant to the administration or enforcement of the Act. It confirms that a heritage officer must leave a place if the officer cannot produce their identity card when asked by the occupier of a place to do so.

#### **Clause 102 Consent to entry**

This Clause sets out what a heritage officer must do when seeking permission to enter a place. This includes informing the occupier that they may refuse to give consent. 102(2) suggests that a heritage officer ought to obtain written consent from the occupier, because if this is not obtained, in certain circumstances a court may presume that the occupier did not give consent.

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

This Clause sets out the conditions under which a search warrant is issued, and states that a heritage officer executing a search warrant must produce the warrant if asked by any person on the place in question.

#### **Clause 104 Additional powers for entry of vehicle**

This Clause sets out the conditions under which a heritage officer may enter a vehicle, and the powers that a heritage officer has in this situation. The Clause states that it is an offence under the Act for a person to act in contravention of a heritage officer's requirements in these circumstances, and establishes fault elements and penalties.

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

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

This Clause sets out the powers that a heritage officer has on entering a place, including inspecting, searching, measuring, and recording the place or anything found in the place; removing things; seizing vehicles and things; copying documents; and asking questions. All such action is subject to various requirements including the provision of written notice, and

the giving of receipts for things seized.

The Clause states that it is an offence under the Act for a person to contravene requirements of a heritage officer in these circumstances, and establishes fault elements and penalties.

### **Clause 106 Seizure of things**

This Clause sets out the conditions under which a heritage officer may seize things.

The Clause states that it is an offence under the Act for a person, without the permission of the CEO, to interfere with, dispose of, or remove a seized thing in these circumstances, and establishes penalties and fault elements.

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

This Clause sets out what happens to things that are seized. If a prosecution for an offence against the Act starts within 12 months, a court may order a related thing to be forfeited to the Territory; if a prosecution does not start within 12 months, a seized thing must be returned to the owner. A thing may also have to be returned if the prosecution is not successful.

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

This Clause allows a heritage officer to have help in exercising a power under this chapter, and also to use reasonable force.

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

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

This Clause states a heritage officer may require a person to state their name and address in certain circumstances.

The Clause states that it is an offence under the Act for a person to contravene requirements of a heritage officer in these circumstances, and establishes fault elements and penalties.

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

This Clause states a heritage officer may require a person to give information about a suspected offence.

The Clause states that it is an offence under the Act for a person to contravene requirements of a heritage officer in these circumstances, and establishes fault elements and penalties.

## **Part 5.5 Heritage offences**

### **Clause 111 Causing damage to heritage place or object**

This Clause states that it is an offence under the Act for a person to cause damage to a heritage place or object, and establishes fault elements and penalties.

Importantly, this does not apply in relation to a heritage object which is in the possession of a person or group who, according to Aboriginal tradition, have a right to possess it, and who are acting in accordance with Aboriginal tradition. In addition, it is not an offence under the Act if a person is engaging in conduct which is in accordance with a heritage agreement, a work approval, work authorised at the time the place or object was declared, or a repair order; or if the work is exempt work as defined under the Act.

The Clause allows a court, in addition to any penalties imposed, to order a person guilty of an offence under this Clause to pay for the damage caused or make good the damage.

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

This Clause is very similar to the preceding Clause but is in relation to the removal of part of a heritage place. Penalties are the same.

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

This Clause states that it is an offence under the Act for a person to remove a heritage object from the Territory, and establishes fault elements and penalties.

As for the two preceding Clauses, this does not apply in relation to a heritage object which is in the possession of a person or group who, according to Aboriginal tradition, have a right to possess it, and who are acting in accordance with Aboriginal tradition. In addition, it is not an offence under the Act if the removal is done in accordance with the CEO's approval as per Clause 89.

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

This Clause states that a person who discovers an Aboriginal or Macassan archaeological place or object must, as soon as practicable after the discovery, report the find to the CEO.

The Clause states that it is an offence under the Act for a person not to do so, and establishes fault elements and penalties.

#### **Clause 115 Alternative verdicts**

This Clause allows alternative verdicts to be reached when prosecutions are being carried out in relation to causing damage to a heritage place or object; removal of part of a heritage place; and removal of heritage objects from the Territory. In each case, when it cannot be determined beyond reasonable doubt that a person committed an offence intentionally, they may be found guilty of an alternative 'strict liability' offence, which carries with it a lower penalty.

## **Part 5.6 Other offences**

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

This Clause states that it is an offence to give misleading information to an official, or to give a document to an official that contains misleading information. An ‘official’ means either the CEO or a heritage officer. The Clause establishes fault elements and penalties.

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

This Clause states that it is an offence to obstruct a heritage officer, or person assisting a heritage officer, acting in an official capacity. The Clause establishes fault elements and penalties.

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

This Clause states that it is an offence for a person to falsely represent themselves as a heritage officer. The Clause establishes fault elements and penalties.

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

### **Clause 119 Definitions**

This Clause sets out which provisions within the Act are relevant to this Part, and also allows for other provisions to be invoked by regulation.

The Clause also defines ‘representative’ for the purposes of the Part.

### **Clause 120 Conduct of representative**

This Clause describes, in the context of prosecutions of individuals under the Criminal Code, how the actions of those individuals are viewed. For example, if a representative of a person engages in conduct that contravenes the Act, the person may be seen as liable for the representative’s conduct – but this does not apply if the person took reasonable steps to prevent the conduct.

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

This Clause states that the executive officer of a body corporate may be considered to have committed an offence if the body corporate commits an offence, and sets out the matters that the court must consider in this situation.

## **Part 5.8 Evidentiary matters**

## **Clause 122 Judicial notice**

This Clause states that in any proceeding, a signature purporting to be the signature of the CEO is taken to be the CEO's signature.

## **Clause 123 Evidentiary certificate**

This Clause states that in a proceeding for an offence against the Act, if the CEO certifies certain matters, then that is taken as evidence of the matter; for example that a person was a heritage officer on a stated day.

# **Chapter 6 Administrative matters**

## **Part 6.1 Heritage Council**

### **Clause 124 Establishment**

This Clause establishes the Heritage Council upon commencement of the Act.

### **Clause 125 Functions**

This Clause sets out the functions of the Heritage Council. These are similar to the functions of the Heritage Advisory Council established by the *heritage conservation act*. Importantly, there is a new function to advise the Minister about proposed work, and to make decisions about minor work.

### **Clause 126 Powers**

This Clause gives the Heritage Council the powers it needs to perform its functions

### **Clause 127 Delegation**

This Clause allows the Heritage Council to delegate any of its powers to the CEO.

### **Clause 128 Membership of Council**

This Clause sets out the membership of the Heritage Council, which consists of a total of 11 members. Six members are appointed by the Minister at the Minister's discretion. The remaining five consist of the CEO (or a nominee of the CEO), and nominees from:

- the National Trust;
- the Aboriginal Areas Protection Authority (AAPA);

- an organisation representing the interests of local government; and
- an organisation representing the interests of land owners.

Importantly, this Clause also requires the Minister to ensure, as far as practicable, that two of the members of the Heritage Council are of Aboriginal descent.

### **Clause 129 Nominations for appointment of member**

This Clause sets out the procedure for appointing the members of Council that are appointed at the discretion of the Minister. Nominations must be sought through public advertising.

### **Clause 130 Duration of appointment**

This Clause states that an appointed member holds office for the period stated in the instrument of appointment, but that this period cannot be for more than three years.

### **Clause 131 Conditions of appointment**

This Clause allows for the instrument of appointment to set conditions.

### **Clause 132 Chairperson and deputy chairperson**

This Clause states that the Minister appoints one of the appointed members as chairperson; but that the Council elects the deputy chairperson. This is the same as the existing *heritage conservation act*.

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

This Clause sets out the conditions under which a member of the Council may cease to hold office, or under which a member may be removed from office.

### **Clause 134 Holding meetings**

This Clause sets out the conditions under which Council meets, including the requirement that it must meet at least four times a year.

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

This Clause states who must chair meetings of the Council.

### **Clause 136 Procedures at meetings**

This Clause establishes quorum for the Council (six members); states how decisions of

Council are to be decided; requires the Council to keep proper minutes; and allows Council to establish its own procedures subject to compliance with this Clause.

**Clause 137 Disclosure of interest**

This Clause states that a member of Council who has a direct or indirect interest in a matter being considered by Council must disclose the nature of that interest. The Clause then outlines what action must be taken as a consequence.

**Clause 138 Annual report**

This Clause states that the Council must prepare an annual report within 3 months of the end of each financial year; and that the Minister must table the report in the Assembly.

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

This Clause requires the Council to keep a register which contains information about declared heritage places and objects; protected classes of places; and heritage agreements. Importantly, the register may be in electronic form.

**Clause 140 Public access to register**

This Clause requires the register to be publicly accessible.

**Part 6.2 Heritage Officers**

**Clause 141 Who is heritage officer**

This Clause defines a ‘heritage officer’ as either a police officer or a person appointed by the CEO as a heritage officer.

**Clause 142 Identity cards**

This Clause requires that every appointed heritage officer must have an identity card, and sets out what the card must include.

**Clause 143 Production of identity card**

This Clause requires an appointed heritage officer to produce their identity card if asked, when exercising a power or performing a function under the Act.

**Clause 144 Return of identity card**

This Clause requires a person who is no longer an appointed heritage officer to return their identity card. The Clause states that is an offence not to do so, and establishes a penalty for

this offence.

## **Chapter 7 Miscellaneous matters**

### **Clause 145 Approved forms**

This Clause allows the CEO to approve forms that are used in the administration of the Act.

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

This Clause allows the Minister to delegate any of the Minister's powers and functions to the CEO; and for the CEO to delegate any of the CEO's powers and functions to a heritage officer

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

This Clause sets out the conditions under which property might be acquired from a person as a result of the operation of the Act.

### **Clause 148 Protection from liability**

This Clause allows certain people acting in good faith pursuant to the administration of the Act to be free from liability for their actions.

### **Clause 149 Regulations**

This Clause allows for regulations to be made pursuant to the Act. Importantly, this includes the ability to regulate access to heritage places, which is not available under the current *heritage conservation act*.

## **Chapter 8 Repeal of Act and transitional matters**

### **Part 8.1 Repeal of Acts**

#### **Clause 150 Repeals**

This Clause repeals the current *heritage conservation act*, as amended.

### **Part 8.2 Transitional matters**

#### **Clause 151 Definitions**

This Clause provides definitions of terms used in this Part.

### **Clause 152 Register**

This Clause states that the Register kept under the existing *heritage conservation act* is taken to be the register under the new Act.

### **Clause 153 Heritage places and objects**

This Clause states that all prescribed archaeological places and objects under the existing *heritage conservation act*, as well as any places or objects specifically declared under Section 26 of the existing Act, are taken to be heritage places and objects under the new Act.

### **Clause 154 Pending assessments for declaration of heritage place or object**

Subclause 154(1) states that Clause 154 applies to places and objects that were nominated under the existing *heritage conservation act*, but where no final decision has been made.

Subclause 154(2) states that despite its repeal, the existing Act continues to apply in relation to the assessment process for places and objects in this category. Subclause 154(3)(a) makes it clear that when the process reaches the stage of declaration, the declaration must be done in accordance with Clause 34 of the new Act. This allows the Minister to authorise certain work. However subclause 154(3)(b) states that Clause 40 of the new Act does not apply; that is notice of the declaration is still done in accordance with Section 26(2) of the existing *heritage conservation act*. This means that if there is any appeal against the declaration then it will be under Part 8 of the repealed Act, not under the new Act.

Subclause 154(4) puts time constraints on making decisions about the places and objects that are subject to this Clause.

If comment has already been sought in accordance with Section 24(2) of the existing Act, then Subclause 154(4)(a) requires that the Heritage Council must make a decision within *12 months* of the date of commencement whether or not to recommend to the Minister that the place or object in question be declared as a heritage place or object.

If comment has not yet been sought in accordance with Section 24(2) of the existing Act, then Subclause 154(4)(b) requires that the Heritage Council must make a decision within *two years* of the date of commencement whether or not to recommend to the Minister that the place or object in question be declared as a heritage place or object, but only in the case of the nomination being made under Section 21 of the existing Act. This means that where the assessment of the place or object was initiated by the Heritage Advisory Council under Section 22 of the existing Act, the completion of the assessment process is at the discretion of the Heritage Advisory Council.

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

Subclause 155(1) states that Clause 155 applies to a situation where an application has been made under the existing Act to revoke the declaration of a heritage place or object (or where the Heritage Council has instigated this process itself), but where no final decision has been made.

Subclause 155(2) states that despite its repeal, in these circumstances the existing Act continues to apply in relation to the process. Subclause 155(3)(a) makes it clear that if the Minister makes a decision to revoke, the Minister must gazette the decision in accordance with Clause 65 of the new Act. However subclause 155(3)(b) states that Clause 65 of the new Act does not apply; that is notice of the decision is still done in accordance with Section 39H(4) of the existing Act. This means that if there is any appeal against the declaration then it will be under Part 8 of the repealed Act, not under the new Act.

#### **Clause 156 Interim conservation orders**

This Clause states that any interim conservation order (ICO) in force prior to the commencement of the new Act will be taken to be a provisional declaration of the place or object under the new Act. This is significant because an ICO under the existing Act normally expires after 90 days, whereas Clause 39 of the new Act states that a provisional declaration stays in effect until *either* the Minister has permanently declared the place or object as a heritage place or object *or* the Minister revokes the provisional declaration for whatever reason.

#### **Clause 157 Conservation Management Plans**

This Clause states that where a conservation management plan is in place for a place or object prior to the commencement of the new Act, then any work that is permitted under the plan is taken to be a work approval under the new Act. However this expires after two years. The intention here is phase out conservation management plans as a management tool.

#### **Clause 158 Heritage Agreements**

This Clause states that a heritage agreement under the existing Act is taken to be a heritage agreement under the new Act.

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

This Clause states that in cases where an application has been made under the existing Act to carry out work, but no decision has been made, the repealed Act continues to apply in relation to the application.

#### **Clause 160 Authorisations for works etc. on heritage place or object**

This Clause states that in cases where authorisation has been granted under the existing Act to carry out work, that authorisation is still valid.

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

This Clause states where a direction has been given under the existing Act to repair or maintain a heritage place or object, that direction is still valid.

#### **Clause 162 Transitional regulations**

This Clause allows for regulations to be made to deal with transitional matters. Those regulations may, subject to some conditions, be retrospective.

### **Chapter 9 Consequential amendments**

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

##### **Clause 163 Act amended**

This Clause states that the new Act is amending the Northern Territory *Lands, Planning and Mining Tribunal Act* ('*LPMT Act*').

##### **Clause 164 Section 5 amended**

This Clause amends Section 5 of the *LPMT Act* such that the Lands Planning and Mining Tribunal ('the Tribunal') is able to hear and decide appeals against certain decisions under the new *Heritage Act*; and confirm stop work orders under that Act.

##### **Clause 165 Section 12 amended**

This Clause amends Section 12 of the *LPMT Act* so that when the Tribunal is hearing appeals under the new *Heritage Act*, the parties are identified as the Territory, and the person making the appeal. When the Tribunal is hearing an application to confirm a stop work order, the parties are identified as the Territory and each 'interested person' as defined in the *Heritage Act*.

##### **Clause 166 Section 17 amended**

This Clause amends Section 17 of the *LPMT Act* such that it is not applicable in proceedings under the new *Heritage Act*; that is the procedures for making a decision and notifying parties of that decision is established by new Division 1A in the *LPMT Act* (see below).

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

This Clause inserts a new Division into the Part of the *LPMT Act* that deals with proceedings. It defines terms and establishes particular proceedings that are to be used when the Tribunal is hearing matters relating to the new *Heritage Act*.

New Section 21B introduces a new Subdivision to the *LPMT Act* that relates to reviewing decisions made under the new *Heritage Act*.

New Section 21C states that if an application is made to the Tribunal to review a decision made under the new *Heritage Act*, the decision remains valid until the Tribunal decides the matter; however the Tribunal may make an order staying or otherwise affecting a decision as it sees fit.

New Section 21D states that applications to the Tribunal may be heard together.

New Section 21E establishes the hearing procedure to be used by the Tribunal. The Tribunal considers the merits of the decision that was made under the *Heritage Act*. It considers matters afresh, is not bound by anything considered by the original decision-maker, and may choose what evidence it wishes to consider, including new evidence. This is an important extension of rights of review compared to the existing *Act*.

New Section 21F deals with how the Tribunal makes its decision. It allows the Tribunal the option of confirming the original decision, making its own decision, or referring the matter back to the original decision-maker with directions as to how to deal with the matter. The Tribunal may make orders as appropriate to give effect to its decision. Importantly, the Tribunal must give reasons for its decision.

New Section 21G introduces a new Subdivision to the *LPMT Act* that relates to the Tribunal's role in confirming stop work orders made under the new *Heritage Act*.

New Section 21GA establishes the hearing procedure to be used by the Tribunal in these circumstances, which is similar to that used when reviewing decisions.

New Section 21H states that the Tribunal may decide to either confirm the stop work order (with variations as it sees fit); or revoke the stop work order.

## **Part 9.2 Planning Act**

### **Clause 168 Act amended**

This Clause states that the new Act is amending the Northern Territory *Planning Act*.

### **Clause 169 Section 51 amended**

This Clause amends Section 51 of the Planning Act, which sets out the matters that the consent authority must take into account when considering a development application under that Act. Section 51(r) of the *Planning Act* will be amended to require the consent authority to consider: “any potential impact on natural, social, cultural or heritage values, *including, for example, the heritage significance of a heritage place or object under the Heritage Act;*”

### **Part 9.3 Other laws**

#### **Clause 170 Laws amended**

This Clause states that other laws that refer to the current *heritage conservation act* are amended according to Schedule 3, so that they refer to the new *Heritage Act*

### **Part 9.4 Expiry of Chapter**

#### **Clause 171 Expiry**

This Clause states that Chapter 9 of the new Act (which deals with consequential amendments of other Acts) expires immediately upon commencement of the new Act.