



Australian Capital Territory

# **Heritage Act 2004**

**A2004-57**

**Republication No 9**

**Effective: 10 March 2009 – 21 September 2009**

Republication date: 10 March 2009

Last amendment made by A2008-36  
(republication for commenced expiry)

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Heritage Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 10 March 2009. It also includes any amendment, repeal or expiry affecting the republished law to 10 March 2009.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Heritage Act 2004

## Contents

---

	Page
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Act 2
3	Objects of Act 2
3A	Individual heritage trees 3
4	Dictionary 3
5	Notes 4
6	Offences against Act—application of Criminal Code etc 4
7	Relationship with Emergencies Act 2004 4
<b>Part 2</b>	<b>Important concepts</b>
8	<i>Place and object</i> 6
9	<i>Aboriginal place and object</i> 7
10	<i>Heritage significance</i> 7
11	<i>Registered</i> 9

---

R9  
10/03/09

Heritage Act 2004  
Effective: 10/03/09-21/09/09

contents 1

## Contents

---

	Page
12	<i>Registration details</i>
13	<i>Interested person</i>
14	Representative Aboriginal organisations
15	<i>Conservation management plan</i>
<b>Part 3</b>	<b>Heritage council</b>
16	Establishment of heritage council
17	Members of council
18	Functions of council
19	Procedures of council
<b>Part 4</b>	<b>Heritage register</b>
20	Establishment of heritage register
21	Public access to heritage register
22	Restricted information on heritage register
23	Judicial notice of matters on heritage register
24	Correction of heritage register
<b>Part 5</b>	<b>Heritage guidelines</b>
25	Guidelines about conserving heritage significance
26	Public consultation about heritage guidelines
27	Application of heritage guidelines
<b>Part 6</b>	<b>Registration of places and objects</b>
<b>Division 6.1</b>	<b>Provisional registration</b>
28	Nomination of place or object for provisional registration
29	Application for urgent decision on nomination
30	Dismissal of nomination
31	Consultation with representative Aboriginal organisation about provisional registration
32	Decision about provisional registration
33	Provisional registration of place or object
34	Notice of decision about provisional registration
35	Period of provisional registration
36	Extension of provisional registration

	Page
<b>Division 6.2</b>	<b>Registration</b>
37	Public consultation about registration of place or object 27
38	Report to Minister about public consultation 27
39	Minister may require further consideration by council 28
40	Decision about registration 28
41	Registration of place or object 28
42	Notice of decision about registration 29
<b>Part 7</b>	<b>Cancellation of registration</b>
43	Cancellation proposal 30
44	Notice of cancellation proposal 30
45	Consultation with representative Aboriginal organisation about cancellation proposal 31
46	Public consultation about cancellation proposal 31
47	Decision about cancellation proposal 31
48	Cancellation of registration of place or object 32
49	Notice of decision about cancellation 32
50	Partial cancellation of registration of place or object 33
<b>Part 8</b>	<b>Discovery of Aboriginal places and objects</b>
51	Reporting discovery of Aboriginal place or object 34
52	Exceptions to reporting obligation 34
53	Assessing heritage significance of reported Aboriginal places and objects 35
<b>Part 9</b>	<b>Restricted information</b>
54	Declaration of restricted information 36
55	Restricted information not to be published without approval 36
56	Approval to publish restricted information 37
57	Limited access to restricted information 38
<b>Part 10</b>	<b>Land development applications</b>
58	Meaning of <i>development</i> —pt 10 39
59	Simplified outline 39
60	Advice about effect of development on heritage significance 40

## Contents

---

	Page
61 Requirements for council's advice about development	41
<b>Part 11 Heritage directions</b>	
62 Heritage direction by Minister	42
63 Service of heritage direction	43
64 Extension of heritage direction	43
65 Contravention of heritage direction—offence	43
66 Contravention of heritage direction—action by authorised person	43
67 Order to enforce exercise of functions	45
<b>Part 12 Civil protection of heritage</b>	
68 Application for heritage order	46
69 Heritage order	46
70 Interim heritage order	47
71 Costs	47
72 Security for costs etc	47
73 Respondent's loss etc in relation to heritage order proceedings	48
<b>Part 13 Heritage offences</b>	
74 Diminishing heritage significance of place or object	49
75 Damaging Aboriginal place or object	49
76 Exceptions to part 13 offences	50
<b>Part 14 Enforcement</b>	
<b>Division 14.1 General</b>	
77 Definitions for pt 14	52
<b>Division 14.2 Authorised people</b>	
78 Appointment of authorised people	53
79 Identity cards	53
<b>Division 14.3 Powers of authorised people</b>	
80 Power to enter premises	54
81 Production of identity card	55
82 Consent to entry	55
83 General powers on entry to premises	56

	Page
84	56
85	58
<b>Division 14.4</b>	
<b>Search warrants</b>	
86	58
87	59
88	61
89	62
90	62
<b>Division 14.5</b>	
<b>Return and forfeiture of things seized</b>	
91	62
92	63
93	64
94	64
<b>Division 14.6</b>	
<b>Miscellaneous</b>	
95	65
96	66
97	67
98	67
<b>Part 15</b>	
<b>Heritage agreements</b>	
99	69
100	69
101	70
102	70
103	70
104	71
105	71
<b>Part 16</b>	
<b>Heritage and public authorities</b>	
106	72
107	72
108	72
110	73

	Page
<b>Part 17</b>	<b>Notification and review of decisions</b>
111	Meaning of <i>reviewable decision</i> 74
112	Definitions—pt 17 74
113	Reviewable decision notices 75
114	Applications for review 75
<b>Part 18</b>	<b>Miscellaneous</b>
115	Repository for Territory-owned Aboriginal objects 76
116	Criminal liability of executive officers 76
117	Service of documents on council 78
118	Legal immunity for council members etc 78
119	Approved forms 78
120	Determination of fees 79
121	Delegation 79
122	Regulation-making power 79
123	5-year review 79
<b>Schedule 1</b>	<b>Reviewable decisions</b> 81
<b>Dictionary</b>	82
<b>Endnotes</b>	
1	About the endnotes 86
2	Abbreviation key 86
3	Legislation history 87
4	Amendment history 88
5	Earlier republications 90





Australian Capital Territory

## Heritage Act 2004

---

An Act to provide for the recognition, registration and conservation of places and objects of natural and cultural significance, and for other purposes

---

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Heritage Act 2004*.

### 3 Objects of Act

- (1) The main objects of this Act are as follows:
  - (a) to establish a system for the recognition, registration and conservation of natural and cultural heritage places and objects, including Aboriginal places and objects;
  - (b) to establish the heritage council;
  - (c) to provide for heritage agreements to encourage the conservation of heritage places and objects;
  - (d) to establish enforcement and offence provisions to provide greater protection for heritage places and objects;
  - (e) to provide a system integrated with land planning and development to consider development applications having regard to the heritage significance of places and heritage guidelines.
- (2) A function under this Act must be exercised—
  - (a) to preserve the heritage significance of places and objects; and
  - (b) to achieve the greatest sustainable benefit to the community from places and objects consistent with the conservation of their heritage significance.
- (3) If the exercise of the function involves conduct that would adversely affect the heritage significance of a place or object, the conduct may be engaged in only if—
  - (a) there is no feasible or prudent alternative; and

- (b) all measures that can reasonably be taken to minimise the adverse effect are taken.

### 3A Individual heritage trees

- (1) The council must not register an individual tree in a built-up urban area.
- (2) Subsection (1) does not prevent the registration of a place where a tree or trees form part of the heritage significance of the place.
- (3) In this section:

***built-up urban area***—see the *Tree Protection Act 2005*, section 7 (2) (Application of Act—built-up urban area).

*Note* The *Tree Protection Act 2005* includes provision for the protection of trees of heritage significance in built-up urban areas. For trees of heritage significance, it provides for the heritage council to be told about approved activities, tree management plans and provisional registration under that Act. It also provides for the heritage council's advice to be taken into account in deciding whether to register a tree of heritage significance under that Act.

## 4 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*Aboriginal place*—see section 9.' means that the term 'Aboriginal place' is defined in that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

## 5 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

## 6 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## 7 Relationship with Emergencies Act 2004

- (1) This Act does not apply to the exercise or purported exercise by a relevant person of a function under the *Emergencies Act 2004* for the purpose of protecting life or property, or controlling, extinguishing or preventing the spread of a fire.

- (2) In this section:

*relevant person* means—

- (a) the chief officer (fire brigade); or
- (b) any other member of the fire brigade; or
- (c) the chief officer (rural fire service); or
- (d) any other member of the rural fire service; or

- (e) any other person under the control of the chief officer (fire brigade) or the chief officer (rural fire service); or
- (f) a police officer.

## Part 2 Important concepts

### 8 ***Place and object***

(1) In this Act:

*place* includes the following:

- (a) a site, precinct or parcel of land;
- (b) an item at the place;
- (c) a building or structure, or part of a building or structure, at the place;
- (d) an object at the place that could be registered separately;
- (e) an item historically or physically associated with the place, if the primary importance of the item derives, completely or partly, from that association;
- (f) equipment, furniture, fittings and articles at, or historically or physically associated with, the place.

**Examples of things that *place* may include**

- 1 landforms
- 2 plantings
- 3 animal habitats

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) An ***object*** means a natural or manufactured object, including an Aboriginal object, but does not include a place.

## 9 ***Aboriginal place and object***

In this Act:

***Aboriginal place*** means a place of particular significance to Aboriginal people because of either or both of the following:

- (a) Aboriginal tradition;
- (b) the history, including contemporary history, of Aboriginal people.

***Aboriginal object*** means an object of particular significance to Aboriginal people because of either or both of the following:

- (a) Aboriginal tradition;
- (b) the history, including contemporary history, of Aboriginal people.

## 10 ***Heritage significance***

A place or object has ***heritage significance*** if it satisfies 1 or more of the following criteria (the ***heritage significance criteria***):

- (a) it demonstrates a high degree of technical or creative achievement (or both), by showing qualities of innovation, discovery, invention or an exceptionally fine level of application of existing techniques or approaches;
- (b) it exhibits outstanding design or aesthetic qualities valued by the community or a cultural group;
- (c) it is important as evidence of a distinctive way of life, taste, tradition, religion, land use, custom, process, design or function that is no longer practised, is in danger of being lost or is of exceptional interest;
- (d) it is highly valued by the community or a cultural group for reasons of strong or special religious, spiritual, cultural, educational or social associations;

- (e) it is significant to the ACT because of its importance as part of local Aboriginal tradition;
- (f) it is a rare or unique example of its kind, or is rare or unique in its comparative intactness;
- (g) it is a notable example of a kind of place or object and demonstrates the main characteristics of that kind;
- (h) it has strong or special associations with a person, group, event, development or cultural phase in local or national history;
- (i) it is significant for understanding the evolution of natural landscapes, including significant geological features, landforms, biota or natural processes;
- (j) it has provided, or is likely to provide, information that will contribute significantly to a wider understanding of the natural or cultural history of the ACT because of its use or potential use as a research site or object, teaching site or object, type locality or benchmark site;
- (k) for a place—it exhibits unusual richness, diversity or significant transitions of flora, fauna or natural landscapes and their elements;
- (l) for a place—it is a significant ecological community, habitat or locality for any of the following:
  - (i) the life cycle of native species;
  - (ii) rare, threatened or uncommon species;
  - (iii) species at the limits of their natural range;
  - (iv) distinct occurrences of species.



**11      *Registered***

A place or object is *registered* if it is—

- (a) provisionally registered under division 6.1; or
- (b) registered under division 6.2.

**12      *Registration details***

The *registration details* for a registered place or object are as follows:

- (a) its name;
- (b) its location or address;
- (c) a description of it, including (if relevant) its extent or boundary;
- (d) a statement about its heritage significance, including the reasons for the registration and an assessment of the place or object against the heritage significance criteria;
- (e) whether it is registered or provisionally registered;
- (f) the date it was registered or provisionally registered;
- (g) if it is provisionally registered—the period of provisional registration.

*Note*      The registration details for a place or object may be cancelled under s 48 (Cancellation of registration of place or object).

**13      *Interested person***

- (1) Each of the following is an *interested person*:
  - (a) the planning and land authority;
  - (b) the conservator of flora and fauna;
  - (c) the national capital authority;

- (d) for a place—
    - (i) an owner;
    - (ii) an occupier;
    - (iii) a lessee or sublessee;
    - (iv) an architect or designer of a building or structure at the place;
    - (v) if the place was nominated under section 28—the nominator;
  - (e) for an object—
    - (i) an owner;
    - (ii) a person in possession of the object;
    - (iii) a maker;
    - (iv) if the object was nominated under section 28—the nominator.
- (2) If a place or object is also an Aboriginal place or object, each of the following is also an *interested person*:
- (a) a representative Aboriginal organisation;
  - (b) if the discovery of the place or object was reported under section 51—the person who reported the discovery.

## 14 ***Representative Aboriginal organisations***

- (1) In this Act:
- representative Aboriginal organisation*** means an entity declared under subsection (7).
- (2) Before declaring criteria under subsection (3), the Minister must consult—

- (a) Aboriginal people whom the Minister is satisfied have a traditional affiliation with land; and
  - (b) the council.
- (3) The Minister may, in writing, declare criteria for deciding whether an entity should be declared to be a representative Aboriginal organisation.
- (4) A declaration under subsection (3) is a disallowable instrument.
- Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (5) For this section, the Minister must, by written notice, invite expressions of interest from entities willing to be declared under subsection (7).
- (6) The notice under subsection (5)—
- (a) is a notifiable instrument; and
  - (b) must be published in a daily newspaper.
- Note* A notifiable instrument must be notified under the Legislation Act.
- (7) The Minister may, in writing, declare an entity to be a representative Aboriginal organisation.
- (8) However, the Minister may make a declaration under subsection (7) only if satisfied that the entity satisfies the criteria (if any) declared under subsection (3).
- (9) A declaration under subsection (7) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

**15 Conservation management plan**

A *conservation management plan* is a plan to ensure that—

- (a) the conservation and future use of a heritage place or object are consistent with its heritage significance; and
- (b) any threat, or potential threat, to the heritage significance of the place or object is identified and managed in accordance with the plan.

## Part 3 Heritage council

### 16 Establishment of heritage council

The Australian Capital Territory Heritage Council is established.

### 17 Members of council

- (1) The members of the council are as follows:
- (a) the conservator of flora and fauna;
  - (b) the chief planning executive;
  - (c) 3 people appointed by the Minister as public representatives (see subsection (3));
  - (d) 6 people appointed by the Minister as experts (see subsection (4)).

*Note 1* For the making of appointments (including acting appointments), see Legislation Act 2001, pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act 2001, div 19.3.3).

- (2) The Minister must appoint a chairperson and deputy chairperson of the council from the members appointed under subsection (1) (c) and (d).
- (3) There must be at least 1 public representative for each of the following groups who, in the Minister's opinion, adequately represents the group:
- (a) the community;
  - (b) the Aboriginal community;

- (c) the property ownership, management and development sector.
- (4) Each expert must, in the Minister's opinion, adequately represent 1 or more of the following disciplines:
  - (a) Aboriginal culture;
  - (b) Aboriginal history;
  - (c) archaeology;
  - (d) architecture;
  - (e) engineering;
  - (f) history, other than Aboriginal history;
  - (g) landscape architecture;
  - (h) nature conservation;
  - (i) object conservation;
  - (j) town planning;
  - (k) urban design.
- (5) A person may be appointed under subsection (1) (c) or (d) for no longer than 3 years.

## **18 Functions of council**

The council has the following functions:

- (a) to identify, assess, conserve and promote places and objects in the ACT with natural and cultural heritage significance;
- (b) to encourage the registration of heritage places and objects;
- (c) to work within the land planning and development system to achieve appropriate conservation of the ACT's natural and cultural heritage places and objects, including Aboriginal places and objects;

- (d) to advise the Minister about issues affecting the management and promotion of heritage;
- (e) to encourage and assist in appropriate management of heritage places and objects;
- (f) to encourage public interest in, and understanding of, issues relevant to the conservation of heritage places and objects;
- (g) to encourage and provide public education about heritage places and objects;
- (h) to assist in the promotion of tourism in relation to heritage places and objects;
- (i) to keep adequate records, and encourage others to keep adequate records, in relation to heritage places and objects;
- (j) any other function given to it under this Act or another Territory law.

**Examples of other council functions**

- 1 making recommendations and submissions to the planning and land authority about draft variations to the territory plan (see *Planning and Development Act 2007*, s 61 (b) (iv))
- 2 giving advice to the planning and land authority about development applications (see *Planning and Development Act 2007*, s 119 (2), s 120 (d), s 128 (2) and s 129 (e))

*Note 1* A provision of a law that gives an entity (including a person) a function also gives the entity the powers necessary and convenient to exercise the function (see *Legislation Act*, s 196 (1) and dict, pt 1, defs of **entity** and **function**).

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act*, s 126 and s 132).

**19 Procedures of council**

- (1) The regulations may prescribe the procedures of the council, including its decision-making procedures.

- (2) However, the conservator of flora and fauna and the chief planning executive are not eligible to vote on questions being decided by the council.

**Examples of what regulations may prescribe**

- 1 the number of members required to be at meetings of the council
- 2 what happens when votes are tied at meetings of the council
- 3 who is to preside at meetings of the council

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).



## Part 4 Heritage register

### 20 Establishment of heritage register

- (1) The council must keep a register of heritage places and heritage objects (the *heritage register*).
- (2) The heritage register must include the registration details for each registered place or object.
- (3) For each place or object nominated for provisional registration, the heritage register must include the following:
  - (a) the nomination details;
  - (b) the date the nomination was given to the council; and
  - (c) if an application for an urgent decision on the nomination has been made under section 29—
    - (i) a statement to that effect; and
    - (ii) the date the application was given to the council.
- (4) In addition, the heritage register must include the following:
  - (a) each heritage guideline;
  - (b) each heritage direction;
  - (c) each enforcement order.
- (5) The heritage register may also include any other material the council considers appropriate.

### 21 Public access to heritage register

- (1) The council may—
  - (a) in writing, approve an internet site for this Act; and

(b) publish a copy of the register (other than restricted information) on the internet site.

(2) An instrument under subsection (1) (a) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

(3) A person may inspect the heritage register during ordinary office hours at a place named under subsection (4).

(4) The council must, in writing, name a place where the register may be inspected.

(5) An instrument under subsection (4) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

(6) On application, the council must give a person a copy of all, or any part, of the heritage register.

*Note 1* If a form is approved under s 119 for this provision, the form must be used.

*Note 2* A fee may be determined under s 120 for this provision.

## **22 Restricted information on heritage register**

(1) This section applies if the registration details for a place or object include restricted information.

(2) The council must include a statement in the register about the effect of subsections (3) and (4).

(3) The restricted information must not be disclosed under section 21, except in accordance with subsection (4).

(4) The restricted information may be made available for inspection or copying only if approved under section 56 (Approval to publish restricted information).

**23 Judicial notice of matters on heritage register**

- (1) Proof is not required about a matter mentioned in section 20 (2) to (4) if the matter is published on the internet site approved under section 21.
- (2) A court or tribunal may inform itself about the matter by examining the approved internet site.

*Note* Section 21 provides for the council to approve an internet site by a notifiable instrument under the Legislation Act.

**24 Correction of heritage register**

The council may correct a mistake or omission in the heritage register subject to the requirements (if any) of the regulations.

## Part 5 Heritage guidelines

### 25 Guidelines about conserving heritage significance

- (1) The council may, in writing, make guidelines (*heritage guidelines*) in relation to the conservation of the heritage significance of places or objects.

#### Examples of matters about which guidelines may be made

- 1 demolition of registered structures
- 2 alterations and additions to registered buildings
- 3 residential heritage precincts
- 4 rural heritage places
- 5 new buildings in heritage precincts
- 6 Aboriginal heritage places and objects
- 7 working with heritage places
- 8 developing heritage places
- 9 when, and when not, to undertake a development affecting the heritage significance of a place

*Note 1* The power to make a statutory instrument (including guidelines) includes power to amend or repeal the instrument (see Legislation Act, s 46)

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) Guidelines are a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

### 26 Public consultation about heritage guidelines

- (1) Before making heritage guidelines, the council must prepare a written notice (a *consultation notice*) about the proposed guidelines.
- (2) The consultation notice—

- (a) is a notifiable instrument; and
- (b) must be published in a daily newspaper as soon as practicable.

*Note* A notifiable instrument must be notified under the Legislation Act.

- (3) The consultation notice must include the following:
  - (a) a statement about the effect of the proposed guidelines and the places or objects to which the guidelines would apply;
  - (b) details of how to obtain further information about the proposed guidelines;
  - (c) an invitation to make comments about the proposed guidelines to the council within 4 weeks after the day the notice is notified under the Legislation Act (the *public consultation period*).
- (4) If the proposed guidelines relate to an Aboriginal place or object, the council must give a copy of the consultation notice to each representative Aboriginal organisation in relation to the proposed guidelines.

*Note* Section 14 defines *representative Aboriginal organisation*.

- (5) In making heritage guidelines, the council must consider any comments made to the council about the proposed guidelines before the end of the public consultation period.

## **27 Application of heritage guidelines**

- (1) A function under this Act that relates, directly or indirectly, to the conservation of a place or object must be exercised in accordance with any applicable heritage guidelines.
- (2) Subsection (1) applies, in particular, to the following functions:
  - (a) the giving of advice to the planning and land authority under section 60 (Advice about effect of development on heritage significance), particularly in relation to ways of avoiding or minimising the effect of a development on the heritage significance of a place or object;

- (b) the giving of a heritage direction;
- (c) the making of a heritage order;
- (d) the making of a heritage agreement.

## **Part 6**                      **Registration of places and objects**

### **Division 6.1**              **Provisional registration**

#### **28**              **Nomination of place or object for provisional registration**

- (1) Anyone may nominate a place or object for provisional registration.
- (2) The nomination must be in writing and must be given to the council.

*Note 1* If a form is approved under s 119 for a nomination, the form must be used.

*Note 2* A fee may be determined under s 120 for this provision.

*Note 3* Section 117 deals with giving documents to the council.

- (3) The application must include the following details (the *nomination details*) of the place or object:
  - (a) its name;
  - (b) its location or address;
  - (c) the nominator's statement about the heritage significance of the place or object.

#### **29**              **Application for urgent decision on nomination**

- (1) Anyone may apply for an urgent decision on a nomination.
- (2) The application must be in writing and must be given to the council.

*Note 1* If a form is approved under s 119 for an application under this section, the form must be used.

*Note 2* A fee may be determined under s 120 for this provision.

*Note 3* Section 117 deals with giving documents to the council.

**Examples of applications of urgent decisions**

- 1 A member of the Legislative Assembly applies for urgent assessment of heritage significance to protect a place or object under imminent threat.
- 2 A developer applies for urgent assessment of heritage significance to avoid delay in a development project.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132)

- (3) The council must use its best endeavours to decide, within 20 working days after the day it receives the application, whether or not to provisionally register the place or object nominated.

**30 Dismissal of nomination**

- (1) The council may dismiss a nomination without further consideration if—
  - (a) the council is satisfied that the nomination is frivolous, vexatious, misconceived, or lacking in substance or was not made honestly; or
  - (b) the council has previously decided not to register the place or object nominated and is satisfied that the nomination shows no new ground for registration.
- (2) If the council dismisses a nomination, it must give the nominator written notice of the dismissal, setting out its reasons for the dismissal.

**31 Consultation with representative Aboriginal organisation about provisional registration**

Before deciding whether to provisionally register an Aboriginal place or object, the council must consult, and consider the views of, each representative Aboriginal organisation about the provisional registration.



**32 Decision about provisional registration**

- (1) The council must decide whether to provisionally register each place or object nominated for provisional registration.
- (2) The council also may decide to provisionally register a place or object that has not been nominated for provisional registration.
- (3) The council may provisionally register a place or object only if satisfied, on reasonable grounds, that the place or object may have heritage significance.

**33 Provisional registration of place or object**

To provisionally register a place or object, the council must enter in the register—

- (a) the registration details for the place or object; and
- (b) an indication that the registration is provisional.

**34 Notice of decision about provisional registration**

- (1) The council must prepare a written notice of its decision about the provisional registration of a place or object.
- (2) The notice—
  - (a) is a notifiable instrument; and
  - (b) must be notified under the Legislation Act within 3 working days after the day the decision is made; and
  - (c) must be published in a daily newspaper as soon as practicable.
- (3) The council must use its best endeavours to give a copy of the notice to each interested person within 10 working days after the day the decision is made.

*Note* Section 13 defines *interested person*.

- (4) If the decision is to provisionally register the place or object, the notice must include the following:
  - (a) the registration details of the place or object;
  - (b) the council's reasons for its decision;
  - (c) the date of provisional registration;
  - (d) an indication of the council's intention to decide whether to register the place or object under division 6.2.
- (5) The notice must not include restricted information.

### **35 Period of provisional registration**

- (1) The provisional registration of a place or object is for—
  - (a) 5 months beginning on the day the place or object is provisionally registered; or
  - (b) if section 36 applies—the extended period under that section.
- (2) However, the provisional registration ends if the place or object is registered under division 6.2.

### **36 Extension of provisional registration**

- (1) This section applies if the council asks the Minister in writing to extend the period of the provisional registration of a place or object.
- (2) While the place or object is provisionally registered, the Minister may, in writing, extend the period of provisional registration.
- (3) The Minister may extend the period of provisional registration only if satisfied, on reasonable grounds, that the existing period of registration (including any extension under this subsection) may end before—
  - (a) any consultation and consideration required under section 31 (Consultation with representative Aboriginal organisation about provisional registration) ends; or

- (b) an appeal against a decision by the council not to provisionally register the place or object has been finally decided.
- (4) An extension must end within 8 months after the day the place or object was provisionally registered.
- (5) An extension under subsection (2) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

## **Division 6.2 Registration**

### **37 Public consultation about registration of place or object**

- (1) A notice under section 34 (Notice of decision about provisional registration) must include an invitation to make comments about the registration of the place or object to the council within 4 weeks after the day the notice is notified under the Legislation Act (the *public consultation period*).

*Note* Section 117 deals with giving documents to the council.

- (2) In deciding whether to register a place or object under this division, the council must consider any comments made to the council about the registration before the end of the public consultation period.

### **38 Report to Minister about public consultation**

As soon as practicable after the end of the public consultation period in relation to the registration of a place or object, the council must give the Minister a written report that—

- (a) identifies the place or object; and
- (b) gives the council's view about whether the place or object should be registered under this division; and
- (c) identifies issues raised in comments made to the council before the end of the public consultation period; and
- (d) includes a copy of the written comments (if any); and

- (e) identifies any other change the council proposes to make to the registration having regard to the issues raised in the comments.

### **39 Minister may require further consideration by council**

- (1) The Minister may direct the council to give further consideration to issues raised in, or arising from, its report to the Minister under section 38.
- (2) The Minister must give the direction to the council in writing within 15 working days after the day the report is given to the Minister.

### **40 Decision about registration**

- (1) If a place or object is provisionally registered, the council must decide whether to register it under this division.
- (2) The council may register the place or object only—
  - (a) after complying with any direction by the Minister under section 39; and
  - (b) if satisfied, on reasonable grounds, that it has heritage significance.

### **41 Registration of place or object**

- (1) To register a place or object under this division, the council must—
  - (a) enter the registration details for the place or object in the register; and
  - (b) remove the indication that registration is provisional.
- (2) The council may register a place or object only if—
  - (a) the appeal period has ended and no appeal has been made; or
  - (b) any appeal has been finally decided and the registration is consistent with any decision on the appeal.

## **42 Notice of decision about registration**

- (1) The council must prepare a written notice of its decision about the registration of a place or object under this division.
- (2) The notice—
  - (a) is a notifiable instrument; and
  - (b) must be notified under the Legislation Act within 3 working days after the day the decision is made; and
  - (c) must be published in a daily newspaper as soon as practicable.
- (3) The council must use its best endeavours to give a copy of the notice to each interested person within 10 working days after the day the decision is made.

*Note* Section 13 defines *interested person*.

- (4) If the decision is to register the place or object under this division, the notice must include the following:
  - (a) the registration details of the place or object;
  - (b) the council's reasons for the registration;
  - (c) the date of registration.
- (5) The notice must not include restricted information.

## Part 7 Cancellation of registration

### 43 Cancellation proposal

- (1) Anyone may propose the cancellation of the registration under division 6.2 of a place or object.
- (2) The proposal (a *cancellation proposal*) must be in writing and must be given to the council.

*Note 1* If a form is approved under s 119 for this provision, the form must be used.

*Note 2* A fee may be determined under s 120 for this provision.

*Note 3* Section 117 deals with giving documents to the council.

- (3) The council may refuse to consider a proposal if satisfied, on reasonable grounds, the proposal is frivolous or vexatious.

### 44 Notice of cancellation proposal

- (1) The council must prepare a written notice of each cancellation proposal.
- (2) The notice—
  - (a) is a notifiable instrument; and
  - (b) must be notified under the Legislation Act within 3 working days after the day the proposal is given to the council; and
  - (c) must be published in a daily newspaper as soon as practicable.
- (3) The council must use its best endeavours to give a copy of the notice to each interested person within 10 working days after the day the proposal is given to the council.

*Note* Section 13 defines *interested person*.

- (4) A notice under this section must include the following:
  - (a) the registration details of the place or object;
  - (b) the proponent's reasons for the cancellation proposal;
  - (c) the date the proposal was given to the council.
- (5) The notice must not include restricted information.

#### **45 Consultation with representative Aboriginal organisation about cancellation proposal**

- (1) This section applies if a cancellation proposal is made in relation to an Aboriginal place or object.
- (2) In deciding whether to cancel the registration of the place or object, the council must consult, and consider the views of, each representative Aboriginal organisation about the proposal.

#### **46 Public consultation about cancellation proposal**

- (1) A notice under section 44 (Notice of cancellation proposal) in relation to the registration of a place or object must include an invitation to make comments about the proposal to the council within 4 weeks after the day the notice is notified under the Legislation Act (the *public consultation period*).

*Note* Section 117 deals with giving documents to the council.

- (2) In deciding whether to cancel the registration of the place or object, the council must consider any comments made to the council about the proposed cancellation before the end of the public consultation period.

#### **47 Decision about cancellation proposal**

- (1) If the council receives a cancellation proposal about a place or object, it must decide whether to cancel the registration of the place or object in accordance with the proposal.

- (2) The council may cancel the registration only if satisfied, on reasonable grounds, that the place or object no longer has heritage significance.

**48 Cancellation of registration of place or object**

- (1) To cancel the registration of a place or object, the council must—
- (a) cancel the registration details for the place or object; and
  - (b) enter in the register—
    - (i) the date of cancellation; and
    - (ii) an indication that the details have been cancelled.
- (2) The council may cancel the registration of a place or object only if—
- (a) the appeal period has ended and no appeal has been made; or
  - (b) any appeal has been finally decided and the cancellation is consistent with any decision on the appeal.

**49 Notice of decision about cancellation**

- (1) The council must prepare a written notice of the cancellation of the registration of a place or object.
- (2) The notice—
- (a) is a notifiable instrument; and
  - (b) must be notified under the Legislation Act within 3 working days after the day the decision is made; and
  - (c) must be published in a daily newspaper as soon as practicable.
- (3) The council must use its best endeavours to give a copy of the notice to each interested person within 10 working days after the day the decision is made.

*Note* Section 13 defines *interested person*.



- (4) The notice must include the following:
  - (a) details of the cancellation;
  - (b) the council's reasons for the cancellation;
  - (c) the date of cancellation.
- (5) The notice must not include restricted information.

## **50 Partial cancellation of registration of place or object**

- (1) In this part:
  - cancellation* includes partial cancellation.
  - partial cancellation* means the exclusion of part of a registered place or object.
- (2) This part applies to a partial cancellation as if—
  - (a) a reference to a registered place or object were a reference to the part of the place or object to be excluded; and
  - (b) all other necessary changes, including any changes prescribed by regulation, were made.

## **Part 8**

# **Discovery of Aboriginal places and objects**

### **51 Reporting discovery of Aboriginal place or object**

- (1) A person commits an offence if the person—
  - (a) discovers an Aboriginal place or object; and
  - (b) has reasonable grounds to believe it is an Aboriginal place or object; and
  - (c) fails to take reasonable steps to report the discovery to the council, in accordance with subsection (2), as soon as practicable after the day of the discovery.

Maximum penalty: 5 penalty units.

- (2) The report must be in writing and must include the following:
  - (a) a description of the place or object and its location;
  - (b) the person's name and address;
  - (c) if known by the person—the name and address of the owner or occupier of the place where the discovery was made.
- (3) A discovery is taken to be reported to the council as soon as practicable if the discovery is reported to the council within 5 working days after the day of the discovery.
- (4) An offence against this section is a strict liability offence.

### **52 Exceptions to reporting obligation**

Section 51 does not apply to—

- (a) a registered place or object; or

- (b) a person who has a traditional Aboriginal affiliation with the land where the place or object was discovered.

**53      Assessing heritage significance of reported Aboriginal places and objects**

As soon as practicable after a place or object is reported under section 51, the council must—

- (a) arrange consultation under section 31 with each representative Aboriginal organisation in relation to the place or object; and
- (b) decide whether the place or object is to be provisionally registered.

## Part 9 Restricted information

### 54 Declaration of restricted information

- (1) The council may, in writing, declare particular information about the location or nature of a place or object to be restricted information.
- (2) The council may make the declaration only if satisfied, on reasonable grounds, that public disclosure of the information would be likely to have a substantial adverse effect on the heritage significance of the place or object.
- (3) Before making a declaration in relation to an Aboriginal place or object, the council must consult, and consider the views of, each representative Aboriginal organisation about the proposed declaration.
- (4) The council must use its best endeavours to give a copy of the declaration to each interested person for the place or object.

*Note* Section 13 defines *interested person*.

### 55 Restricted information not to be published without approval

- (1) A person commits an offence if the person—
  - (a) publishes restricted information about a place or object; and
  - (b) knows the information is restricted information.Maximum penalty: 50 penalty units.
- (2) Subsection (1) does not apply if the publication is—
  - (a) in accordance with an approval under section 56; or
  - (b) for the exercise of a function under this Act or another Territory law.

- (3) Also, subsection (1) does not apply to a publication about an Aboriginal place or object if the publication—
- (a) is made by a person with a traditional affiliation with the place or object; and
  - (b) is—
    - (i) to another Aboriginal person; or
    - (ii) for the purpose of education about Aboriginal tradition; or
    - (iii) necessary and reasonable to avoid an imminent risk of damage to, or destruction of, an Aboriginal place or object.

## **56 Approval to publish restricted information**

- (1) The council may approve the publication of restricted information about a place or object if satisfied, on reasonable grounds, that the publication will not have a substantial adverse effect on the heritage significance of the place or object.
- (2) An approval—
- (a) may be given only on application; and
  - (b) must be given in writing to the applicant.
- (3) An application must be in writing and must—
- (a) identify the restricted information proposed to be published; and
  - (b) state the reason for the publication; and
  - (c) state the nature of the publication, including the person, people or kind of people to whom it would be directed.

*Note 1* If a form is approved under s 119 for an application, the form must be used.

*Note 2* A fee may be determined under s 120 for this provision.

**57 Limited access to restricted information**

- (1) This section applies if—
- (a) land is offered for sale; and
  - (b) an interested person for the land, or someone considering buying an interest in the land, applies to the council for access to restricted information relevant to the conservation and use of the land.

*Note 1* If a form is approved under s 119 for an application, the form must be used.

*Note 2* A fee may be determined under s 120 for this provision.

*Note 3* Section 13 defines *interested person*.

- (2) The council must give the applicant the restricted information sought, together with a written explanation about the operation of this part.

## Part 10 Land development applications

### 58 Meaning of *development*—pt 10

In this part:

*development* means a proposed development to which a development application under the *Planning and Development Act 2007*, chapter 7 applies.

### 59 Simplified outline

The following notes provide a simplified outline of this part and the *Planning and Development Act 2007*, chapter 7:

*Note 1 Council to be given copy of certain development applications*

The planning and land authority may be required to give the council a copy of each development application for a development proposal in the merit or impact track (see *Planning and Development Act 2007*, s 148). This requirement would not apply to a development application for a development proposal in the code track (see *Planning and Development Act 2007*, s 117 (c)).

*Note 2 Council to give advice on application*

The council gives advice to the planning and land authority about the effect of a development on the heritage significance of a place or object if the development application is referred to the council (see *Planning and Development Act 2007*, s 149, s 150 and s 151).

*Note 3 Council's advice to be considered*

The council's advice must be considered by the planning and land authority in approving or refusing to approve a development application referred to the council (see *Planning and Development Act 2007*, s 119 (2), s 120 (d), s 128 (2) and s 129 (e)).

*Note 4 Council may apply for review of decision to approve application*

The council may apply to the ACAT for review of the planning and land authority's decision to approve a development application if the council—

- (a) made a representation about the proposal under the *Planning and Development Act 2007*, s 156; and
- (b) is an eligible entity under that Act, ch 13 (Review of decisions) (see *Planning and Development Act 2007*, s 408 and s 419, and sch 1, item 4 and item 6).

## **60 Advice about effect of development on heritage significance**

- (1) This section applies if the council is satisfied, on reasonable grounds, that a development would affect the heritage significance of—
  - (a) a registered place or object; or
  - (b) a place or object nominated for provisional registration.
- (2) The council may give the planning and land authority written advice in accordance with section 61 about its decision.

*Note 1* If the planning and land authority refers a development application to the council under the *Planning and Development Act 2007*, s 148, the council must, not later than 15 working days after being given the application, give the planning and land authority its advice in relation to the development application (see *Planning and Development Act 2007*, s 149).

*Note 2* The council may apply to the ACAT for review of the planning and land authority's decision to approve a development application if the council—

- (a) made a representation about the proposal under the *Planning and Development Act 2007*, s 156; and
- (b) is an eligible entity under that Act, ch 13 (Review of decisions) (see *Planning and Development Act 2007*, s 408 and s 419, and sch 1, item 4 and item 6).



**61 Requirements for council's advice about development**

- (1) This section applies if the council gives advice—
  - (a) under section 60 about the effect of a development on the heritage significance of a place or object; or
  - (b) under the *Planning and Development Act 2007*, section 149 in relation to a development application.
- (2) The council's advice must include the following:
  - (a) an outline of the effect of the development on the heritage significance of the place or object;
  - (b) advice about ways of avoiding or minimising the impact of the development on the heritage significance of the place or object.
- (3) Without limiting subsection (2), the advice may set out proposed conditions on any approval of the development, including conditions requiring compliance with all or any of the following:
  - (a) prudent and feasible measures to conserve the heritage significance of the place or object;
  - (b) conservation requirements under applicable heritage guidelines;
  - (c) a conservation management plan approved by the council.

## Part 11 Heritage directions

### 62 Heritage direction by Minister

- (1) The Minister may give the owner or occupier of a place or object a written direction (a *heritage direction*) to do or not do something to conserve the heritage significance of the place or object.

**Examples of heritage directions**

- 1 to do essential maintenance on a place
- 2 not to adversely affect a significant feature of a heritage place
- 3 not to undertake a development affecting the heritage significance of a place

*Note 1* The power to make a statutory instrument (including a heritage direction) includes power to amend or repeal the instrument (see Legislation Act, s 46)

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The heritage direction may be given only if—
- (a) the council—
    - (i) is satisfied, on reasonable grounds, the direction is in accordance with any applicable heritage guideline; and
    - (ii) recommends the direction; and
  - (b) the Minister is satisfied, on reasonable grounds, that—
    - (i) there is a serious and imminent threat to the heritage significance of the place or object; and
    - (ii) immediate protection is necessary.
- (3) The direction must state the period for which it is in force.
- (4) To remove any doubt, a direction may be given in relation to a place or object whether or not it is registered.

**63 Service of heritage direction**

A heritage direction may be given to the owner or occupier of a place by leaving it secured in a conspicuous position at the place.

*Note* For how directions may be served generally, see Legislation Act, pt 19.5.

**64 Extension of heritage direction**

- (1) On application by the Minister, the Supreme Court may extend the period for which a heritage direction is in force in relation to a place or object if satisfied that—
  - (a) there is a serious and imminent threat to the heritage significance of the place or object; and
  - (b) extended protection is necessary.
- (2) An extension must be for no longer than the Supreme Court considers necessary.

**65 Contravention of heritage direction—offence**

A person commits an offence if the person intentionally contravenes a requirement of a heritage direction.

Maximum penalty: 1 000 penalty units.

**66 Contravention of heritage direction—action by authorised person**

- (1) This section applies if—
  - (a) a person does not comply with a heritage direction requiring the person to do something; and
  - (b) either—
    - (i) the appeal period has ended and no appeal has been made; or

- (ii) any appeal has been finally decided and is unsuccessful.
- (2) An authorised person may enter the premises where the place or object to which the direction applies is located and—
- (a) do the thing stated in the direction; or
  - (b) do or finish any work stated in the direction.
- (3) The reasonable cost incurred by the Territory in doing anything under subsection (2) is a debt owing to the Territory by the person to whom the direction was given.
- (4) The Minister must endeavour to give each interested person for the place or object written notice of the action proposed under subsection (2) at least 5 working days before the day the action is to begin.
- (5) The notice must include the following:
- (a) a statement about the operation of this section;
  - (b) the purpose and nature of the proposed action;
  - (c) the parts of the place likely to be affected;
  - (d) the time or times when the action is proposed to be taken;
  - (e) a statement about the obligations of the authorised person and the Territory under subsection (7).
- (6) A person may waive the right to all or part of the minimum period of notice under subsection (4).
- (7) Section 97 (Damage etc to be minimised) and section 98 (Compensation for exercise of enforcement powers) apply to any action taken under subsection (2) as if—
- (a) it were the exercise of a function under part 14 (Enforcement) by an authorised person or a person assisting an authorised person; and

- (b) as if all other changes, including changes prescribed under the regulations, were made.

## **67 Order to enforce exercise of functions**

- (1) This section applies if—
  - (a) an authorised person is entitled to exercise a function under section 66 (2); and
  - (b) another person obstructs, or proposes to obstruct, the authorised person in the exercise of the function.
- (2) The Magistrates Court may, on the application of the authorised person, make an order authorising a police officer or other person named in the order to use necessary assistance and force to enable the function to be exercised.
- (3) A copy of an application under subsection (1) must be given to the obstructor, and the obstructor is entitled to appear and be heard on the hearing of the application.

## Part 12 Civil protection of heritage

### 68 Application for heritage order

- (1) An application for a heritage order may be made to the Supreme Court by—
  - (a) the council on behalf of the Territory; or
  - (b) someone else with the court's leave.
- (2) The Supreme Court may grant leave under subsection (1) (b) only if satisfied that—
  - (a) the person has asked the council to apply for a heritage order and the council has failed to do so within a reasonable time; and
  - (b) it is in the public interest that the proceeding be brought.

### 69 Heritage order

- (1) This section applies if, on an application under section 68, the Supreme Court is satisfied that—
  - (a) the respondent has contravened, is contravening or is likely to contravene a defined offence provision; and
  - (b) an order under this section is necessary to avoid material harm to the heritage significance of a place or object.
- (2) The Supreme Court may make an order (a *heritage order*)—
  - (a) restraining the respondent from contravening the defined offence provision (including an order requiring the respondent to do something); and
  - (b) about anything else the court considers appropriate for giving effect to the order.

(3) In this section:

*defined offence provision* means any of the following:

- (a) section 55 (Restricted information not to be published without approval);
- (b) section 65 (Contravention of heritage direction—offence);
- (c) section 74 (Diminishing heritage significance of place or object);
- (d) section 75 (Damaging Aboriginal place or object);
- (e) section 96 (Contravention of information discovery order).

## **70 Interim heritage order**

The Supreme Court may make an interim heritage order under section 69 before deciding an application for a heritage order.

## **71 Costs**

In deciding the amount of any costs to be awarded against a party to a proceeding under section 69, the Supreme Court must consider the public interest in the proceeding being brought.

## **72 Security for costs etc**

The Supreme Court may order an applicant for a heritage order to give—

- (a) security for the payment of costs that may be awarded against the applicant if the application is subsequently dismissed; or
- (b) an undertaking about the payment of any amount that may be awarded against the applicant under section 73.

**73 Respondent's loss etc in relation to heritage order proceedings**

- (1) This section applies if, on an application for a heritage order claiming a contravention of a defined offence provision, the Supreme Court is satisfied that—
  - (a) there has not been a contravention of the provision by the respondent; and
  - (b) the respondent has suffered loss or damage because of the making of the application; and
  - (c) in the circumstances it is appropriate to make an order under this section.
- (2) The court may, on the application of the respondent, and in addition to any order about costs, order the applicant to pay the respondent an amount, decided by the court, to compensate the respondent for the loss or damage suffered by the respondent.
- (3) In this section:  
*defined offence provision*—see section 69 (3).



## Part 13 Heritage offences

### 74 Diminishing heritage significance of place or object

- (1) A person commits an offence if the person—
  - (a) engages in conduct that diminishes the heritage significance of a place or object; and
  - (b) is reckless about whether the conduct would diminish the heritage significance of the place or object.

Maximum penalty: 1 000 penalty units.

- (2) A person commits an offence if the person—
  - (a) engages in conduct that diminishes the heritage significance of a place or object; and
  - (b) is negligent about whether the conduct would diminish the heritage significance of the place or object.

Maximum penalty: 500 penalty units.

- (3) A person commits an offence if the person engages in conduct that diminishes the heritage significance of a place or object.

Maximum penalty: 100 penalty units.

- (4) An offence against subsection (3) is a strict liability offence.

### 75 Damaging Aboriginal place or object

- (1) A person commits an offence if the person—
  - (a) engages in conduct that causes damage to an Aboriginal place or object; and

(b) is reckless about whether the conduct would cause damage to the Aboriginal place or object.

Maximum penalty: 1 000 penalty units.

(2) A person commits an offence if the person—

(a) engages in conduct that causes damage to an Aboriginal place or object; and

(b) is negligent about whether the conduct would cause damage to the Aboriginal place or object.

Maximum penalty: 500 penalty units.

(3) A person commits an offence if the person engages in conduct that causes damage to an Aboriginal place or object.

Maximum penalty: 100 penalty units.

(4) An offence against subsection (3) is a strict liability offence.

(5) In this section:

*cause damage* includes disturb and destroy.

## 76 Exceptions to part 13 offences

(1) In this section:

*authorised*—see Legislation Act, section 121 (6).

*conservation officer*—means a person who is a conservation officer under the *Nature Conservation Act 1980*, section 8.

*governmental officer* means—

(a) a public servant or conservation officer; or

(b) a person declared under subsection (3) to be a governmental officer.

- (2) Section 74 and section 75 do not apply to—
- (a) engaging in conduct in accordance with any of the following:
    - (i) a heritage guideline;
    - (ii) a heritage direction;
    - (iii) a heritage agreement;
    - (iv) a conservation management plan approved by the council;
    - (v) development approval under the *Planning and Development Act 2007*, chapter 7; or
  - (b) a governmental officer exercising a function for this Act or another Territory law or engaging in authorised conduct.
- (3) The Minister may, in writing, declare a person to be a governmental officer.
- (4) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

## Part 14            Enforcement

### Division 14.1      General

#### 77            Definitions for pt 14

In this part:

***connected***—a thing is ***connected*** with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

***occupier***, of premises, includes—

- (a) a person believed, on reasonable grounds, to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

*Note*      The dictionary defines ***premises*** as including land.

***offence*** includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

## **Division 14.2      Authorised people**

### **78      Appointment of authorised people**

The chief executive may appoint a public servant to be an authorised person for this Act.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

### **79      Identity cards**

- (1) The chief executive must give each authorised person an identity card that states the person's name and appointment as an authorised person, and shows—
  - (a) a recent photograph of the person; and
  - (b) the date of issue of the card; and
  - (c) the date of expiry of the card; and
  - (d) anything else prescribed under the regulations.
- (2) A person commits an offence if—
  - (a) the person ceases to be an authorised person; and
  - (b) the person does not return the person's identity card to the chief executive as soon as practicable (but within 7 days) after the day the person ceases to be an authorised person.

Maximum penalty: 1 penalty unit.

- (3) An offence against this section is a strict liability offence.

## Division 14.3 Powers of authorised people

### 80 Power to enter premises

- (1) For this Act, an authorised person may—
  - (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether on not on payment of money); or
  - (b) at any reasonable time, enter premises to—
    - (i) inspect a place or object that is registered, or nominated for provisional registration; or
    - (ii) give a heritage direction to the owner or occupier; or
  - (c) at any time, enter premises with the occupier's consent; or
  - (d) at any time, enter premises if the authorised person believes, on reasonable grounds, that the circumstances are so serious and urgent that immediate entry to the premises without the authority of a search warrant is necessary; or
  - (e) enter premises in accordance with a search warrant.
- (2) However, subsections (1) (a) and (1) (b) do not authorise entry into a part of premises that is being used only for residential purposes.
- (3) An authorised person may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (4) To remove any doubt, an authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.
- (5) For subsection (1) (d), the inspector may enter the premises with any necessary assistance and force.

**81            Production of identity card**

An authorised person may not remain at premises entered under this part if the authorised person does not produce his or her identity card when asked by the occupier.

**82            Consent to entry**

- (1) When seeking the consent of an occupier to enter premises under section 80 (1) (b), an authorised person must—
  - (a) produce his or her identity card; and
  - (b) tell the occupier—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this part may be used in evidence in court; and
    - (iii) that consent may be refused.
- (2) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—
  - (a) that the occupier was told—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this part may be used in evidence in court; and
    - (iii) that consent may be refused; and
  - (b) that the occupier consented to the entry; and
  - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.

- (4) A court must find that the occupier did not consent to entry to the premises by the authorised person under this part if—
- (a) the question whether the occupier consented to the entry arises in a proceeding in the court; and
  - (b) an acknowledgment of consent for the entry is not produced in evidence; and
  - (c) it is not proved that the occupier consented to the entry.

### **83 General powers on entry to premises**

- (1) An authorised person who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything at the premises:
- (a) inspect or examine;
  - (b) take measurements or conduct tests;
  - (c) take samples;
  - (d) make sketches, drawings or any other kind of record (including photographs, films, or audio, video or other recordings);
  - (e) require the occupier, or anyone at the premises, to give the authorised person reasonable help to exercise a power under this part.

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (e).

Maximum penalty: 50 penalty units.

### **84 Power to seize things**

- (1) An authorised person who enters premises under this part with the occupier's consent may seize anything at the premises if—



- (a) the authorised person is satisfied, on reasonable grounds, that the thing is connected with an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) An authorised person who enters premises under a warrant under this part may seize anything at the premises that the authorised person is authorised to seize under the warrant.
- (3) An authorised person who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied, on reasonable grounds, that—
- (a) the thing is connected with an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing from being—
    - (i) concealed, lost or destroyed; or
    - (ii) used to commit, continue or repeat the offence.
- (4) Having seized a thing, an authorised person may—
- (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
  - (b) leave the thing at the place of seizure but restrict access to it.
- (5) A person commits an offence if—
- (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (4); and
  - (b) the person does not have an authorised person's approval to interfere with the thing.

Maximum penalty: 50 penalty units.

- (6) An offence against subsection (5) is a strict liability offence.

## 85 Power to require name and address

- (1) An authorised person may require a person to state the person's name and home address if the authorised person suspects, on reasonable grounds, that the person is committing, is about to commit, or has just committed, an offence against this Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (2) If an authorised person makes a requirement of a person under subsection (1), the authorised person must—

- (a) tell the person the reasons for the requirement; and
- (b) as soon as practicable, record the reasons.

- (3) A person commits an offence if the person contravenes a requirement under subsection (1).

Maximum penalty: 10 penalty units.

- (4) However, a person is not required to comply with a requirement under subsection (1) if, when asked by the person, the authorised person does not produce his or her identity card for inspection by the person.

- (5) An offence against subsection (3) is a strict liability offence.

- (6) In this section:

*home address*, of a person, means the address of the place where the person usually lives.

## Division 14.4 Search warrants

### 86 Warrants generally

- (1) An authorised person may apply to a magistrate for a warrant to enter premises.

- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity connected with an offence against this Act; and
  - (b) the thing or activity—
    - (i) is, or is being engaged in, at the premises; or
    - (ii) may be, or may be engaged in, at the premises within the next 14 days.
- (5) The warrant must state—
  - (a) that an authorised person may, with any necessary assistance and force, enter the premises and exercise the authorised person's powers under this part; and
  - (b) the offence for which the warrant is issued; and
  - (c) the things that may be seized under the warrant; and
  - (d) the hours when the premises may be entered; and
  - (e) the date, within 14 days after the day of the warrant's issue, when the warrant ends.

## **87 Warrants—application made other than in person**

- (1) An authorised person may apply for a warrant by phone, fax, radio or other form of communication if the authorised person considers it necessary because of—

- (a) urgent circumstances; or
  - (b) other special circumstances.
- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised person may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the authorised person—
- (a) the magistrate must—
    - (i) tell the authorised person what the terms of the warrant are; and
    - (ii) tell the authorised person the date and time the warrant was issued; and
  - (b) the authorised person must complete a form of warrant (the **warrant form**) and write on it—
    - (i) the magistrate's name; and
    - (ii) the date and time the magistrate issued the warrant; and
    - (iii) the warrant's terms.
- (6) The faxed copy of the warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the authorised person's powers under this part.
- (7) The authorised person must, at the first reasonable opportunity, send to the magistrate—
- (a) the sworn application; and
  - (b) if the authorised person completed a warrant form—the completed warrant form.

- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must find that a power exercised by an authorised person was not authorised by a warrant under this section if—
  - (a) the question arises in a proceeding before the court whether the exercise of power was authorised by a warrant; and
  - (b) the warrant is not produced in evidence; and
  - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

**88 Search warrants—announcement before entry**

- (1) An authorised person must, before anyone enters premises under a search warrant—
  - (a) announce that the authorised person is authorised to enter the premises; and
  - (b) give anyone at the premises an opportunity to allow entry to the premises; and
  - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.
- (2) The authorised person is not required to comply with subsection (1) if the authorised person believes, on reasonable grounds, that immediate entry to the premises is required to ensure—
  - (a) the safety of anyone (including the authorised person or any person assisting); or
  - (b) that the effective execution of the warrant is not frustrated.

**89 Details of search warrant to be given to occupier etc**

If the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the authorised person or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

**90 Occupier entitled to be present during search etc**

- (1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
  - (a) to do so would impede the search; or
  - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

**Division 14.5 Return and forfeiture of things seized**

**91 Receipt for things seized**

- (1) As soon as practicable after a thing is seized by an authorised person under this part, the authorised person must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must leave the receipt, secured conspicuously at the place of seizure under section 84 (Power to seize things).

- (3) A receipt under this section must include the following:
- (a) a description of the thing seized;
  - (b) an explanation of why the thing was seized;
  - (c) the authorised person's name, and how to contact the authorised person;
  - (d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

**92 Moving things to another place for examination or processing under search warrant**

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
- (a) both of the following apply:
    - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;
    - (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
  - (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for no longer than 72 hours.
- (3) An authorised person may apply to a magistrate for an extension of time if the authorised person believes, on reasonable grounds, that the thing cannot be examined or processed within 72 hours.
- (4) The authorised person must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.

- (5) If a thing is moved to another place under this section, the authorised person must, if practicable—
- (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
  - (b) allow the occupier or the occupier's representative to be present during the examination or processing.
- (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

### **93 Access to things seized**

A person who would, apart from the seizure, be entitled to inspect a thing seized under this part may—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

### **94 Return of things seized**

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, if—
- (a) an infringement notice for an offence connected with the thing is not served on the owner within 1 year after the day of the seizure and either—
    - (i) a prosecution for an offence connected with the thing is not begun within the 1-year period; or
    - (ii) a prosecution for an offence connected with the thing is begun within the 1-year period but the court does not find the offence proved; or



- (b) an infringement notice for an offence connected with the thing is served on the owner within 1 year after the day of the seizure, the infringement notice is withdrawn and—
  - (i) a prosecution for an offence connected with the thing is not begun within 1 year after the day of the seizure; or
  - (ii) a prosecution for an offence connected with the thing is begun within 1 year after the day of the seizure but the court does not find the offence proved; or
- (c) an infringement notice for an offence connected with the thing is served on the owner within 1 year after the day of the seizure, liability for the offence is disputed in accordance with the *Magistrates Court Act 1930*, section 132 (Disputing liability for infringement notice offence) and—
  - (i) an infringement notice is not laid in the Magistrates Court against the person for the offence within 60 days after the day notice is given under section 132 that liability is disputed; or
  - (ii) the Magistrates Court does not find the offence proved.
- (2) If anything seized under this part is not required to be returned or reasonable compensation is not required to be paid under subsection (1), the thing—
  - (a) is forfeited to the Territory; and
  - (b) may be sold, destroyed or otherwise disposed of as the chief executive directs.

## **Division 14.6      Miscellaneous**

### **95      Information discovery order**

- (1) This section applies if the council has reasonable grounds for suspecting that a person—

- (a) has knowledge of information (the *required information*) reasonably required by the council for the administration or enforcement of this Act; or
  - (b) has possession or control of a document containing the required information.
- (2) The council may give the person an order (an *information discovery order*) requiring the person to give the information, or produce the document, to the council.
- (3) The information discovery order must be in writing and must include particulars of the following:
- (a) the identity of the person to whom it is given;
  - (b) why the information is required;
  - (c) the time by which the order must be complied with;
  - (d) the operation of section 96.
- (4) A person does not incur any civil or criminal liability only because the person gives information, or produces a document, to the council in accordance with an information discovery order.
- (5) The council must return a document produced in accordance with an information discovery order to the person who produced the document as soon as practicable.

## **96 Contravention of information discovery order**

A person commits an offence if the person intentionally contravenes a requirement of an information discovery order.

Maximum penalty: 100 penalty units.

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and legal professional privilege.

**97            Damage etc to be minimised**

- (1) In the exercise, or purported exercise, of a function under this part, an authorised person must take all reasonable steps to ensure that the authorised person, and any person assisting the authorised person, cause as little inconvenience, detriment and damage as is practicable.
- (2) If an authorised person, or a person assisting an authorised person, damages anything in the exercise or purported exercise of a function under this part, the authorised person must give written notice of the particulars of the damage to the person whom the authorised person believes, on reasonable grounds, is the owner of the thing.
- (3) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it secured in a conspicuous place at the premises.

**98            Compensation for exercise of enforcement powers**

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by—
  - (a) the council; or
  - (b) an authorised person; or
  - (c) a person assisting an authorised person.
- (2) Compensation may be claimed and ordered in a proceeding for—
  - (a) compensation brought in a court of competent jurisdiction; or
  - (b) an offence against this Act brought against the person making the claim for compensation.

- (3) A court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) The regulations may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

## Part 15 Heritage agreements

### 99 Heritage agreement with Minister

- (1) The Minister may enter into an agreement (a *heritage agreement*) with a person in relation to the conservation of the heritage significance of a place or object.
- (2) A heritage agreement may only be made in accordance with the council's advice and with—
  - (a) the owner of the place or object; or
  - (b) if the owner consents—someone else.
- (3) A heritage agreement may be made in relation to a place or object, whether or not it is registered.
- (4) The regulations may provide that a stated Territory law does not apply to—
  - (a) a place to which a heritage agreement applies; or
  - (b) a place where there is an object to which a heritage agreement applies.

### 100 Provisions of heritage agreement

A heritage agreement may include provisions about 1 or more of the following:

- (a) conservation of the place or object;
- (b) provision of financial, technical or other professional advice or assistance needed for the conservation of the place or object;
- (c) review of the valuation of the place or object;
- (d) restrictions on the use of the place or object;

- (e) requirements to carry out work;
- (f) standards to which any work is to be carried out;
- (g) restrictions on work that may be carried out;
- (h) public appreciation of the heritage significance of the place or object;
- (i) availability of the place or object for public inspection.

**101 Amending or ending heritage agreement**

The Minister may, on the council's advice, amend or end a heritage agreement—

- (a) by agreement with the owner of the place or object; or
- (b) in accordance with the original agreement.

**102 Period of heritage agreement**

A heritage agreement begins and ends on the dates stated in the agreement.

**103 Binding nature of heritage agreement**

- (1) A heritage agreement attaches to the land where the place or object is located and is binding on the owner of the land for the time being.
- (2) The Minister must lodge a copy of each heritage agreement, and of any agreement to vary or end a heritage agreement, with the registrar-general for registration under the *Land Titles Act 1925*.
- (3) The Minister must ensure as far as is practicable that the copy of the agreement is lodged with the registrar-general in registrable form.

*Note* The *Land Titles Act 1925* provides for the registrar-general to register an agreement mentioned in s (2) under that Act (see s 48).

**104 Enforcement order**

- (1) A party to a heritage agreement may apply to the Supreme Court for an enforcement order to give effect to the agreement if—
- (a) someone contravenes the agreement; or
  - (b) there are reasonable grounds for believing that someone may contravene the agreement.

*Note* **Contravene** includes fails to comply with (see Legislation Act, dict, pt 1).

- (2) The council must enter details of an enforcement order in the heritage register as soon as possible after the order is made.

**105 Financial and other assistance**

The council may arrange for the provision of financial, technical or other assistance that the council considers necessary or desirable for the conservation of a place or object subject to a heritage agreement.

## Part 16 Heritage and public authorities

### 106 Meaning of *public authority* for pt 16

In this part:

*public authority*—see the *Annual Reports (Government Agencies) Act 2004*, dictionary.

### 107 Public authority *heritage places* and *heritage objects*

For this part, a place or object is a *heritage place* or *heritage object* for which a public authority is responsible if—

- (a) the place or object—
  - (i) is vested in, or subject to the control of, the authority; or
  - (ii) is owned by the authority; and
- (b) the place or object—
  - (i) is registered; or
  - (ii) although not registered, meets 1 or more heritage significance criteria; or
  - (iii) is an Aboriginal place or object.

### 108 Annual heritage reports

- (1) Within 1 month after the end of each financial year, each public authority must give the council a written report for the year that includes details of each heritage place and object for which it was responsible at any time during the year.
- (2) If the public authority disposed of a heritage place or object during the year, the report must include details of the disposal.



- (3) However, a public authority is not required to include details of a heritage place or object in the report if—
  - (a) subsection (2) does not apply to the place or object; and
  - (b) the details of the place or object were included in a previous report under this section to the council; and
  - (c) the details given to the council have not changed.
- (4) The regulations may prescribe information that may, must or must not be included in a report under this section.

#### **110 Conservation management plan**

- (1) The council may, in writing, direct a public authority to prepare a conservation management plan for a heritage place or object for which the authority is responsible.
- (2) The public authority must prepare the conservation management plan and give the plan to the council within the time (no less than 1 month) allowed by the council in the direction.
- (3) If the council considers that the conservation management plan adequately manages the threat, or potential threat, the council—
  - (a) may approve the plan in writing; and
  - (b) if the council approves the plan—must tell the public authority in writing that it has approved the plan.
- (4) If the council approves the conservation management plan, the public authority must act in accordance with the plan.

## Part 17 Notification and review of decisions

### 111 Meaning of *reviewable decision*

In this Act:

*reviewable decision* means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

### 112 Definitions—pt 17

In this part:

*decision-maker*, for a reviewable decision, means an entity mentioned in schedule 1, column 4 for the decision.

*interested person* means each of the following:

- (a) for a decision under section 40 (Decision about registration)—anyone who made comments to the council about the decision before the end of the public consultation period for the decision;
- (b) for a decision under section 47 (Decision about cancellation proposal)—the following:
  - (i) anyone who proposed the cancellation under section 43;
  - (ii) anyone who made comments to the council about the decision before the end of the public consultation period for the decision;
- (c) for a decision under section 56 (Approval to publish restricted information)—the applicant for approval;

- (d) for a decision under section 62 (Heritage direction by Minister) to make or not revoke a heritage direction—the person to whom the direction is given;
- (e) for a decision under section 95 (Information discovery order)—the person to whom the order is given;
- (f) for any reviewable decision—any other person mentioned in section 13 (1) (d) or (e).

### **113 Reviewable decision notices**

A decision-maker for a reviewable decision must take reasonable steps to give a reviewable decision notice only to each interested person for the decision.

*Note* The requirements for reviewable decision notices are prescribed by regulation under the *ACT Civil and Administrative Tribunal Act 2008*.

### **114 Applications for review**

An interested person for the decision may apply to the ACAT for a review of a reviewable decision.

*Note* If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

## Part 18                            Miscellaneous

### 115            Repository for Territory-owned Aboriginal objects

- (1) The Minister must ensure that each Aboriginal object owned by the Territory is kept in a repository declared under subsection (2).
- (2) The Minister may, in writing, declare a place to be a repository only if satisfied, on reasonable grounds, that the place is suitable for the conservation of Aboriginal objects owned by the Territory.

*Note*        The power to make a statutory instrument (including a declaration) includes power to amend or repeal the instrument (see Legislation Act, s 46)

- (3) Before making a declaration, the Minister must consult, and consider the views of, the council and each representative Aboriginal organisation about the proposed declaration.
- (4) A declaration must not include restricted information.
- (5) A declaration is a notifiable instrument.

*Note*        A notifiable instrument must be notified under the Legislation Act.

### 116            Criminal liability of executive officers

- (1) An executive officer of a corporation commits an offence if—
  - (a) the corporation contravenes a provision of this Act; and
  - (b) the contravention is an offence against this Act (a *relevant offence*); and
  - (c) the officer was reckless about whether the contravention would happen; and

- (d) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and
- (e) the officer failed to take all reasonable steps to prevent the contravention.

**Maximum penalty:** The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (3) 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 that the action is relevant to the act or omission):
    - (i) that the corporation arranges regular professional assessments of the corporation's compliance with the contravened provision;
    - (ii) that the corporation implements any appropriate recommendation arising from such an assessment;
    - (iii) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the contravened provision;
  - (b) any action the officer took when the officer became aware that the contravention was, or might be, about to happen.
- (4) Subsection (3) does not limit the matters to which the court may have regard.

(5) This section does not apply if the corporation would have a defence to a prosecution for the relevant offence.

(6) In this section:

*executive officer*, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

### **117 Service of documents on council**

A document may be given to the council by giving it to the chief executive.

*Note 1* For how documents may be served generally, see Legislation Act, pt 19.5.

*Note 2* The chief executive may delegate the function under this section to a public sector officer, for example, a public servant who is the council secretary (see *Public Sector Management Act 1994*, s 36).

### **118 Legal immunity for council members etc**

(1) This section applies to someone who is, or has been, a member of the council or an authorised person.

(2) A civil proceeding does not lie against the person in relation to anything done or omitted to be done honestly by the person in the exercise or purported exercise of a function under this Act.

(3) Subsection (2) does not affect any liability the Territory would have for the act or omission apart from that subsection.

### **119 Approved forms**

(1) The Minister may, in writing, approve forms for this Act.

(2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

## 120 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

*Note* The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3)

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## 121 Delegation

The council may delegate the council's functions under this Act to the chief executive.

*Note 1* For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

*Note 2* The chief executive may subdelegate a function delegated to the chief executive under this section (see *Public Sector Management Act 1994*, s 36).

## 122 Regulation-making power

The Executive may make regulations for this Act.

*Note* Regulations must be notified and presented to the Legislative Assembly, under the Legislation Act.

## 123 5-year review

- (1) In this section:

*review period* means the 5 years beginning on the day this section commences.

- (2) As soon as practicable after the review period, the Minister must review the operation of this Act during the review period.
- (3) The Minister must present the report of the review to the Legislative Assembly within 6 months after the review period ends.
- (4) This section expires 6 years after the day it commences.



## Schedule 1 Reviewable decisions

(see s 111 and s 112)

column 1 item	column 2 section	column 3 decision	column 4 decision-maker
1	32	not to provisionally register place or object	council
2	36	to extend, or not extend, period of provisional registration	Minister
3	40	register, or not register, place or object	council
4	47	to cancel, or not cancel, registration of place or object	council
5	56	to approve, or not approve, publication of restricted information	council
6	62	to make, or not make, heritage direction	Minister
7	62	revoke, or not revoke, heritage direction	Minister
8	95	give information discovery order	council

## Dictionary

(see s 4)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- ACAT
- chief executive
- chief planning executive
- conservator of flora and fauna
- entity
- exercise
- function
- Minister
- national capital authority
- planning and land authority
- reviewable decision notice
- working day.

***Aboriginal object***—see section 9.

***Aboriginal place***—see section 9.

***Aboriginal tradition*** means Aboriginal tradition, observance, custom or belief, including Aboriginal tradition, observance, custom or belief that has evolved or developed since European colonisation of Australia.

***appeal***, in relation to a reviewable decision, means an application to the ACAT to review the decision.

***at*** premises includes on the premises.

***authorised person*** means a person appointed as an authorised person under section 78.

***cancellation***, for part 7 (Cancellation of registration)—see section 50.

***cancellation proposal***, for part 7 (Cancellation of registration)—see section 43.

***connected***, for part 14 (Enforcement)—see section 77.

***conservation*** includes preservation, protection, maintenance, restoration and reconstruction.

***conservation management plan***—see section 15.

***conservation requirement*** means a requirement under any heritage guideline that applies, directly or indirectly, to conservation of the heritage significance of a place or object.

***council*** means the Australian Capital Territory Heritage Council established under section 16.

***daily newspaper*** means a daily newspaper that circulates generally in the ACT.

***development***, for part 10 (Land development applications)—see section 58.

***enforcement order*** means an order under section 104.

***engage in conduct*** means—

- (a) do an act; or
- (b) omit to do an act.

***heritage agreement***—see section 99.

***heritage direction***—see section 62.

***heritage guidelines***—see section 25.

***heritage object***, for which a public authority is responsible—see section 107.

***heritage order***—see section 69.

**heritage place**, for which a public authority is responsible—see section 107.

**heritage register**—see section 20.

**heritage significance**—see section 10.

**heritage significance criteria**—see section 10.

**information discovery order**—see section 95.

**interested person** means—

- (a) for this Act generally—see section 13; and
- (b) for part 17 (Notification and review of decisions)—see section 112.

**nomination** means nomination of a place or object under section 28 for provisional registration.

**nomination details**, for a place or object—see section 28 (3).

**object**—see section 8 (2).

**occupier**, for part 14 (Enforcement)—see section 77.

**offence**, for part 14 (Enforcement)—see section 77.

**owner**, of a place, means—

- (a) the registered proprietor of a lease granted under the *Planning and Development Act 2007* over land that includes the place; or
- (b) a unit owner within the meaning of the *Unit Titles Act 2001*, if the lease of the unit is over land that includes the place; or
- (c) an owners corporation within the meaning of the *Unit Titles Act 2001*, if the common property covers land that includes the place.

**partial cancellation**, for part 7 (Cancellation of registration)—see section 50.

**place**—see section 8 (1).

**premises** includes land.

**public authority**, for part 16 (Heritage and public authorities)—see section 106

**public consultation period**—

(a) for division 6.2 (Registration)—see section 37; and

(b) for part 7 (Cancellation of registration)—see section 46.

**registered**—see section 11.

**registered proprietor**, of a lease, means the person registered under the *Land Titles Act 1925* as the proprietor of the lease.

**registration details**—see section 12.

**representative Aboriginal organisations**—see section 14.

**restricted information** means information restricted under section 54 (Declaration of restricted information).

**reviewable decision**—see section 111.

## Endnotes

1 About the endnotes

---

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

---

### 3 Legislation history

**Heritage Act 2004 A2004-57**

notified LR 9 September 2004

s 1, s 2 commenced 9 September 2004 (LA s 75 (1))

remainder commenced 9 March 2005 (s 2 and LA s 79)

as amended by

**Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.27**

notified LR 12 May 2005

s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))

sch 3 pt 3.27 commenced 2 June 2005 (s 2 (1))

**Tree Protection Act 2005 A2005-51 sch 1 pt 1.2**

notified LR 29 September 2005

s 1, s 2 commenced 29 September 2005 (LA s 75 (1))

sch 1 pt 1.2 commenced 29 March 2006 (s 2 and LA s 79)

**Statute Law Amendment Act 2007 (No 2) A2007-16 sch 1 pt 1.2, sch 3 pt 3.19**

notified LR 20 June 2007

s 1, s 2 taken to have commenced 12 April 2007 (LA s 75 (2))

sch 1 pt 1.2, sch 3 pt 3.19 commenced 11 July 2007 (s 2 (1))

**Planning and Development (Consequential Amendments) Act 2007 A2007-25 sch 1 pt 1.17**

notified LR 13 September 2007

s 1, s 2 commenced 13 September 2007 (LA s 75 (1))

sch 1 pt 1.17 commenced 31 March 2008 (s 2 and see Planning and Development Act 2007 A2007-24, s 2 and CN2008-1)

**ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 A2008-36 sch 1 pt 1.29**

notified LR 4 September 2008

s 1, s 2 commenced 4 September 2008 (LA s 75 (1))

sch 1 pt 1.29 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

## Endnotes

4 Amendment history

---

### 4 Amendment history

#### **Commencement**

s 2 om LA s 89 (4)

#### **Individual heritage trees**

s 3A ins A2005-51 amdt 1.3

#### **Interested person**

s 13 am A2007-16 amdt 1.3

#### **Members of council**

s 17 am A2007-16 amdt 3.69

#### **Functions of council**

s 18 am A2007-16 amdt 3.70; A2007-25 amdt 1.72

#### **Guidelines about conserving heritage significance**

s 25 am A2007-25 amdt 1.73

#### **Partial cancellation of registration of place or object**

s 50 sub A2007-16 amdt 1.4

#### **Meaning of *development*—pt 10**

s 58 sub A2007-25 amdt 1.74

#### **Simplified outline**

s 59 sub A2007-25 amdt 1.74  
am A2008-36 amdt 1.344

#### **Advice about effect of development on heritage significance**

s 60 am A2007-25 amdt 1.75  
am A2008-36 amdt 1.344

#### **Requirements for council's advice about development**

s 61 sub A2007-25 amdt 1.76

#### **Heritage direction by Minister**

s 62 am A2007-25 amdt 1.77

#### **Exceptions to part 13 offences**

s 76 am A2007-25 amdt 1.78

#### **Return of things seized**

s 94 am A2005-20 amdts 3.164-3.166

#### **Annual heritage reports**

s 108 (4), (5) exp 9 March 2007 (s 108 (5))  
ss renum R5 LA

#### **Heritage audit**

s 109 exp 9 March 2009 (s 109 (5))



**Notification and review of decisions**

pt 17 hdg sub A2008-36 amdt 1.345

**Meaning of reviewable decision**

s 111 sub A2008-36 amdt 1.345

**Definitions—pt 17**s 112 sub A2008-36 amdt 1.345  
def **decision-maker** ins A2008-36 amdt 1.345  
def **interested person** ins A2008-36 amdt 1.345**Reviewable decision notices**

s 113 sub A2008-36 amdt 1.345

**Applications for review**

s 114 sub A2008-36 amdt 1.345

**5-year review**s 123 exp 9 March 2011 (s 123 (4))**Transitional**

pt 19 hdg exp 9 March 2006 (s 136)

**Definitions for pt 19**

s 124 exp 9 March 2006 (s 136)

**Legislation repealed**

s 125 om LA s 89 (3)

**Legislation amended—sch 1**

s 126 om LA s 89 (3)

**Applications for registration on old heritage places register**

s 127 exp 9 March 2006 (s 136)

**Places on old heritage places register**

s 128 exp 9 March 2006 (s 136)

**Conservation requirements for places on old heritage places register**

s 129 exp 9 March 2006 (s 136)

**Objects on old heritage objects register**

s 130 exp 9 March 2006 (s 136)

**Conservation requirements for objects on old heritage objects register**

s 131 exp 9 March 2006 (s 136)

**Restricted information on old registers**

s 132 exp 9 March 2006 (s 136)

**Unregistered Aboriginal places and objects**

s 133 exp 9 March 2006 (s 136)

## Endnotes

### 5 Earlier republications

---

#### Transitional regulations

s 134 exp 9 March 2006 (s 136)

#### Modification of pt 19's operation

s 135 exp 9 March 2006 (s 136)

#### Expiry of pt 19

s 136 exp 9 March 2006 (s 136)

#### Reviewable decisions

sch 1 om LA s 89 (3)  
ins A2008-36 amdt 1.346

#### Dictionary

dict am A2008-36 amdt 1.347  
def **appeal** sub A2008-36 amdt 1.348  
def **cancellation** ins A2007-16 amdt 3.71  
def **interested person** sub A2007-16 amdt 3.72; A2008-36  
amdt 1.349  
def **Land Act** om A2007-25 amdt 1.79  
def **owner** am A2007-25 amdt 1.80  
def **reviewable decision** sub A2008-36 amdt 1.350

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 (RI) 18 Oct 2006	9 Mar 2005– 1 June 2005	not amended	new Act reissue for textual correction in s 127
R2 (RI) 18 Oct 2006	2 June 2005– 9 Mar 2006	A2005-20	amendments by A2005-20 reissue for textual correction in s 127

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R3 10 Mar 2006	10 Mar 2006– 28 Mar 2006	A2005-20	commenced expiry
R4 29 Mar 2006	29 Mar 2006– 9 Mar 2007	A2005-51	amendments by A2005-51
R5 10 Mar 2007	10 Mar 2007– 10 July 2007	A2005-51	commenced expiry
R6 11 July 2007	11 July 2007– 30 Mar 2008	A2007-16	amendments by A2007-16
R7 31 Mar 2008	31 Mar 2008– 1 Feb 2009	A2007-25	amendments by A2007-25
R8 2 Feb 2009	2 Feb 2009– 9 Mar 2009	A2008-36	amendments by A2008-36

© Australian Capital Territory 2009