



AUSTRALIAN CAPITAL TERRITORY

# Heritage Objects Act 1991

No. 101 of 1991

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AUSTRALIAN CAPITAL TERRITORY

# Heritage Objects Act 1991

No. 101 of 1991

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## **An Act to provide for the conservation of the heritage significance of objects and for related purposes**

*[Notified in ACT Gazette S3: 15 January 1992]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

### **PART I—PRELIMINARY**

#### **Short title**

1. This Act may be cited as the *Heritage Objects Act 1991*.

#### **Commencement**

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.  
(2) The remaining provisions commence on a day, or on respective days, fixed by the Minister by notice in the *Gazette*.  
(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

## **Crown**

3. (1) This Act binds the Crown.

(2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

## **Interpretation**

4. (1) In this Act, unless the contrary intention appears—

“Aboriginal object” means—

- (a) a natural or manufactured object; or
- (b) human remains not buried in accordance with a law of the Territory, a State or another Territory;

which is, or are, of significance in Aboriginal tradition;

“Aboriginal place” means a place which is of significance in Aboriginal tradition;

“Aboriginal tradition” means the traditions, observances, customs or beliefs of the people who inhabited Australia before European colonisation and include traditions, observances, customs and beliefs that have evolved or developed from that tradition since European colonisation;

“Assessment” means an Assessment made under Division 3 of Part IV of the Land Act;

“Authority” means the Australian Capital Territory Planning Authority established under Division 4 of Part II of the Land Act;

“conservation” includes preservation, protection, maintenance, restoration and reconstruction;

“Conservator” means the Conservator of Wildlife appointed under section 7 of the *Nature Conservation Act 1980*;

“determined fee” means the fee determined pursuant to section 54 for the purposes of the provision in which the expression occurs;

“environment” includes all aspects of the natural and other surroundings of human beings affecting them as individuals or in social groups;

“formal error” means—

- (a) a clerical error;
- (b) an error arising from an accidental slip or omission; or
- (c) a defect of form;

“Heritage Council” means the Heritage Council established under Division 8 of Part III of the Land Act;

“heritage object” means a natural or manufactured object, including an Aboriginal object, of heritage significance in relation to the Territory, but does not include an object kept by—

- (a) a natural person—
  - (i) as a collector of heritage objects; or
  - (ii) as a memento; or
- (b) a prescribed body;

“Heritage Objects Register” means the register of heritage objects approved by the Minister under subsection 16 (1), as varied and in effect from time to time;

“heritage place” has the same meaning as in the Land Act;

“Heritage Places Register” has the same meaning as in the Land Act;

“heritage significance” means archaeological, historic, aesthetic, architectural, scientific, natural or social significance for the present community, and for future generations;

“Inquiry” means an inquiry conducted under Division 4 of Part IV of the Land Act;

“interim Heritage Places Register” has the same meaning as in the Land Act;

“interim variation”, in relation to the Heritage Objects Register, means a proposed variation to that Register notified under section 5;

“Land Act” means the *Land (Planning and Environment) Act 1991*;

“Plan” means the plan established under Part II of the Land Act, as varied and in effect from time to time;

“relevant Aboriginal organisation”, in relation to a proposed action by the Territory, the Executive, the Minister or a Territory authority, means an organisation or association (whether incorporated or unincorporated)—

- (a) comprised substantially of Aboriginal persons;
- (b) having amongst its principal objects the conservation of Aboriginal tradition in the Territory; and
- (c) which the person or body proposing the action believes on reasonable grounds to have an object or interest directly relevant to, or directly affected by, that action;

“restricted information”, in relation to an Aboriginal object, means information which is the subject of a declaration under subsection 44 (1);

“Territory authority” means—

- (a) a body (whether corporate or not) established by or under an Act, or by the Executive; or
- (b) the holder of an office established by or under an Act, or by the Executive;

“Tribunal” means the Australian Capital Territory Administrative Appeals Tribunal;

“variation” includes revocation and substitution.

(2) Where this Act requires the Executive, the Minister or the Heritage Council to consult with, or to notify, any person or body (whether corporated or unincorporated), that requirement is to be taken to be satisfied if the Executive, the Minister or the Heritage Council (as the case requires) takes all reasonable steps to consult with, or to notify, that person or body.

### **Interim Registers—interpretation**

5. In this Act, unless the contrary intention appears, a reference to an interim Heritage Objects Register is to be taken to be a reference to—

- (a) where there is no Heritage Objects Register—a proposed Heritage Objects Register; or
- (b) where there is a Heritage Objects Register—an interim variation to that Register;

being a proposed Register, or an interim variation to a Register, notified in the *Gazette* under section 12, as revised under section 14.

## **PART II—HERITAGE OBJECTS**

### ***Division 1—Heritage Objects Register***

#### ***Subdivision A—Content and effect of Register and interim Registers***

### **Heritage Objects Register—content**

6. (1) The Heritage Objects Register shall—

- (a) identify heritage objects, specifying any that are Aboriginal objects;
- (b) specify the current location of each identified heritage object;
- (c) include a statement of the heritage significance of each identified heritage object;



- (d) specify requirements for the conservation of the heritage significance of each identified heritage object; and
- (e) specify any restricted information in the Register in relation to an Aboriginal object referred to in the Register.

(2) Notwithstanding subsection (1), where the Heritage Council includes a provision in an interim Heritage Places Register which would have the effect of removing each reference to a heritage object from an entry in the Heritage Places Register, the Heritage Council may include a provision in an interim Heritage Objects Register which would have the effect of including an entry in relation to that object in the Heritage Objects Register.

(3) A word or phrase in the Heritage Objects Register has the same meaning as in this Act, unless the contrary intention appears in the Register.

(4) In subsection (1)—

“heritage object” does not include an object identified in the Heritage Places Register as intrinsic to the heritage significance of a place identified in that Register as a heritage place.

#### **Heritage Objects Register—effect**

7. The Territory, the Executive or a Minister shall not do any act or approve the doing of any act that is inconsistent with the Heritage Objects Register unless satisfied that—

- (a) there is no prudent and feasible alternative; and
- (b) all prudent and feasible measures to comply with any requirements specified in the Register for the conservation of the relevant object or objects are taken or are to be taken in doing that act.

#### **Effect of interim Registers**

8. (1) Where there is no Heritage Objects Register, during the defined period an interim Heritage Objects Register has effect as if it were the Heritage Objects Register.

(2) Where an interim Heritage Objects Register is in the form of an interim variation to the Heritage Objects Register, during the defined period the Territory, the Executive, or a Minister shall not, except where subsection (3) applies, do any act, or approve the doing of any act that—

- (a) would be inconsistent with the Heritage Objects Register if it were varied in accordance with the interim variation; or

(b) is inconsistent with the Heritage Objects Register.

(3) Subsection (2) does not apply in relation to the doing of any act, or the approval of the doing of any act, by the Territory, the Executive or a Minister where—

- (a) there is no prudent and feasible alternative; and
- (b) all prudent and feasible measures to comply with any requirement specified in—
  - (i) the Heritage Objects Register if it were varied in accordance with the interim Heritage Objects Register; and
  - (ii) the Heritage Objects Register;

for the conservation of the heritage significance of the relevant object are taken or are to be taken in doing that act.

(4) In this section, in relation to an interim Heritage Objects Register—

“defined period” means the period commencing on the date the interim Register is notified in the *Gazette* under section 12 and terminating at the expiration of—

- (a) the day before—
  - (i) where the interim Register is approved under section 16—the date of effect of the Register or variation so approved; or
  - (ii) where the interim Register is refused approval under section 16—the date the refusal is notified under that section; or
- (b) the period specified in the notice in the *Gazette* under section 12;

whichever is shorter.

(5) In paragraph (a) of the definition of “defined period” in subsection (4), where part only of an interim Heritage Objects Register is approved or is refused approval under paragraph 16 (1) (b), a reference to the interim Register is to be read as a reference to that part of the interim Register.

***Subdivision B—Preparation, notification, submission to the Minister***

**Criteria for preparation**

**9. (1)** In preparing an interim Heritage Objects Register, the Heritage Council shall—

- (a) assess the heritage significance of an object in accordance with the determined criteria; and
- (b) consider the need to take measures which are prudent and feasible to conserve the heritage significance of a heritage object.

**(2)** The Minister shall, in writing, determine criteria for the purpose of paragraph (1) (a).

**(3)** A determination under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

**Ministerial directions and declarations**

**10. (1)** If the Minister is satisfied that it would not be in the public interest to do so, the Minister may, by instrument, declare that the location of a specified heritage object not be included in the Heritage Objects Register.

**(2)** Where the Minister makes a declaration under subsection (1), the Heritage Council shall not specify the location of the heritage object in an interim Heritage Objects Register.

**(3)** Where the Minister issues a direction under paragraph 42 (1) (a) to the Heritage Council to notify an interim Heritage Objects Register in relation to an object, the Heritage Council shall comply with that direction.

**(4)** While a declaration of the Minister under paragraph 42 (1) (b) is in force, the Heritage Council shall not notify an interim Heritage Objects Register which would have the effect of listing that object on the Heritage Objects Register.

**Public consultation**

**11.** Except where subsection 10 (1) applies, in preparing an interim Heritage Objects Register, the Heritage Council shall—

- (a) obtain such information about the public attitude to its proposals as the Heritage Council considers appropriate; and
- (b) consider that information.

### **Public notification**

**12. (1)** After preparing an interim Heritage Objects Register, the Heritage Council shall cause to be published in the *Gazette* and in a daily newspaper published and circulating in the Territory a notice—

- (a) stating that copies of the interim Register are available for public inspection at specified places during office hours; and
- (b) specifying, for the purpose of section 8, the maximum period (being a period not exceeding 1 year) during which the interim Register, or a part of it, is to have effect under that section; and
- (c) including a statement of the effect of section 8.

**(2)** The Heritage Council shall make copies of the interim Heritage Objects Register available for public inspection during office hours at the places specified in the notice.

**(3)** A copy of an interim Heritage Objects Register made available for public inspection under subsection (2) shall not include any restricted information in relation to an Aboriginal object.

**(4)** The validity of a decision of the Heritage Council to include a provision in an interim Heritage Objects Register is not affected by a failure to comply with paragraph (1) (a) or (c) or subsection (2) or (3).

### **Notification of affected persons**

**13. (1)** As soon as practicable after a notice is published in the *Gazette* under section 12 in relation to an interim Heritage Objects Register, the Heritage Council shall give the owner and the possessor of each object in relation to which the interim Register is notified a notice—

- (a) specifying the matters included in the interim Register in relation to the object;
- (b) in the case of an Aboriginal object—specifying, and identifying as such, any restricted information about the object;
- (c) including a statement of the effect of section 46 in relation to the publication of restricted information; and
- (d) including the statements referred to in paragraph 12 (1) (c) in relation to the interim Register.

**(2)** The validity of a decision of the Heritage Council to include a provision in an interim Register is not affected by a failure to comply with subsection (1).

### **Revision of interim Registers**

**14. (1)** After the notification of an interim Heritage Objects Register under section 12, the Heritage Council may, by notice published in the *Gazette*, revise the interim Register—

- (a) to correct a formal error; or
- (b) to provide for the removal of a provision of the interim Register which would have had the effect of including an entry in the Heritage Objects Register;

with effect from the date of the notice.

**(2)** The Heritage Council shall cause a copy of a notice under subsection (1) to be published in a daily newspaper published and circulating in the Territory.

**(3)** A notice under paragraph (1) (b) shall include—

- (a) a statement that copies of the interim Register, as revised, are available for public inspection at specified places; and
- (b) a statement of the effect of section 8 in relation to the interim Heritage Objects Register as revised.

**(4)** The Heritage Council shall make copies of the interim Heritage Objects Register, as revised, available for public inspection during office hours at the places specified in the notice under subsection (3).

**(5)** Where paragraph (1) (b) applies, the Heritage Council shall give the owner and the possessor of each object in relation to which the interim Register is revised a notice—

- (a) specifying the revision; and
- (b) including the statements referred to in subsection (3).

**(6)** The validity of a decision to revise an interim Heritage Objects Register under paragraph (1) (b) is not affected by a failure to comply with subsection (2), (3), (4) or (5).

### **Submission of interim Register to Minister**

**15.** The Heritage Council shall submit an interim Heritage Objects Register to the Minister for approval after the expiration of 28 days after the interim Register is notified in the *Gazette* under subsection 12 (1).

***Subdivision C—Approval and disallowance***

**Approval**

**16. (1)** On receipt of an interim Heritage Objects Register submitted under section 15, the Minister shall, by instrument in writing, approve or refuse to approve—

- (a) the interim Register as a whole; or
- (b) each provision of the interim Register.

**(2)** An instrument of approval under subsection (1) shall specify—

- (a) the date of effect of the approval, or the date of effect of the approval of each approved provision of the interim Register; and
- (b) places where copies of the Register, or the approved provisions of the interim Register, may be inspected or purchased.

**(3)** The Minister shall make copies of the Register, or of each approved provision of the Register, excluding any restricted information, available for public inspection or purchase during office hours at the places specified under subsection (2).

**Date of effect**

**17.** On the date or dates specified under paragraph 16 (2) (a)—

- (a) where the interim Heritage Objects Register is to become the Heritage Objects Register—
  - (i) the approved provisions of that interim Register become the initial Heritage Objects Register; or
  - (ii) if a provision or provisions of that interim Register has or have previously become the initial Heritage Objects Register under subparagraph (a) (i)—that initial Register is varied accordingly; or
- (b) where the interim Heritage Objects Register is in the form of an interim variation to the Heritage Objects Register—the Register is varied accordingly.

**Disallowance**

**18.** An approval under section 16 is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

***Division 3—Heritage objects—approvals and orders***

***Subdivision A—Preliminary***

**Interpretation**

**19.** In this Division—

“application” means an application to conduct a controlled activity;

“approval” means an approval under Subdivision B;

“controlled activity” means an activity in relation to an object which—

- (a) is inconsistent with the Heritage Objects Register; or
- (b) where an interim Heritage Objects Register is in effect—  
would be inconsistent with the Heritage Objects Register—
  - (i) where there is no Heritage Objects Register— if the interim Register were to become that Register; or
  - (ii) in any other case—if that Register were varied in accordance with the interim Register.

***Subdivision B—Approvals***

**Offence—controlled activities**

**20.** A person shall not, without reasonable excuse, conduct a controlled activity except in accordance with an approval.

Penalty: \$5,000.

**Application to conduct controlled activities**

**21. (1)** An application shall—

- (a) be in a form made available by the Minister;
- (b) set out, or be accompanied by, such information relating to the controlled activity as is required by the form;
- (c) be signed by the applicant; and
- (d) be lodged with the Minister; and

**(2)** The Minister may, before notice of an application is given under section 22—

- (a) at the request of the applicant—make an alteration to an application or correct a formal error; or
- (b) of his or her own motion—correct a formal error in an application.

### **Notice of applications**

**22. (1)** After receiving an application, unless subsection (2) or (3) applies, the Minister shall cause to be published in the *Gazette* and in a newspaper published and circulating in the Territory a notice—

- (a) of the details of the application; and
- (b) stating the effect of section 23.

**(2)** Subsection (1) does not apply in relation to prescribed applications or to applications included in a prescribed class of applications.

**(3)** The Minister may require the applicant—

- (a) to cause to be published in a daily newspaper published and circulating in the Territory a notice of the kind referred to in subsection (1), in a form specified by the Minister, in relation to the application; or
- (b) to give such a notice to such persons as are specified by the Minister.

**(4)** If an applicant fails to comply with a requirement under subsection (3), the application is to be taken to have been withdrawn.

**(5)** The applicant shall pay the cost of a notice given in accordance with subsection (3).

**(6)** If the Minister publishes a notice under subsection (1), the reasonable cost of the notice is a debt payable by the applicant to the Territory.

### **Objections**

**23. (1)** Any person who may be affected by the approval of an application may, within the prescribed period, object to the grant of the approval.

**(2)** An objection shall be made to the Minister in writing and shall set out the grounds of the objection.

**(3)** The Minister shall give a copy of each objection to—

- (a) the applicant;
- (b) the Heritage Council; and
- (c) any relevant Aboriginal organisation.



(4) The Minister shall make a copy of each objection available for public inspection during office hours until the expiration of the period during which the applicant may apply to the Tribunal for a review of a decision in relation to the application.

(5) The Minister may, on request by a person making an objection, exclude information which would identify the objector from being made available under subsection (3) or (4) if, in the Minister's opinion based on reasonable grounds, it would not be in the public interest for that information to be published.

### **Environmental Assessments and Inquiries**

24. The Minister may—

- (a) direct that an Assessment be made of; or
- (b) establish a panel to conduct an Inquiry into;

any aspect of an application.

### **Consultation with the Heritage Council and Aboriginal organisations**

25. (1) The Minister shall, by notice in writing to—

- (a) the Heritage Council; and
- (b) any relevant Aboriginal organisation;

invite the Heritage Council and any such organisation to submit written comments about an application to the Minister within the prescribed period.

(2) A notice under subsection (1) shall include a copy of the relevant application.

### **Further information**

26. (1) The Minister may, by notice in writing, require an applicant to furnish to the Minister, within the period specified in the notice (being a period of not less than 28 days), either orally or in writing, such further information relating to the application as is specified in the notice.

(2) An applicant may, at any time before the expiration of the period specified in a notice under subsection (1), apply to the Minister for an extension of the period within which the applicant is to furnish information.

(3) On receipt of an application under subsection (2), the Minister may grant an extension of the period of not more than 6 months.

(4) If a person fails to furnish information in accordance with a notice under subsection (1), the applicant is to be taken to have withdrawn the application on the expiration of the period specified in the notice, or, where that period is extended under subsection (3), on the expiration of the extended period.

### **Decisions about approvals**

27. (1) The Minister shall, by notice in writing to the applicant in accordance with section 31, approve or refuse an application.

(2) If the Minister fails to make a decision on an application before the expiration of the prescribed period after the application is made, the Minister is to be taken to have refused to approve the application.

### **Conditions**

28. (1) The Minister may approve an application subject to such conditions as are specified by the Minister.

(2) The conditions subject to which an approval may be given include conditions that the controlled activity be conducted subject to any of the following requirements:

- (a) that the activity be conducted to the satisfaction of the Minister or the Heritage Council;
- (b) that the controlled activity be conducted to a specified standard;
- (c) that plans, drawings or other documents be prepared by the applicant and lodged with the Minister for approval before commencing to conduct the controlled activity (whether in whole or in part);
- (d) requiring changes to be made to any plan, drawing or other document forming part of the application for approval.

### **Relevant considerations**

29. (1) In making a decision under subsection 27 (1) or 28 (1), the Minister shall consider—

- (a) any objections made in accordance with section 23 in relation to the application;
- (b) any comments by the Heritage Council or any relevant Aboriginal organisation in relation to the application submitted in response to the invitation under section 25;

- (c) any preliminary assessment under Division 2 of Part IV of the Land Act, or any report under section 119 of that Act, in relation to the controlled activity; and
  - (d) any Assessment made, or the report of any Inquiry conducted, in relation to the controlled activity to which the application relates.
- (2) The Minister shall not approve an application unless he or she is satisfied—
- (a) that there is no prudent and feasible alternative to the proposed controlled activity; and
  - (b) that, in undertaking that activity, the applicant intends to take all reasonable measures to conserve the heritage significance of the relevant object.

#### **Date of effect of approvals**

**30.** An approval takes effect—

- (a) 7 days after the last day on which an application may be made to the Tribunal for the review of the decision; or
- (b) if, before the expiration of that period, the Minister gives the applicant written notice that no application has been made to the Tribunal—on the day on which the notice is given;

whichever occurs first.

#### **Notice of decisions**

**31. (1)** A notice for the purposes of subsection 27 (1) shall—

- (a) where the Minister approves the application—specify the date of effect of the decision and any conditions subject to which the approval is given;
- (b) include a statement of the grounds for the decision; and
- (c) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, the applicant may apply to the Tribunal for a review of a decision of the Minister to refuse to give an approval, or to give an approval subject to conditions (as the case may be).

(2) The Minister shall give a copy of a notice referred to in subsection (1) to—

- (a) the Heritage Council;
- (b) any relevant Aboriginal organisation; and

(c) each person who made an objection in accordance with section 23.

(3) The validity of a decision in relation to an approval is not affected by a failure to comply with paragraph (1) (b) or (c) or subsection (2).

**Minor variations**

32. (1) On application by—

- (a) the owner or possessor of an object in relation to which an approval is in force; or
- (b) the lessee or an occupier of a place where such an object is located;

the Minister may vary the approval.

(2) The Minister shall vary an approval if satisfied on reasonable grounds that the proposed variation—

- (a) does not relate to the nature of the controlled activity for which the approval was given;
- (b) would not have the effect of varying a condition subject to which the approval was given;
- (c) would not cause a significant detriment to any person; and
- (d) would not have a significant adverse effect on the heritage significance of the relevant object.

(3) The Minister shall give written notice of a variation to—

- (a) the owner and the possessor of the object in relation to which the approval is in force; and
- (b) the Heritage Council.

**Formal variations**

33. If the Minister is satisfied that an approval contains a formal error, the Minister shall—

- (a) vary the approval accordingly; and
- (b) notify accordingly in writing—
  - (i) the owner and the possessor of the object in relation to which the approval is in force; and
  - (ii) the Heritage Council.

### **Expiration of approvals**

**34. (1)** An approval expires if, in the opinion of the Minister—

- (a) the activity is not commenced within the period specified in the approval;
- (b) the activity is not completed within the period specified in the approval; or
- (c) if no period is specified in the approval for the commencement or completion of an activity—the activity is not commenced within 2 years after the date of the approval.

**(2)** The expiry of an approval does not affect anything done under the approval before the expiry.

### **Extension of time**

**35. (1)** Where an approval specifies a date for completion of a controlled activity, the Minister may, on application by the owner or possessor of an object in relation to which an approval is given, by written notice to that person, extend the period within which the activity is to be completed.

**(2)** The Minister shall give the Heritage Council a copy of a notice under subsection (1).

### **Revocation of approval**

**36.** The Minister may revoke an approval if satisfied on reasonable grounds that the approval was obtained by fraud or misrepresentation.

### *Subdivision C—Orders*

#### **Application of Part VI of Land Act**

**37. (1)** In this section—

“order” means an order under subsection (2).

**(2)** The Minister may make an order under Division 3 of Part VI of the Land Act in relation to a controlled activity.

**(3)** A controlled activity is to be taken to be a controlled activity for the purposes of Division 3 of Part VI of the Land Act in its application to an order.

**(4)** An approval is to be taken to be an approval for the purposes of paragraph 256 (5) (b) of the Land Act in its application to an order.

(5) In deciding whether to make an order, the Minister shall consider whether the relevant controlled activity is likely to affect adversely the heritage significance of the relevant object.

(6) An order may be expressed to bind a subsequent owner or possessor of the relevant object to the same extent as if the order had been made against that owner or possessor.

#### ***Division 4—Aboriginal heritage***

##### ***Subdivision A—Preliminary***

#### **Interpretation**

**38. (1)** In this Division, unless the contrary intention appears—

“interim Register” means an interim Heritage Objects Register;

“Register” means the Heritage Objects Register.

(2) In this Division, a reference to a registered object is to be read as a reference to an object in relation to which—

(a) there is an entry in a Register; or

(b) there is a provision in an interim Register which would have the effect of including such an entry in a Register;

and a reference to—

(c) an unregistered object; or

(d) the registration of an object;

is to be read accordingly.

##### ***Subdivision B—Protection of unregistered Aboriginal heritage***

#### **Damaging unregistered Aboriginal objects**

**39. (1)** A person shall not knowingly disturb, damage or destroy or cause or permit to be disturbed, damaged or destroyed an unregistered Aboriginal object.

Penalty: \$5,000.

(2) Subsection (1) does not apply where—

(a) the object has previously been registered and the registration has been cancelled; or

(b) the person referred to in that subsection—

(i) does not believe that the object is an Aboriginal object; or

- (ii) believes on reasonable grounds that a declaration under paragraph 42 (1) (b) is in force.

**Orders for the protection of unregistered Aboriginal objects—  
application of Part VI of Land Act**

**40. (1)** In this section—

“order” means an order referred to in subsection (2).

**(2)** The Minister may make an order under Division 3 of Part VI of the Land Act in relation to the disturbance, damage or destruction of an unregistered Aboriginal object except where—

- (a) a declaration under paragraph 42 (1) (b) is in force in relation to that object; or
- (b) the object has previously been registered.

**(3)** For the purposes of Division 3 of Part VI of the Land Act in its application to an order, the disturbance, damage or destruction referred to in subsection (2) is to be taken to be a controlled activity.

**(4)** In deciding whether to make an order, the Minister shall consider whether the relevant controlled activity is likely to affect adversely the heritage significance—

- (a) of the object; or
- (b) in the case of an object which is related to the heritage significance of a place—of that place.

**(5)** An order—

- (a) shall specify the grounds on which the order is made; and
- (b) may direct any person against whom it is made—
  - (i) to stop disturbing, damaging or destroying an unregistered Aboriginal object; or
  - (ii) not to commence disturbing, damaging or destroying such an object.

**(6)** An order shall remain in force for such period, not exceeding 35 days, as is specified in the order.

**(7)** Subsection 256 (5) of the Land Act does not apply in relation to an order for the purposes of this section.

**Orders—reports by Heritage Council**

**41. (1)** Where the Minister makes an order for the purposes of section 40, he or she shall direct the Heritage Council to report within 21 days about the heritage significance of the relevant object.

**(2)** The Heritage Council shall—

- (a) prepare a report for submission to the Minister in compliance with a direction under subsection (1); and
- (b) in preparing that report, consult with, and consider the views of—
  - (i) the owner and the possessor of the object, and the lessee and the occupier of the place where the object was discovered;
  - (ii) the person who reported the discovery; and
  - (iii) any relevant Aboriginal organisation.

**Orders—Ministerial directions and declarations**

**42. (1)** Within 14 days after receiving a report from the Heritage Council under section 41, the Minister shall—

- (a) direct the Heritage Council to notify an interim Register under section 13 which would have the effect of registering the object on particular terms; or
- (b) declare that the object is not to be registered, by notice in writing to—
  - (i) the lessee and the occupier of the land where the object was discovered; and
  - (ii) the owner and the possessor of the object.

**(2)** Before making a decision under subsection (1), the Minister shall consult with the persons referred to in paragraph (1) (b).

**(3)** In making a decision under subsection (1), the Minister shall—

- (a) taking into account the report of the Heritage Council—consider whether the object is of sufficient heritage significance to be registered;
- (b) taking into account the views of the persons consulted under subsection (2)—consider the effect of registration on those persons' interests; and



- (c) taking into account that report and those views—consider whether there is any prudent and feasible alternative to the activity in relation to which the order is in force.

(4) Where the Minister makes a decision under paragraph (1) (a), sections 12 and 13 apply in relation to a decision of the Minister under paragraph (1) (a) as if—

- (a) the references in those sections to a decision of the Heritage Council to include a provision in an interim Register were references to that decision of the Minister; and
- (b) the references in paragraph 12 (1) (b) to a maximum period not exceeding 1 year were references to a maximum period not exceeding 3 months.

(5) A declaration under paragraph (1) (b) shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, a person whose interests in relation to land are affected may apply for review of a decision of the Minister to make the declaration; and
- (b) subject to subsection 26 (11) of the *Administrative Appeals Tribunal Act 1989*—a statement to the effect that such a person may request a statement under section 26 of that Act.

#### ***Subdivision C—Consultation in relation to Registers***

#### **Consultation with Aboriginal organisations**

**43. (1)** This section applies where the Heritage Council is preparing an interim Register, or a revision to an interim Register, which relates to an Aboriginal object.

(2) Where this section applies, the Heritage Council shall consult with, and consider the views of, any relevant Aboriginal organisation about the effect of the interim Register or revision on Aboriginal tradition.

(3) This section does not apply where the Heritage Council proposes to cancel the registration of an Aboriginal object in one Register for the purpose of registering the object in the other Register.

(4) In this section—

“Aboriginal object” includes an object which the Heritage Council at one time considered, but no longer considers to be an Aboriginal object.

***Subdivision D—Restricted information***

**Restricted information**

**44. (1)** Where, in the Minister's opinion, the public disclosure of particular information about the location or nature of an Aboriginal object would be likely to have a significant adverse effect on—

- (a) Aboriginal tradition; or
- (b) the heritage significance of the object;

the Minister shall, in writing, declare that information to be restricted information for the purposes of this Act.

**(2)** The Minister shall not make a declaration under subsection (1) without first consulting with, and considering the views of—

- (a) the Heritage Council; and
- (b) any relevant Aboriginal organisation;

about the relevant information.

**(3)** The Minister shall give a copy of a declaration under subsection (1) to—

- (a) the lessee and the occupier of any land, and the owner and the possessor of any object, in relation to which the declaration is given;
- (b) the Heritage Council; and
- (c) any relevant Aboriginal organisation.

**(4)** A copy of a declaration given to a person under paragraph (3) (a) shall be accompanied by—

- (a) a statement in the prescribed form of the effect of the declaration;
- (b) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, the person may apply to the Tribunal for a review of the decision of the Minister to make the declaration; and
- (c) except where subsection 26 (11) of that Act applies—a statement to the effect that the person may request a statement pursuant to section 26 of that Act.

**(5)** The validity of a decision of the Minister to make a declaration under subsection (1) is not affected by a failure to comply with subsections (2), (3) and (4).

**Publication of restricted information by public officials**

**45. (1)** The Territory, the Executive, a Minister or a Territory authority shall not publish or cause to be published any restricted information about an Aboriginal object except—

- (a) for the purposes of this Part or Part II of the Land Act;
- (b) in accordance with subsection (2); or
- (c) in accordance with the prescribed procedures.

**(2)** For the purposes of paragraph (1) (b), restricted information may be published where the person or body responsible for its publication is satisfied on reasonable grounds that the publication would not have a significant adverse effect on—

- (a) Aboriginal tradition; or
- (b) the heritage significance of the relevant object.

**Publication of restricted information generally**

**46. (1)** A person (other than a person referred to in subsection 45 (1)) shall not, without reasonable excuse, publish or cause to be published restricted information about an Aboriginal object except—

- (a) in accordance with an approval under subsection (2); and
- (b) where that publication is accompanied by a written statement in the form referred to in paragraph 44 (4) (a).

Penalty: \$500.

**(2)** On application in accordance with subsection (3), the Heritage Council shall, by notice in writing to the applicant, approve the publication of restricted information about an Aboriginal object where it is satisfied on reasonable grounds that the publication would not have a significant adverse effect on—

- (a) Aboriginal tradition; or
- (b) the heritage significance of the relevant object.

**(3)** An application under subsection (2) shall be in writing specifying—

- (a) the nature of the restricted information;
- (b) the reason for the proposed publication; and
- (c) the nature of the proposed publication, including the person, persons or class of persons to whom or to which it is directed.

(4) If the Heritage Council refuses an application under this section, it shall give written notice of its decision to the applicant including—

- (a) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, the applicant may apply to the Tribunal for a review of the Heritage Council's decision; and
- (b) except where subsection 26 (11) of that Act applies—a statement to the effect that the applicant may request a statement pursuant to section 26 of that Act.

#### **Access to restricted information**

47. (1) On application in accordance with subsection (2)—

- (a) by the owner or possessor of an object; or
- (b) where an interest in an object is being offered for sale—by a person who is considering purchasing that interest;

the Heritage Council shall publish to that person any restricted information relevant to the conservation and use of that object.

(2) An application shall be in writing accompanied by a written declaration—

- (a) in the case referred to in paragraph (1) (a)—specifying the capacity in which the applicant is applying; or
- (b) in the case referred to in paragraph (1) (b)—specifying the interest being offered for sale, and stating that the applicant is considering the purchase of that interest.

(3) Where the Heritage Council publishes restricted information to a person under subsection (1), it shall give the person a statement in the form referred to in paragraph 44 (4) (a).

#### ***Subdivision E—Custodianship of Aboriginal objects***

#### **Custodianship of Territory-owned Aboriginal objects**

48. (1) The Minister shall, on behalf of the Territory, keep or cause to be kept each Aboriginal object owned by the Territory in a repository authorised under subsection (2).

(2) The Minister may, by notice in the *Gazette*, declare a place to be an authorised repository for the purposes of this section.

(3) In a declaration under subsection (2), the Minister shall not publish any restricted information in relation to an Aboriginal object.

(4) The Minister shall not declare a place to be an authorised repository unless he or she is satisfied that the place is suitable for the conservation of Aboriginal objects owned by the Territory.

(5) The Minister shall not declare a place to be an authorised repository without first consulting with and considering the views of—

- (a) the Heritage Council; and
- (b) each relevant Aboriginal organisation;

about the proposed declaration.

(6) The Minister shall, by notice published in the *Gazette*, revoke a declaration under subsection (2) if he or she is no longer satisfied that the relevant place is suitable for the conservation of Aboriginal objects owned by the Territory.

#### ***Division 5—Administrative review***

##### **Review of decisions**

49. (1) A person whose interests in relation to land are affected may apply to the Tribunal for the review of a decision of the Minister under paragraph 42 (1) (b) to declare that no interim Heritage Objects Register is to be notified in relation to a particular object.

(2) An applicant for an approval under Subdivision B of Division 3 may apply to the Tribunal for the review of a decision of the Minister—

- (a) to refuse to give the approval; or
- (b) to give the approval subject to conditions.

(3) A person whose interests in relation to an object are affected by a decision of the Minister to make a declaration under subsection 44 (1) may apply to the Tribunal for a review of that decision.

(4) An applicant for an approval to publish restricted information under subsection 46 (2) may apply to the Tribunal for a review of the decision of the Minister to refuse to grant that approval.

(5) Subsections (1), (2) and (3) are to be read as modifying the operation of section 25 of the *Administrative Appeals Tribunal Act 1989*.

***Division 6—Public access to heritage information***

***Subdivision A—Information about administrative action***

**Application**

- 50.** This Subdivision applies in relation to the following documents:
- (a) applications for approvals under Subdivision B of Division 3, being applications—
    - (i) made in accordance with subsection 21 (1); and
    - (ii) as altered (if at all) under subsection 21 (2);while the applications are under consideration by the Minister;
  - (b) approvals given under subsection 28 (1) while the approvals are in force;
  - (c) orders referred to in section 37, while the orders are in force;
  - (d) orders referred to in section 40, while the orders are in force;
  - (e) declarations under paragraph 42 (1) (b), while the declarations are in force;
  - (f) declarations under subsection 48 (2).

**Searching administrative records**

**51. (1)** A person may, during office hours, inspect a document to which this Subdivision applies, excluding any part of the document which—

- (a) contains restricted information; or
- (b) contains information which is the subject of a declaration under subsection (3).

**(2)** On application by a person, accompanied by the determined fee, the Minister shall give the person a copy of a document to which this Subdivision applies, or any part of such a document, excluding any part of the document which—

- (a) contains restricted information; or
- (b) contains information which is the subject of a declaration under subsection (3).

**(3)** On application by an applicant for approval under Subdivision B of Division 3, the Minister may, by written notice to the applicant, declare that the application for approval, or a specified part of that application, is not to be available for public inspection under subsection (1) or (2).

(4) The Minister shall only make a declaration under subsection (3) if he or she is satisfied that—

- (a) information in the relevant application or part—
  - (i) relates to the personal or business affairs of a person; and
  - (ii) was supplied to the Minister in confidence; and
- (b) the publication of that information would not be in the public interest.

***Subdivision B—Access to Heritage Registers***

**Searching the Heritage Registers**

**52. (1)** A person may, during office hours, inspect either Register, other than any part of a Register which contains restricted information.

(2) On application by a person, accompanied by the determined fee, the Heritage Council shall give the person a copy of a Register, or any part of a Register, other than any part of the Register which contains restricted information.

(3) On application to the Heritage Council accompanied by the determined fee in relation to an object which—

- (a) is not listed in a Register; and
- (b) is not, in an interim Register, proposed to be listed in the corresponding Register;

the Heritage Council shall give the applicant a certificate stating—

- (c) whether a declaration in relation to that object is in force under paragraph 42 (1) (a); or
- (d) whether the object has previously been so listed, or so proposed to be listed.

(4) In this section—

“interim Register” means the interim Heritage Objects Register;

“Register” means the Heritage Objects Register.

### **PART III—MISCELLANEOUS**

#### **Corporations—penalties**

**53.** Where a body corporate is convicted of an offence against this Act or the regulations, the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the court could impose as a pecuniary penalty for that offence.

#### **Power of Minister to determine fees**

**54.** The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Act.

#### **Regulations**

**55.** The Executive may make regulations, not inconsistent with this Act prescribing—

- (a) matters required or permitted by this Act to be prescribed;
- (b) matters necessary or convenient to be prescribed for carrying out or giving effect to this Act; or
- (c) penalties, for offences against the regulations, not exceeding—
  - (i) if the offender is a natural person—a fine of \$1,000; or
  - (ii) if the offender is a body corporate—a fine of \$5,000.

*[Presentation speech made in Assembly on 19 September 1991]*