



Australian Capital Territory

# **Heritage Objects Act 1991      No 101**

**Republication No 3**

**Effective: 1 July 2003 – 31 August 2003**

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Last amendment made by A2002-56

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Heritage Objects Act 1991* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 July 2003. It also includes any amendment, repeal or expiry affecting the republished law to 1 July 2003.

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 does not include 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 Objects Act 1991

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Australian Capital Territory

# Heritage Objects Act 1991

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

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## Part 1 Preliminary

### 1 Short title

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

### 4 Interpretation for Act

(1) In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

***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;

that is, or are, of significance in Aboriginal tradition.

***Aboriginal place*** means a place that 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 the Land Act, division 4.3.

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

***conservator*** means the conservator of flora and fauna.



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

***heritage council*** means the Heritage Council established under the Land Act, division 3.8.

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

- (a) an individual—
  - (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 section 16 (Approval).

*Note* A reference to a disallowable instrument (including the heritage objects register) includes a reference to the instrument as originally made and as amended (see *Legislation Act 2001*, s 102).

***heritage place***—see the Land Act.

***heritage places register***—see 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 the Land Act, division 4.4.

***interim heritage places register***—see 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 the Land Act, part 2, 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 corporated or unincorporated)—

- (a) comprised substantially of Aboriginal persons; and
- (b) having amongst its principal objects the conservation of Aboriginal tradition in the ACT; 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 that is the subject of a declaration under section 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.

***variation*** includes revocation and substitution.

- (2) If 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 takes all reasonable steps to consult with, or to notify, that person or body.

**5 Interim registers—interpretation**

In this Act, a reference to an interim heritage objects register is to be taken to be a reference to—

- (a) if there is no heritage objects register—a proposed heritage objects register; or
- (b) if there is a heritage objects register—an interim variation to that register;

being a proposed register, or an interim variation to a register, notified as required by section 12, as revised under section 14.

## **Part 2 Heritage objects**

### **Division 2.1 Heritage objects register**

#### **Subdivision 2.1.1 Content and effect of register and interim registers**

##### **6 Heritage objects register—content**

- (1) The heritage objects register shall—
  - (a) identify heritage objects, specifying any that are Aboriginal objects; and
  - (b) specify the current location of each identified heritage object; and
  - (c) include a statement of the heritage significance of each identified heritage object; and
  - (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), if the heritage council includes a provision in an interim heritage places register that 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 that 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.

## **7 Heritage objects register—effect**

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.

## **8 Effect of interim registers**

- (1) If 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) If 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 if—
  - (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 beginning on the day the interim register is notified (other than in a newspaper) as required by section 12 (Public notification) and ending at the end of the earlier of—

(a) the day before—

(i) if the interim register is approved under section 16 (Approval)—the date of effect of the register or an approved variation of it; or

(ii) if the interim register is refused approval under section 16—the date the refusal is notified (other than in a newspaper) as required by that section; and

(b) the last day of the period specified in the notification of the interim register as required by section 12 (1) (b).

(5) In subsection (4), definition of *defined period*, paragraph (a), if part only of an interim heritage objects register is approved or is refused approval under section 16 (1) (b), a reference to the interim register is a reference to that part of the interim register.

## **Subdivision 2.1.2 Preparation, notification and submission to Minister**

### **9 Criteria for preparation**

- (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 that are prudent and feasible to conserve the heritage significance of a heritage object.
- (2) The Minister shall, in writing, determine criteria for subsection (1) (a).
- (3) A determination under subsection (2) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

### **10 Ministerial directions and declarations**

- (1) If the Minister is satisfied that it would not be in the public interest to do so, the Minister may, in writing, declare that the location of a specified heritage object not be included in the heritage objects register.
- (2) If 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) If the Minister issues a direction under section 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 section 42 (1) (b) is in force, the heritage council shall not notify an interim heritage

objects register that would have the effect of listing that object on the heritage objects register.

## **11 Public consultation**

Except if section 10 (1) applies, in preparing an interim heritage objects register, the heritage council shall—

- (a) obtain the information about the public attitude to its proposals that the heritage council considers appropriate; and
- (b) consider that information.

## **12 Public notification**

- (1) After preparing an interim heritage objects register, the heritage council must prepare 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 section 8, the maximum period (not longer than 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 notice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (3) The heritage council must also publish the notice in a newspaper published and circulating in the ACT.
- (4) 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.
- (5) A copy of an interim heritage objects register made available for public inspection under subsection (4) shall not include any restricted information in relation to an Aboriginal object.



- (6) 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 subsection (1) (a) or (c), (4) or (5).

### **13 Notification of affected persons**

- (1) As soon as practicable after a notice under section 12 is notified under the *Legislation Act 2001* 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; and
  - (b) for an Aboriginal object—specifying, and identifying as such, any restricted information about the object; and
  - (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 section 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).

### **14 Revision of interim registers**

- (1) After the notification of an interim heritage objects register as required by section 12, the heritage council may, in writing, revise the interim register—
- (a) to correct a formal error; or
  - (b) to provide for the removal of a provision of the interim register that would have had the effect of including an entry in the heritage objects register.

(2) The revision is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

(3) The heritage council must also publish the notice in a newspaper published and circulating in the ACT.

(4) A revision under subsection (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.

(5) 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 revision under subsection (4).

(6) If subsection (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 (4).

(7) The validity of a decision to revise an interim heritage objects register under subsection (1) (b) is not affected by a failure to comply with subsection (3), (4), (5) or (6).

## **15 Submission of interim register to Minister**

The heritage council shall submit an interim heritage objects register to the Minister for approval after the end of 28 days after the interim register is notified under the *Legislation Act 2001*.

### **Subdivision 2.1.3 Approval and disallowance**

#### **16 Approval**

- (1) On receipt of an interim heritage objects register submitted under section 15, the Minister shall, in writing, approve or refuse to approve—
  - (a) the interim register as a whole; or
  - (b) each provision of the interim register.

*Note* Power given under an Act to make a statutory instrument (including an approval) includes power to amend or repeal the instrument (see *Legislation Act 2001*, s 46 (1)).

- (2) An 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).
- (4) An approval, or a refusal to approve, under subsection (1) is a disallowable instrument.

*Note 1* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

*Note 2* An amendment or repeal of an approval is also a disallowable instrument (see *Legislation Act 2001*, s 46 (2)).

#### **17 Date of effect**

On the date or dates specified under section 16 (2) (a)—

- (a) if 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 paragraph (a) (i)—that initial register is varied accordingly; or
- (b) if the interim heritage objects register is in the form of an interim variation to the heritage objects register—the register is varied accordingly.

## **Division 2.3 Heritage objects—approvals and orders**

### **Subdivision 2.3.1 Preliminary**

#### **19 Definitions for div 2.3**

In this division:

*application* means an application to conduct a controlled activity.

*approval* means an approval under subdivision 2.3.2.

*controlled activity* means an activity in relation to an object that—

- (a) is inconsistent with the heritage objects register; or
- (b) if an interim heritage objects register is in effect—would be inconsistent with the heritage objects register—
  - (i) if 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 2.3.2 Approvals**

### **20 Offence—controlled activities**

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

Maximum penalty: 50 penalty units.

### **21 Application to conduct controlled activities**

- (1) A person may apply to the Minister for approval to conduct a controlled activity.

*Note* If a form is approved under s 55 (Approved forms) for an application, the form must be used.

- (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) on his or her own initiative, correct a formal error in an application.

### **22 Notice of applications**

- (1) After receiving an application the Minister must, unless subsection (4) or (5) applies, prepare a notice—
- (a) of the details of the application; and
  - (b) stating the effect of section 23.

- (2) The notice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (3) The Minister must also publish the notice in a newspaper published and circulating in the ACT.
- (4) Subsection (1) does not apply in relation to prescribed applications or to applications included in a prescribed class of applications.

- (5) The Minister may require the applicant—
- (a) to cause to be published in a daily newspaper published and circulating in the ACT 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 the persons that are specified by the Minister.
- (6) If an applicant fails to comply with a requirement under subsection (5), the application is to be taken to have been withdrawn.
- (7) The applicant shall pay the cost of a notice given in accordance with subsection (5).
- (8) 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.

## **23 Objections**

- (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; and
  - (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 administrative

appeals 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 that 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.

## **24 Environmental assessments and inquiries**

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.

## **25 Consultation with the heritage council and Aboriginal organisations**

- (1) The Minister shall, by written notice to—
- (a) the heritage council; and
  - (b) any relevant Aboriginal organisation;

invite the heritage council and any relevant Aboriginal 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.

## **26 Further information**

- (1) The Minister may, by written notice, require an applicant to give to the Minister, within the period specified in the notice (at least 28 days), either orally or in writing, the further information relating to the application that is specified in the notice.

- (2) An applicant may, at any time before the end 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 give 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 give information in accordance with a notice under subsection (1), the applicant is to be taken to have withdrawn the application on the end of the period specified in the notice, or, if that period is extended under subsection (3), on the end of the extended period.

## **27 Decisions about approvals**

- (1) The Minister shall, by written notice 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 end of the prescribed period after the application is made, the Minister is to be taken to have refused to approve the application.

## **28 Conditions**

- (1) The Minister may approve an application subject to the conditions that 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.

## **29 Relevant considerations**

- (1) In making a decision under section 27 (1) or 28 (1), the Minister shall consider—
  - (a) any objections made in accordance with section 23 in relation to the application; and
  - (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; and
  - (c) any preliminary assessment under of the Land Act, division 4.2, or any report under the Land Act, section 119, 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.

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

An approval takes effect—

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

whichever occurs first.

### **31 Notice of decisions**

- (1) A notice for section 27 (1) shall—
  - (a) if the Minister approves the application—specify the date of effect of the decision and any conditions subject to which the approval is given; and
  - (b) be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).
- (2) The Minister shall give a copy of a notice referred to in subsection (1) to—
  - (a) the heritage council; and
  - (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 subsection (2).

### **32 Minor variations**

- (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; and
  - (b) would not have the effect of varying a condition subject to which the approval was given; and
  - (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.

### **33 Formal variations**

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.

### **34 Expiration of approvals**

- (1) An approval expires if, in the opinion of the Minister—

- (a) the activity is not commenced within the period specified in the approval; or
  - (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.

### **35 Extension of time**

- (1) If 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).

### **36 Revocation of approval**

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

### **Subdivision 2.3.3 Orders**

#### **37 Application of Land Act, pt 6**

- (1) In this section:
- order* means an order under subsection (2).
- (2) The Minister may make an order under the Land Act, division 6.3 in relation to a controlled activity.

- (3) A controlled activity is to be taken to be a controlled activity for the Land Act, division 6.3 in its application to an order.
- (4) An approval is to be taken to be an approval for the Land Act, section 256 (5) (b) 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 2.4            Aboriginal heritage**

### **Subdivision 2.4.1    Preliminary**

#### **38    Interpretation for div 2.4**

- (1) In this division:
  - 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 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 that 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 2.4.2 Protection of unregistered Aboriginal heritage**

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

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

Maximum penalty: 50 penalty units.

- (2) Subsection (1) does not apply if—
- (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 section 42 (1) (b) is in force.

### **40 Orders for the protection of unregistered Aboriginal objects—application of Land Act, pt 6**

- (1) In this section:
- order* means an order referred to in subsection (2).
- (2) The Minister may make an order under the Land Act, division 6.3 in relation to the disturbance, damage or destruction of an unregistered Aboriginal object except if—
- (a) a declaration under section 42 (1) (b) is in force in relation to that object; or
  - (b) the object has previously been registered.

- (3) For the Land Act, division 6.3 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) for an object that 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 the period (not longer than 35 days) specified in the order.
- (7) The Land Act, section 256 (5) does not apply in relation to an order for this section.

#### **41 Orders—reports by heritage council**

- (1) If the Minister makes an order for 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; and
  - (ii) the person who reported the discovery; and
  - (iii) any relevant Aboriginal organisation.

#### **42 Orders—Ministerial directions and declarations**

- (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 that would have the effect of registering the object on particular terms; or
  - (b) declare that the object is not to be registered, by written notice 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 subsection (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; and
  - (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) If the Minister makes a decision under subsection (1) (a), sections 12 and 13 apply in relation to a decision of the Minister under subsection (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 section 12 (1) (b) to a maximum period not longer than 1 year were references to a maximum period not longer than 3 months.
- (5) A notice under subsection (1) (b) shall be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

### **Subdivision 2.4.3 Consultation in relation to registers**

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

- (1) This section applies where the heritage council is preparing an interim register, or a revision to an interim register, that relates to an Aboriginal object.
- (2) If 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 that the heritage council at one time considered, but no longer considers to be an Aboriginal object.

### **Subdivision 2.4.4    Restricted information**

#### **44    Restricted information**

- (1) If, 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 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; and
  - (b) the heritage council; and
  - (c) any relevant Aboriginal organisation.
- (4) A copy of a declaration given to a person under subsection (3) (a) must be accompanied by—
  - (a) a statement of the effect of the declaration; and

- (b) a notice in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

*Note* If a form is approved under s 55 (Approved forms) for a statement, the form must be used.

- (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).

#### **45 Publication of restricted information by public officials**

- (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 this part or the Land Act, part 2; or
  - (b) in accordance with subsection (2); or
  - (c) in accordance with the prescribed procedures.
- (2) For subsection (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.

#### **46 Publication of restricted information generally**

- (1) A person (other than a person referred to in section 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) if the publication is accompanied by a statement under section 44 (4) (a) of the effect of the declaration under section 44 (1) relating to the information.

Maximum penalty: 50 penalty units.

- (2) On application in accordance with subsection (3), the heritage council shall, by written notice to the applicant, approve the publication of restricted information about an Aboriginal object if 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; and
- (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.
- (5) A notice under subsection (4) shall be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

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

- (1) On application in accordance with subsection (2)—
- (a) by the owner or possessor of an object; or
- (b) if 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 subsection (1) (a)—specifying the capacity in which the applicant is applying; or
  - (b) in the case referred to in subsection (1) (b)—specifying the interest being offered for sale, and stating that the applicant is considering the purchase of that interest.
- (3) A publication to a person of restricted information under this section must be accompanied by a copy of the statement under section 44 (4) (a) of the effect of the declaration under section 44 (1) relating to the information.

### **Subdivision 2.4.5 Custodianship of Aboriginal objects**

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

- (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, in writing, declare a place to be an authorised repository for 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, in writing, 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.
- (7) A declaration under subsection (2), or a revocation under subsection (6), is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## **Division 2.5 Administrative review**

### **49 Review of decisions**

- (1) A person whose interests in relation to land are affected may apply to the administrative appeals tribunal for the review of a decision of the Minister under section 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 2.3.2 may apply to the administrative appeals 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 section 44 (1) may apply to the administrative appeals tribunal for a review of that decision.
- (4) An applicant for an approval to publish restricted information under section 46 (2) may apply to the administrative appeals 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 the *Administrative Appeals Tribunal Act 1989*, section 25.

## **Division 2.6            Public access to heritage information**

### **Subdivision 2.6.1    Information about administrative action**

#### **50    Application of subdiv 2.6.1**

This subdivision applies in relation to the following documents:

- (a) applications for approvals under subdivision 2.3.2, being applications—
  - (i) made in accordance with section 21 (1); and
  - (ii) as altered (if at all) under section 21 (2);while the applications are under consideration by the Minister;
- (b) approvals given under section 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 section 42 (1) (b), while the declarations are in force;
- (f) declarations under section 48 (2).

#### **51    Searching administrative records**

- (1) A person may, during office hours, inspect a document to which this subdivision applies, excluding any part of the document that—
  - (a) contains restricted information; or
  - (b) contains information the subject of a declaration under subsection (3).

- (2) On application, the Minister must give the applicant a copy of a document, or any part of a document, to which this subdivision applies, other than any part of the document that—
- (a) contains restricted information; or
  - (b) contains information the subject of a declaration under subsection (3).

*Note* A fee may be determined under s 54 (Determination of fees) for an application under this subsection.

- (3) On application by an applicant for approval under subdivision 2.3.2, 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 2.6.2 Access to heritage registers**

### **52 Searching the heritage registers**

- (1) A person may, during office hours, inspect either register, other than any part of a register that contains restricted information.
- (2) On application, the heritage council must give the applicant a copy of a register, or any part of a register, other than any part of the register that contains restricted information.

*Note* A fee may be determined under s 54 (Determination of fees) for an application under this section.



- (3) On application to the heritage council in relation to an object, the council must, unless the object is listed in a register or proposed, in an interim register, to be listed in the corresponding register, give the applicant a certificate stating—
- (a) whether a declaration in relation to the object is in force under section 42 (1) (a); and
  - (b) whether the object has previously been listed in a register or proposed, in an interim register, to be listed in the corresponding register.
- (4) In this section:

*interim register* means the interim heritage objects register.

*register* means the heritage objects register.

## Part 3 Miscellaneous

### 54 Determination of fees

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

*Note* The *Legislation Act 2001* 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 2001*.

### 55 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 form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

### 56 Regulation-making power

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may also prescribe offences for contraventions of the regulations and may prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

## 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.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

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

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Heritage Objects Act 1991 No 101**

notified 15 January 1992 (Gaz 1992 No S3)  
s 1, s 2 commenced 15 January 1992 (s 2 (1))  
remainder commenced 15 July 1992 (s 2 (3))

as amended by

#### **Acts Revision (Position of Crown) Act 1993 No 44 sch 2**

notified 27 August 1993 (Gaz 1993 No S165)  
commenced 27 August 1993 (s 2)

#### **Administrative Appeals (Consequential Amendments) Act 1994 No 60 sch 1**

notified 11 October 1994 (Gaz 1994 No S197)  
s 1, s 2 commenced 11 October 1994 (s 2 (1))  
sch 1 commenced 14 November 1994 (s 2 (2) and see Gaz 1994 No S250)

#### **Statute Law Revision (Penalties) Act 1994 No 81 sch**

notified 29 November 1994 (Gaz 1994 No S253)  
s 1, s 2 commenced 29 November 1994 (s 2 (1))  
sch commenced 29 November 1994 (s 2 (2) and Gaz 1994 No S269)

#### **Statutory Offices (Miscellaneous Provisions) Act 1994 No 97 sch pt 1**

notified 15 December 1994 (Gaz 1994 No S280)  
s 1, s 2 commenced 15 December 1994 (s 2 (1))  
sch pt 1 commenced 15 December 1994 (s 2 (2) and Gaz 1994 No S293)

#### **Legislation (Consequential Amendments) Act 2001 No 44 pt 184**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 184 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Planning and Land (Consequential Amendments) Act 2002 A2002-56  
sch 3 pt 3.8**

notified LR 20 December 2002

s 1, s 2 commenced 20 December 2002 (LA s 75 (1))

sch 3 pt 3.8 commenced 1 July 2003 (s 2 and see Planning and Land Act 2002 A2002-55, s 2)

## 4 Amendment history

### Commencement

s 2 om 2001 No 44 amdt 1.2075

### Crown

s 3 om 1993 No 44 sch 2

### Interpretation for Act

s 4 def **authority** om A2002-56 amdt 3.34

def **conservator** am 1994 No 97 sch pt 1

def **determined fee** om 2001 No 44 amdt 1.2076

def **heritage objects register** sub 2001 No 44 amdt 1.2077

def **tribunal** om 1994 No 60 sch 1

### Interim registers—interpretation

s 5 am 2001 No 44 amdt 1.2078

### Heritage objects register

div 2.1 hdg (prev pt 2 div 1 hdg) renum R2 LA

### Content and effect of register and interim registers

sdiv 2.1.1 hdg (prev pt 2 div 1 sdiv A hdg) renum R2 LA

### Effect of interim registers

s 8 am 2001 No 44 amdt 1.2079

### Preparation, notification and submission to Minister

sdiv 2.1.2 hdg (prev pt 2 div 1 sdiv B hdg) renum R2 LA

### Criteria for preparation

s 9 am 2001 No 44 amdt 1.2080

### Public notification

s 12 am 2001 No 44 amdt 1.2081, amdt 1.2082; ss renum R2 LA  
(see 2001 No 44 amdt 1.2083)

### Notification of affected persons

s 13 am 2001 No 44 amdt 1.2084

### Revision of interim registers

s 14 am 2001 No 44 amdt 1.2085-1.2087; ss renum R2 LA (see  
2001 No 44 amdt 1.2088)

## Endnotes

4 Amendment history

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### **Submission of interim register to Minister**

s 15 am 2001 No 44 amdt 1.2089

### **Approval and disallowance**

sdiv 2.1.3 hdg (prev pt 2 div 1 sdiv C hdg) renum R2 LA

### **Approval**

s 16 am 2001 No 44 amdts 1.2090-1.2093

### **Disallowance**

s 18 om 2001 No 44 amdt 1.2094

### **Heritage objects—approvals and orders**

div 2.3 hdg (prev pt 2 div 3 hdg) renum R2 LA

### **Preliminary**

sdiv 2.3.1 hdg (prev pt 2 div 3 sdiv A hdg) renum R2 LA

### **Approvals**

sdiv 2.3.2 hdg (prev pt 2 div 3 sdiv B hdg) renum R2 LA

### **Offence—controlled activities**

s 20 am 1994 No 81 sch

### **Application to conduct controlled activities**

s 21 am 2001 No 44 amdt 1.2095

### **Notice of applications**

s 22 am 2001 No 44 amdt 1.2096, amdt 1.2097; ss renum R2 LA  
(see 2001 No 44 amdt 1.2098)

### **Objections**

s 23 am 1994 No 60 sch 1

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

s 30 am 1994 No 60 sch 1

### **Notice of decisions**

s 31 am 1994 No 60 sch 1

### **Orders**

sdiv 2.3.3 hdg (prev pt 2 div 3 sdiv C hdg) renum R2 LA

### **Aboriginal heritage**

div 2.4 hdg (prev pt 2 div 4 hdg) renum R2 LA

### **Preliminary**

sdiv 2.4.1 hdg (prev pt 2 div 4 sdiv A hdg) renum R2 LA

### **Protection of unregistered Aboriginal heritage**

sdiv 2.4.2 hdg (prev pt 2 div 4 sdiv B hdg) renum R2 LA

### **Damaging unregistered Aboriginal objects**

s 39 am 1994 No 81 sch

**Orders—Ministerial directions and declarations**

s 42 am 1994 No 60 sch 1

**Consultation in relation to registers**

sdiv 2.4.3 hdg (prev pt 2 div 4 sdiv C hdg) renum R2 LA

**Restricted information**

sdiv 2.4.4 hdg (prev pt 2 div 4 sdiv D hdg) renum R2 LA

**Restricted information**

s 44 am 1994 No 60 sch 1; 2001 No 44 amdt 1.2099

**Publication of restricted information generally**

s 46 am 1994 No 60 sch 1; 1994 No 81 sch; 2001 No 44 amdt 1.2100

**Access to restricted information**

s 47 am 2001 No 44 amdt 1.2101

**Custodianship of Aboriginal objects**

sdiv 2.4.5 hdg (prev pt 2 div 4 sdiv E hdg) renum R2 LA

**Custodianship of Territory-owned Aboriginal objects**

s 48 am 2001 No 44 amdt 1.2102, amdt 1.2103

**Administrative review**

div 2.5 hdg (prev pt 2 div 5 hdg) renum R2 LA

**Review of decisions**

s 49 am 1994 No 60 sch 1

**Public access to heritage information**

div 2.6 hdg (prev pt 2 div 6 hdg) renum R2 LA

**Information about administrative action**

sdiv 2.6.1 hdg (prev pt 2 div 6 sdiv A hdg) renum R2 LA

**Searching administrative records**

s 51 am 2001 No 44 amdt 1.2104

**Access to heritage registers**

sdiv 2.6.2 hdg (prev pt 2 div 6 sdiv B hdg) renum R2 LA

**Searching the heritage registers**

s 52 am 2001 No 44 amdt 1.2105

**Corporations—penalties**

s 53 om 1994 No 81 sch

**Determination of fees**

s 54 sub 2001 No 44 amdt 1.2106

**Approved forms**

s 55 am 1994 No 81 sch  
sub 2001 No 44 amdt 1.2106

## Endnotes

4 Amendment history

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### **Regulation-making power**

s 56 ins 2001 No 44 amdt 1.2106



## 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. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1994 No 97	28 February 1995
2	A2001-44	16 April 2002

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