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**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY**

**HERITAGE OBJECTS BILL 1991**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of Bill Wood  
Minister for the Environment, Land and Planning**

## HERITAGE OBJECTS BILL 1991

### Outline

The Heritage Objects Bill (the Bill) introduces the first A.C.T. legislation to protect objects in the public domain which have significance to the Territory. It covers natural and manufactured objects, including those of Aboriginal origin, but does not include objects which are intrinsic to a heritage place. The *Land (Planning and Environment) Bill 1991* provides for the listing of heritage places and related objects in the Heritage Places Register.

The Bill establishes a Heritage Objects Register which identifies heritage objects, includes a statement of their heritage significance, specifies requirements for their conservation and specifies any restricted information in relation to an Aboriginal object referred to in the Register.

The addition of objects to the Heritage Objects Register is effected by an interim variation process. This is the responsibility of the Heritage Council (the same Council as established under the *Land (Planning and Environment) Act 1991*). In preparing an interim Heritage Objects Register the Council is required to consult with the public and then notify the interim register in the *Gazette* and newspaper. Copies of the interim Register are to be made available for public inspection.

The Minister is responsible for approving an interim Heritage Objects Register submitted to him/her by the Heritage Council. The approved Register will then be made available for public inspection and, as it is a disallowable instrument for the purposes of the *Subordinate Laws Act 1989*, it must be tabled in the Legislative Assembly.

Any person who wishes to undertake an activity which is inconsistent with the Heritage Objects Register must obtain Ministerial approval. These applications must be publicly notified and open to objections from any person who may be affected by the approval of an application. Decisions on these applications must also be publicly notified and applicants will be able to appeal to the Administrative Appeals Tribunal for a review of the Minister's decision.

The Bill requires consultation with Aboriginal organisations in respect of Aboriginal Heritage objects. There are procedures for withholding information about Aboriginal objects from public notification and inspection where disclosure of that information may have an adverse affect on Aboriginal tradition or the heritage significance of the object.

Other provisions in the Bill are intended to protect unregistered Aboriginal heritage and enable the Minister to make orders and declarations relating to the protection of objects. In addition to applicant appeal rights, the Bill enables other parties to challenge administrative decisions in various circumstances.

Provisions of the Bill are detailed in the Attachment

### Financial Implications

This Bill has no revenue/cost implications in the 1991/92 financial year. It is anticipated that total funds of \$0.150m will be required in 1992/93 to establish and maintain the Heritage Objects Register. This estimate includes the cost of an additional administrative officer.

**ATTACHMENT**

**PART I - PRELIMINARY**

**Clauses 1,2,3,4 and 5** are formal requirements. They refer to the short title of the Bill, the commencement date(s) which will be notified in the Gazette, and provide an interpretation of certain terms used throughout the Bill.

**PART II - HERITAGE OBJECTS**

**Division 1 - Heritage Objects Register**

**Subdivision A - Content and effect of Register and Interim Registers**

**Heritage Objects Register-content**

**Clause 6** sets out the information which must be included for each entry in the Heritage Objects Register. There are 5 essential requirements, namely: a description of each item including whether it is of Aboriginal origin, its current location, conservation requirements and whether information has been restricted in relation to Aboriginal Objects.

The clause also excludes from the definition of Heritage Objects those which are intrinsic to, or an essential part of a place identified in the Heritage Places Register. The Heritage Places Register is established by the Land (Planning and Environment) Act. Notwithstanding this provision, the Heritage Council may transfer references to objects on the Heritage Places Register to the Interim Heritage Objects Register and, subject to approval, to the Heritage Objects Register. The aim is to ensure that objects of heritage significance are properly recorded whether they have value in their own right or in relation to a particular registered place.

**Heritage Objects Register - protection of registered items**

**Clause 7.** The intention of this clause is to ensure that no action is taken which is inconsistent with conditions set out in the Heritage Objects Register. This applies to the Territory, the Executive and the Minister, unless there is no "prudent and feasible" alternative. Even if this is the case, all "prudent and feasible" measures must be taken to comply with any requirement specified for the conservation of the affected object(s) while doing that act.

**Status of interim Registers**

**Clause 8** gives an interim Heritage Objects Register during the "defined period" the same status and protection as given to a Heritage Objects Register.

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

**Criteria for preparing an interim Heritage Objects Register**

**Clause 9** requires the Heritage Council, when preparing an interim Heritage Objects Register, to assess the heritage significance of a nomination to the Register in accordance with disallowable criteria determined by the Minister. At the same time the council is required to consider whether there is a need to take measures to conserve the heritage significance of a heritage object. Such measures must be "prudent and feasible".

**Ministerial directions and declarations - non disclosure of location**

**Clause 10.** The intention of this clause is to protect an object(s) recorded on the Heritage Objects Register by withholding details of its location. The clause also provides that the Minister can direct the Heritage Council to include or not include an entry of an Aboriginal object in an interim Heritage Objects Register. The Heritage Council must comply with any such direction of the Minister.

**Public consultation when preparing an interim Heritage Objects Register**

**Clause 11** requires the Heritage Council to seek comments from the public, where it considers this necessary, on proposed entries to the Heritage Objects Register unless the Minister has issued a direction under subclause 10(1) that it is not in the public interest to disclose the location of an object.

**Public notification of an interim Heritage Objects Register**

**Clause 12** requires the Heritage Council to advise the public through a notice in the Gazette and daily newspaper that copies of the interim Heritage Objects Register are available for public inspection. The notice will also need to state that the interim Heritage Objects Register notified will remain in effect for a specific period not exceeding one year, and that during that period, entries in the interim Register will be afforded the same protection as if the objects were included in the Heritage Objects Register.

The copy of the Register which is made available for public inspection is not to include any restricted information about Aboriginal objects.

The clause also provides that inclusion of an item in an interim Heritage Objects Register is not invalidated by the failure of the Heritage Council to take actions specified under this clause.

**Notification of the owner and possessor of objects on an interim Register**

**Clause 13** ensures that the Heritage Council notifies the owner and the possessor of each object which has been entered in the interim Register. The notice has to provide details of the entry and, in the case of Aboriginal objects, any information which is restricted.

#### **Revision of Interim Registers**

**Clause 14** enables the Heritage Council to amend an interim Heritage Objects Register by removing an entry from that Register, or to correct a formal error. The Heritage Council will publish a notice in the Gazette and a daily newspaper advising that copies of the revised interim Register are available for public inspection.

Where an interim Register is revised the Heritage Council must provide a notice specifying the nature of the revision to the owner and the possessor of each object affected. The notice must also advise that copies of the revised interim Register are available for public inspection.

The clause also provides that a decision to revise an interim Heritage Objects Register is not invalidated by the failure of the Heritage Council to take actions specified under this clause.

#### **Submission of interim Registers to the Minister for approval**

**Clause 15** requires the Heritage Council to submit an interim Heritage Objects Register to the Minister for approval following the expiration of 28 days after the interim Heritage Objects Register was notified in the Gazette.

### **Subdivision C - Approval and Disallowance**

#### **Approval of Interim Registers by the Minister**

**Clause 16** provides for the Minister to approve or refuse to approve an interim Heritage Objects Register as a whole or, alternatively, each provision in the interim Register. The Minister's decision must be by instrument in writing and specify the date of effect of approval and the place where the Register may be inspected or purchased.

#### **Date of effect**

**Clause 17** makes provision for the approved entries in the first interim Heritage Objects Register to become the Heritage Objects Register on a date specified by the Minister in subclause 16(2)

This clause also provides for variations to the Heritage Objects Register to come into effect on a date specified by the Minister under subclause 16(2).

#### **Disallowance of a Heritage Objects Register**

**Clause 18** makes an approval under clause 16 a disallowable instrument for the purposes of the Subordinate Laws Act 1989.

### **Division 3 - Heritage Objects - Approvals and Orders**

### **Subdivision A - Preliminary**

#### **Interpretation**

**Clause 19** provides definitions of the terms used in this Division

### **Subdivision B - Approvals**

#### **Offences relating to controlled activities**

**Clause 20** provides a penalty of \$5,000 for conducting a controlled activity without an approval.

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

**Clause 21** specifies the content for an application to conduct a controlled activity. Sub-clause 21(2) enables the correction of formal errors in applications before notification.

#### **Public Notification of applications to conduct controlled activities**

**Clause 22** requires the Minister to publicly notify applications to conduct a controlled activity in the Gazette and in a newspaper published and circulating in the Territory.

Alternatively, the Minister may require the applicant, at the applicant's cost, to arrange the public notification. This may include direct notification to persons specified by the Minister. If an applicant fails to comply with the Minister's requirement to arrange the public notification, the application is taken to have been withdrawn.

The regulations may prescribe applications or classes of application which are exempt from the public notification requirement of subclause 22(1).

#### **Objections from persons who may be affected by the approval of an application to conduct a controlled activity**

**Clause 23** enables any person who may be affected by approval of an application to lodge an objection within the prescribed period. Objections are to be made in writing to the Minister who is to give copies to the applicant, the Heritage Council and any relevant Aboriginal organisation. Copies of the objection will also be available for public inspection for a specified period.

The Minister may, on request by an objector, agree to exclude information from being made available which would identify the objector if it would not be in the public interest for that information to be published.

#### **Environmental Assessments and Inquiries**

**Clause 24** empowers the Minister to require an Assessment of, or establish a panel to conduct an Inquiry into, any aspect of an application.

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

Clause 25 places an obligation on the Minister to invite the Heritage Council and any relevant Aboriginal organisation to submit comments about an application within a prescribed period.

### **Further information from applicants**

Clause 26 empowers the Minister to require the applicant to provide further information within a period specified, being of not less than 28 days. An applicant may seek an extension of time of up to six months to respond to the request for additional information.

The information sought by the Minister can be provided by the applicant either orally or in writing. However, if the information is not supplied within the time allowed the application is taken to have been withdrawn.

### **Notifying the applicant of the decision on an application**

Clause 27 places an obligation on the Minister to advise the applicant by notice in writing of the outcome of the application. The notice provided to the applicant is to include the information specified in subclause 31(1).

If the Minister does not make a decision within the prescribed time the application is taken to have been refused.

### **Conditional approval of applications**

Clause 28 enables the Minister to specify conditions that will apply to an approval of an application. These conditions may include requirements that the controlled activity be conducted to the satisfaction of the Minister or Heritage Council, that it be conducted to a specified standard, or, before the activity commences, that further documentation be prepared or existing documentation be amended.

### **Relevant considerations when making a decision**

In making a decision in relation to an application Clause 29 places an obligation on the Minister to take account of any views submitted by objectors, the Heritage Council, relevant Aboriginal organisations, or the outcome of any preliminary assessment, report, Assessment or Inquiry conducted in relation to the controlled activity under the Land (Planning and Environment) Act 1991.

The Minister can not approve an application unless satisfied that there is no prudent and feasible alternative to the controlled activity and that the applicant will take all reasonable measures to conserve the heritage significance of the relevant object.

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

Clause 30 provides for an approval of a controlled activity to take effect seven days after the last day on which an application may be made to the Australian Capital Territory Administrative Appeals Tribunal for the review of the decision to approve the controlled activity.

Approval can take effect before the expiration of the seven day period mentioned if there have been no applications made to the Tribunal for a review of the decision. In such circumstances the approval takes effect from the day on which the Minister gives notice that no applications have been made to the Tribunal.

#### **Content of the notice of decisions**

**Clause 31** specifies the information to be provided to an applicant in the notice of approval or refusal to approve provided under clause 27.

The Minister is also obliged to provide copies of the notice to the Heritage Council, any relevant Aboriginal organisation and any person who, in accordance with clause 23, made an objection to the application.

The clause also provides that with the exception of notice of the date of effect of a decision and any conditions attached to the approval, the validity of a decision in relation to an approval is not affected by a failure to comply with the other notification requirements of this clause.

#### **Minor variations of an approval**

**Clause 32** enables the Minister to vary the approval on application by the owner or possessor of the object in relation to which an approval is in force, or on application by the lessee or occupier of a place where the object is located.

The Minister shall vary the approval if satisfied on reasonable grounds that the variation would not alter the nature of the controlled activity nor vary a condition of the approval, nor have an adverse effect on the heritage significance of the object, nor be detrimental to any person.

The Minister is obliged to provide written notification of a variation to the owner and possessor of the object and the Heritage Council.

#### **Formal variations - correction of errors**

**Clause 33** enables the Minister to correct a formal error in an approval and requires that the owner and possessor of the object and the Heritage Council be advised.

#### **Expiration of approvals**

**Clause 34** provides the circumstances in which in the Minister's opinion, an approval expires.

The clause also provides that anything done in accordance with an approval before its expiration is not affected by the expiration of the approval.

#### **Extension of time in which to complete a controlled activity**

**Clause 35** provides for the Minister to approve an extension of time for completion of a controlled activity on application by the owner or possessor of the object. Where an extension of time is approved, the Minister is obliged to advise the Heritage Council.



### **Revocation of approval in the event of fraud or misrepresentation**

**Clause 36** enables the Minister to revoke an approval if he/she is satisfied on reasonable grounds that it was obtained by fraud or misrepresentation.

### **Subdivision C - Orders**

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

**Clause 37** enables the Minister to make an order under Division 3 of Part VI of the *Land (Planning and Environment) Act 1991* in relation to a controlled activity.

The clause provides that a controlled activity under the *Heritage Objects Act 1991* is taken to be a controlled activity for the purposes of the orders provisions of the *Land (Planning and Environment) Act 1991*. Similarly, an approval under the *Heritage Objects Act 1991* is taken to be an approval for the purposes of paragraph 277(5)(b) of the *Land (Planning and Environment) Act 1991* in its application to an order.

In deciding whether to make an order, the Minister has to consider whether the controlled activity is likely to adversely affect the heritage significance of the object. An order made under this clause may also be expressed so as to bind a subsequent owner or possessor of the object that is the subject of the order.

### **Division 5 - Aboriginal Heritage**

#### **Subdivision A - Preliminary**

#### **Interpretation**

**Clause 38** provides definitions of the terms that are used in Division 5.

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

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

**Clause 39** makes it an offence to knowingly disturb, damage or destroy an unregistered Aboriginal object unless the object has been previously registered and the registration has been cancelled. Similarly it is an offence for a person to cause or permit those actions to occur.

The above provision does not apply if the person does not believe that the object is an Aboriginal object, or believes on reasonable grounds that the Minister has not made a declaration under clause 42(1)(b) that the object is not to be registered.

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

**Clause 40** enables the Minister to make orders under Part VI of the Land (Planning and Environment) Act 1991 to prevent activities taking place which may have an adverse effect on unregistered Aboriginal objects. Exemptions are made where the Minister has declared under clause 42(1)(b) that the object not be registered, or a previous registration has been cancelled.

The clause provides that, except for the exemptions mentioned above, the disturbance, damage or destruction of an unregistered Aboriginal object is a controlled activity for the purposes of Division 3 of Part VI of the Land (Planning and Environment) Act 1991.

The purpose of an order is to direct a person not to disturb, destroy, or damage an unregistered Aboriginal object. The order will be in force for the period specified in the order. This is not to exceed 35 days.

**Orders-reports by Heritage Council**

**Clause 41** requires the Heritage Council to report to the Minister on the heritage significance of the object within 21 days of an order being made under clause 40. There is an obligation on the Heritage Council to consult with and consider the views of the owner and possessor of the object, the lessee or occupier of the place where the object was discovered, the person who reported the discovery, and any relevant Aboriginal organisations.

**Orders-Ministerial directions and declarations**

**Clause 42** requires the Minister, within 14 days of receiving a report from the Heritage Council under clause 41, either to direct the Heritage Council to publicly notify an interim Heritage Objects Register under clause 12 that includes the object that is the subject of the report, or to declare that the object is not to be registered. The Minister is obliged to notify the persons mentioned in the clause if the object is not to be registered.

Before making the above decision, the Minister is obliged to consult with the persons mentioned in subclause 42(1)(b).

In making a decision under this clause, the Minister is required to consider the report of the Council and the views of those who have been consulted and to be assured that there is no prudent and feasible alternative to the activity which is the subject of the order.

Where the Minister decides to direct the Heritage Council to notify an interim Heritage Objects Register in respect of the object, the provisions of clauses 12 and 13, i.e. relating to public notification and the notification of affected persons, apply except that in respect of clause 12(1)(b), which includes a provision that 1 year is the maximum period of effect of an interim Heritage Objects register, a registration notified pursuant to the Minister's direction under clause 42 will have effect only for 3 months.

The clause also provides that the persons notified of a decision not to register an object must be given a statement of their appeal rights.

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

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

**Clause 43** places an obligation on the Heritage Council, where the Council is proposing to include or vary an entry on the interim Heritage Objects Register in respect of an Aboriginal object, to consult with any relevant Aboriginal organisation about the effect of that entry on Aboriginal tradition.

The clause does not apply where the Heritage Council is proposing to cancel a registration in the Heritage Objects Register for the purpose of registering it as an object intrinsic to a place in the Heritage Places Register established under the Land (Planning and Environment) Act 1991.

The clause also states that for the purpose of the clause, and this is particularly relevant in any consideration of the cancellation of an entry in the Heritage Objects Register, the term '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 - Aboriginal objects**

**Clause 44** enables the Minister to declare that information about an Aboriginal object which would have a significant adverse effect on Aboriginal tradition or the heritage significance of the object be restricted and not available to public scrutiny.

The clause states that the Minister shall not make any declaration in respect of restricted information without first consulting with and considering the views of the Heritage Council and any relevant Aboriginal organisation

Copies of any declaration made by the Minister under this clause must be given to the lessee and occupier of any land involved, the owner and the possessor of the object, the Heritage Council, and any relevant Aboriginal organisation.

Included with the declaration given to the persons listed in paragraph 44(3)(a) must be a statement of their appeal rights.

The clause also provides that the validity of a decision of the Minister in relation to a declaration concerning restricted information is not affected by the failure to comply with a number of the actions specified under this clause.

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

**Clause 45** requires the Territory, Executive, a Minister or a Territory Authority not to publish or allow to be published restricted information except in certain circumstances. Those circumstances are, where this Part of the Bill permits release of the information, where the person or body is satisfied that there are reasonable grounds that publication would not have an adverse effect on Aboriginal tradition or the heritage significance of the object, or in accordance with procedures prescribed by regulation.

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

**Clause 46** prohibits a person other than those mentioned in clause 45 from publishing or causing to be published, restricted information about an Aboriginal object. The only exception is where the Heritage Council, by notice in writing, approves the publication of the restricted information.

In deciding whether to approve publication of restricted information, the Heritage Council must be satisfied on reasonable grounds that the publication would not have a significant adverse effect on Aboriginal tradition, or the heritage significance of the relevant object.

An application to publish restricted information requires details of the nature of the restricted information, the reason for publication and the nature of the intended publication. If the Heritage Council refuses approval to publish it must give written notice of its decision to the applicant, including advice on appeal rights.

There is a penalty of \$500 for publishing restricted information without an approval.

### **Access to restricted information**

**Clause 47** places an obligation on the Heritage Council to approve an application for release of restricted information relevant to the conservation and use of a particular object. The circumstances in which this can happen are where an application is made by the owner or possessor of an object or, where an object is being offered for sale, to a person considering purchasing the object.

An application made under clause 46 must be in writing specifying the capacity in which the applicant is applying or that an object is being offered for sale and the applicant is considering the purchase of the object.

Where the Heritage Council publishes restricted information to a person under this clause, it shall give the person a statement of the effect of the declaration and a statement of appeal rights.

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

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

**Clause 48** requires the Minister to keep each Aboriginal object owned by the Territory in a repository which has been declared by the Minister in the Gazette as an "authorized repository". In making this declaration, the Minister must not publish restricted information in relation to an Aboriginal object. Further, the Minister must also be satisfied that the place is suitable for the conservation of Aboriginal objects owned by the Territory.

The Minister must not declare a place to be an authorised repository without first consulting with and considering the views of the Heritage Council and each relevant Aboriginal organisation about the proposed declaration.

The clause allows the Minister to revoke a declaration of a place as an authorised repository if he/she is no longer satisfied that the place is suitable for the purposes for which it was declared.

#### **Division 5 - Administrative Review**

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

Clause 49 prescribes the circumstances where applications may be made to the Administrative Appeals Tribunal for the review of a decision of the Minister. These circumstances are where a person, whose interests in relation to land may be affected, wants a review of the Minister's decision to declare that no Interim Heritage Objects register is to be notified in relation to a particular object and where an applicant wants a review of the Minister's decision to refuse to give approval or to give approval subject to conditions under subdivision B of Division 3.

Appeal rights are also provided to an applicant affected by a decision of the Minister to declare information to be restricted information, or by a refusal to permit the publication of restricted information.

The clause also provides that subsections (1), (2) and (3) of the clause 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**

Clause 50 lists the documents to which Subdivision A applies.

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

Clause 51 provides for public inspection of the documents in clause 50 during office hours. Exceptions are any part of a document which contains restricted information or information which the Minister declares under subclause (3) of this clause to be not available for public inspection.

A fee can be charged for a copy of a document or part of a document.

The Minister shall only make a declaration under subclause (3) that an application or a specified part of an application is not to be available for public inspection if the Minister is satisfied that the information relates to the personal or business affairs of a person, was supplied to the Minister in confidence and publication of that information would not be in the public interest.

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## **Subdivision B - Access to Heritage Registers**

### **Searching the Heritage Registers**

**Clause 52** provides for public to access to the Heritage Objects Register during office hours. Parts of the Register which contain restricted information will not be available for inspection. A fee is payable for a copy of a Register or part of a Register.

The clause also requires the Heritage Council, on receipt of an application accompanied by the determined fee, to give the applicant a certificate, in respect of an object not listed in the Heritage Objects Register or an interim Heritage Objects Register, stating whether the Minister has issued a direction to the Council under subclause 42(1)(a) to notify the object in an interim Heritage Objects Register or whether the object has been previously listed or proposed to be listed.

## **PART III - MISCELLANEOUS**

### **Corporations-penalties**

**Clause 53** provides for the payment of penalties by a Body Corporate which is convicted of an offence against this Act or the regulations. The penalty that the court may impose is a fine not exceeding five times the maximum amount that, but for this clause, the court could impose as a pecuniary penalty for that offence.

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

**Clause 54** enables the Minister to determine fees for this Act by notice in writing published in the Gazette.

### **Regulations**

**Clause 55** enables the Executive to make regulations which are not inconsistent with this Act.