



ENVIRONMENTAL DEFENDER'S OFFICE (ACT)

Heritage protection law

ACT Heritage Act 2004 — Fact Sheet # 9

The ACT Heritage Act 2004 in conjunction with Commonwealth legislation, notably the Environment Protection and Biodiversity Conservation Act 1999 (Cth), is intended to protect the ACT's heritage places and objects for future generations – those places and objects valued by communities for their historic, spiritual, cultural, ecological or evolutionary characteristics.

The Heritage Act creates the ACT Heritage Register, the ACT Heritage Council and a set of processes for assessing and protecting significant heritage places and objects.

What is heritage?

Heritage is generally understood to be unique places and objects that are valued by a community or cultural group that possess historic, religious, spiritual, cultural, ecological or evolutionary values.

How is heritage protected?

The *Heritage Act 2004* (ACT) (Heritage Act) provides for the recognition, registration and conservation of places and objects of natural and cultural significance in the ACT.

Heritage protection can be provided through the listing of places and objects on the Heritage Register.

What is the heritage register?

The Heritage Act creates the Heritage Register [Part 4]. The Register is a publicly available list of recognised heritage places and objects – natural, indigenous and built heritage – in the ACT. It also includes provisionally registered places and objects as well as those nominated for potential inclusion. The register contains information about each registered place or object including:

- its name and location or address;
- a statement about its heritage significance;
- whether it is permanently or provisionally registered;
- the date of registration of heritage protection;
- if it is provisionally registered, the period of registration;
- requirements for conservation of the place or object; and
- any heritage guidelines, heritage directions or enforcement orders relating to the place or object.

What is the Heritage Council?

The Heritage Act also creates the Heritage Council [Part 3] which plays a key role in administering the processes and components within the Act, including:

- maintaining the Heritage Register;
- placing items on to the heritage register;
- identifying, assessing, conserving and promoting places and objects in the ACT with natural and cultural heritage significance;
- providing public education on heritage issues; and



- advising the Minister on the management and promotion of heritage [s.18].

Membership of the Heritage Council includes the ACT Conservator of Flora and Fauna, the chief planning executive and nine other members, appointed by the Minister responsible for heritage, currently the Minister for the Arts and Heritage. Six of these members are selected for their expertise and three as public representatives [s.17].

How is a place or object registered?

The Heritage Act sets out the process for heritage registration [Part 6]. Any person can apply to the Heritage Council to nominate an item for provisional registration on the Heritage Register [s.28]. The nomination must be in writing and include a statement of reasons as to the heritage significance of the place or object [s.28]. The reasons should refer to the criteria set out in section 10 of the Heritage Act.

What is eligible to be registered?

In order for a place or object to be registered, it must have heritage significance. This means it must satisfy at least one of the criteria set out in the Heritage Act [s.10], including that it:

- demonstrates a high degree of technical and/or creative achievement;
- exhibits outstanding design or aesthetic qualities;
- is evidence of a distinctive way of life, taste, tradition, religion, land use or custom;
- is highly valued for strong or significant associations of a religious, spiritual, cultural, educational or social kind;
- has importance as part of local Aboriginal tradition;
- is a unique or rare example of its kind;
- is a notable example of a kind of place or object;
- has strong or special associations with persons or events that played a significant part in local or national history;
- is significant for understanding the evolution of a natural landscape heritage protection;
- provides information on the natural or cultural history of the ACT through its use as a research or teaching site or object;
- for places – it exhibits unusual richness or diversity of flora, fauna or natural landscapes;
- for places – it is a significant ecological community, habitat or locality.

How does the heritage registration process work?

The Heritage Council is responsible for considering heritage register applications against the criteria and deciding whether to provisionally register the place or object [s.32].

Where a place or object is under imminent threat or a quick decision is required for other reasons, for example, to avoid delays in a development project, an application can be made for an urgent decision on nomination. In such a case, the Heritage Council must use its best endeavours to decide, within 20 working days after it receives the application, whether or not to provisionally register the place or object nominated [s.29].

The Heritage Council must give public notice of its decision about provisional registration [s.34]. If provisional registration is granted the notice will also invite public comment on whether the item should be included permanently on the register. Comments must be provided to the Heritage Council within four weeks [s.37].

The Heritage Council must provide the Minister a report setting out its views about registration of the item and identifying issues raised in any public comments [s.38]. The Minister has 15 working days to direct the Heritage Council to give further consideration to issues raised in its report [s.39]. The Heritage Council may then carry out final registration of the place or object, provided it is satisfied that it has heritage significance [s.40].

Provisional registration provides immediate protection while further steps, such as public consultation, are being carried out. It lasts five months unless the Minister grants an extension [s.35]. Final registration of a heritage place or object provides ongoing legal protection.

Can decisions of the Heritage Council be challenged?

A wide range of persons have the right to seek review, in the ACT Civil and Administrative Tribunal (ACAT) of Heritage Council decisions to register, or not to register, a place or object, including the owner, occupier, lessee, nominator or any person who made comments during the public consultation period [ss.111, 114, and Schedule 1].

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Any person can apply by writing to the Heritage Council to have the heritage registration of a place or object cancelled [Part 7]. Prior to cancelling a registration, the Heritage Council is required to go through a similar process required to register a place or Heritage protection object, including public consultation. The Heritage Council can only cancel the registration of a place or object if satisfied, on reasonable grounds, that the place or object no longer has heritage significance [s.47(2)].

What is the effect of registration on development activity?

On most development applications relating to a registered, provisionally registered or nominated place or object the Heritage Council provides advice to the ACT Planning and Land Authority (ACTPLA) about the effect of the development on the heritage significance of that place or object and about ways of avoiding or minimising the impact of the development on the heritage significance of the place or object [ss.60 and 61].

The Heritage Council may advise that approval of the development should be subject to conditions to assist in the heritage conservation, for example, requiring compliance with an approved conservation management plan [s.61]. ACTPLA must consider that advice in approving or refusing the development application and the Heritage Council generally has the right to apply for review in the ACAT of the authority's decision.



What is a heritage direction?

The Minister has the power to give the owner or occupier of a place or object a heritage direction to do, or not to do, something to conserve the heritage significance of the place or object, for example, an order to undertake essential maintenance on a place [s.62]. The Minister can only do so on the Heritage Council's recommendation and must be satisfied that there is a serious and imminent threat to the heritage significance of the place or object and immediate protection is necessary [s.62]. Contravention of a heritage direction is an offence with a penalty of 1,000 penalty units, currently \$110,000 for an individual and \$550,000 for a corporation [s.65]. If the owner or occupier fails to comply with the direction, a person authorised by the ACT Government may enter the premises to do the things necessary to comply with the direction [s.66].

What is a heritage order and offence?

The Heritage Council, or any other person with the Court's leave, may apply to the ACT Supreme Court for a heritage order, which is a civil order similar to an injunction [s.68]. The order can require a person to do, or not to do something, in order to conserve the heritage significance of a place or object. The Court can only grant a heritage order if satisfied that a person has contravened, or is likely to contravene, certain offence provisions in the Heritage Act (such as contravening a heritage direction), and that an order is necessary to avoid material harm to the heritage significance of the the place or object [s.69].

The Heritage Act also makes it an offence to diminish the heritage significance of a place or object [s.74]. For instance, where a person is reckless as to the consequences of their conduct, the maximum penalty is 1,000 penalty units, currently \$110,000 for an individual and \$550,000 for a corporation. Authorised persons have significant powers of search and seizure to enforce the provisions of the Act [Part 14].

What is a heritage protection agreement?

The Heritage Act [Part 15] provides the Minister power to enter into heritage agreements with the owner of a heritage place or object, or another person where the owner consents [s.99]. The place or object need not be registered. Heritage agreements are made on the advice of the Heritage Council and may relate, for example, to:

- conservation of the place or objects;
- restrictions on the use of the place or object;

- provision of financial, technical or other professional advice or assistance needed for the conservation of the place or object; or
- availability of the place or object for public inspection [s.100].

Heritage agreements are binding on the parties [s.103] and the Heritage Council may arrange for the provision of financial, technical or other assistance for the conservation of a place or object subject to a heritage agreement [s.105].

How UfY Aboriginal heritage places and objects protected?

An Aboriginal heritage place or object may be registered and deregistered in the same way as any other heritage place or object. The one exception is that the Heritage Council has specific obligations to consult with each representative Aboriginal organisation, declared by the minister under the Heritage Act [s.14].

Special provisions in the Heritage Act apply to the discovery of unregistered Aboriginal places or objects [Part 8]. A person who discovers a place or object that he or she thinks is an unregistered Aboriginal place or object must report the discovery to the Heritage Council within five working days, unless that person has a traditional Aboriginal affiliation with the land where it was discovered. Failure to report the discovery is an offence [s.51]. The Heritage Council must arrange consultations with the relevant Aboriginal organisations and decide whether to provisionally register the place or object [s.53].

There are also specific offences relating to the damage of Aboriginal places or objects, irrespective of whether those places or objects have been registered [s.75].

How does the Commonwealth protect heritage?

There are a number of different types of heritage protection in Commonwealth legislation including:

- World heritage under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth);
- national heritage under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth);
- Commonwealth heritage under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth);
- overseas places of historic significance to Australia under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth);
- Indigenous heritage under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth);
- moveable cultural heritage under the *Protection of Movable Cultural Heritage Act 1986* (Cth); and
- historic shipwrecks under the *Historic Shipwrecks Act 1976* (Cth).

EDO (ACT)

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We advise on questions of Commonwealth and Australian Capital Territory law.

We offer a free telephone advice service on environmental law questions.

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Contact us:

*First Floor,
14 Childers Street
Canberra City
Ph: (02) 6243 3460
Fax: (02) 6243 3461
GPO Box 574
Canberra ACT 2601*

edoact@edo.org.au

Disclaimer

The law described in this Fact Sheet is current at 31 March 2010.

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