



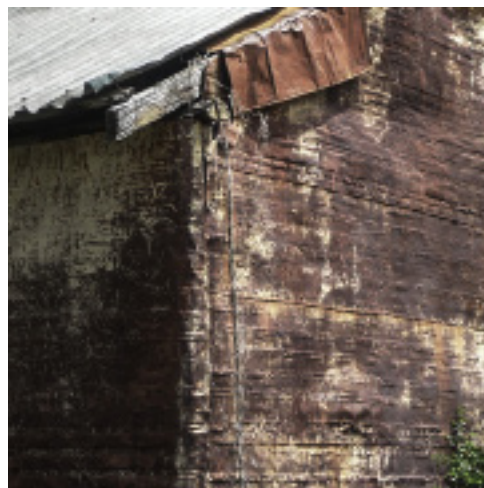
ACT
Government

HOW IS HERITAGE PROTECTION ENFORCED?



ONCE HERITAGE PLACES ARE LOST, THEY — AND ALL THEY REPRESENT — ARE LOST TO FUTURE GENERATIONS. TO HELP PROTECT HERITAGE PLACES AND OBJECTS, THE HERITAGE ACT 2004 (THE ACT) ESTABLISHES A NUMBER OF OFFENCES. THIS LEGISLATIVE PROTECTION BOTH PENALISES THOSE WHO BREACH THE ACT AND PROVIDES AN ESSENTIAL DETERRENT TO ANYONE WANTING TO DELIBERATELY DAMAGE THE ACT'S HERITAGE.





OFFENCES

Offence provisions include:

- prohibiting certain actions, including damage to the heritage significance of places and objects, including damaging an Aboriginal place or object
- setting processes and timeframes for reporting unregistered Aboriginal places and objects
- prohibiting publishing of restricted information about the location or nature of a place or object
- prohibiting the breaching of a heritage direction or repair damage direction.

Civil and criminal penalties apply to offences against the Act. The Criminal Code 2002 sets out general principles of criminal responsibility (including burdens of proof and general defences) and defines terms used in offences, including strict liability.

There are several tools available to help enforce the Act.

- Information or Warning Letters
- Infringement Notices
- Heritage Directions and Repair Damage Directions
- Heritage Orders
- Information Discovery Orders
- Prosecution

INFORMATION OR WARNING LETTERS

Authorised officers may issue information letters as a response to an initial complaint or a potential contravention of the law to raise awareness of the potential breach and seek to rectify the issue.

INFRINGEMENT NOTICES

Authorised officers can issue immediate fines of \$1000 to an individual or \$5000 to a corporation for damage to heritage places or objects or Aboriginal places or objects, regardless of whether they can be repaired.

Infringement notices offer a quicker, simpler and less costly alternative to prosecution of offenders through the courts. They are aimed at simpler, less serious cases where people:

- diminish the heritage significance of a place or object
- damage an Aboriginal place or object.

Infringement notices are issued for strict liability offences — that is, where there is no requirement to prove a fault element, such as intention or recklessness. It is sufficient to show that the individual was responsible for the prohibited act. For instance, it is a strict liability offence to exceed the speed limit whether or not the driver intended to drive faster than the speed limit.



HERITAGE DIRECTION — SECTION 62

The Heritage Council may give the owner, occupier, custodian or a person whose work affects the heritage place or object a heritage direction when there is an imminent threat to the heritage significance of a place or object. The place or object does not need to be nominated or registered on the ACT Heritage Register for a direction to apply.

Heritage Directions may include:

- carrying out essential maintenance on a place;
- avoiding adverse effects on a significant feature of a heritage place; and
- preventing development which affects the heritage significance of a place such as work without or not in accordance with a development approval under the Planning and Development Act 2007 or Heritage Act 2004 approval.

Heritage Directions only apply when there is an imminent threat to the heritage significance of the place or object which requires immediate protection measures.

The directions need to accord with any applicable heritage guidelines. Each direction is in force for a specified period, which may be extended by the Supreme Court.

It is an offence, incurring 1,000 penalty units (\$160,000 to an individual and \$810,000 to a corporation), to contravene a heritage direction. Failure to comply with a direction can be grounds for a Heritage Order made by the Supreme Court.

If the Territory has to carry out the requirements of a heritage direction, costs can be recovered from the person the direction was given to. There are some exemptions to this offence.

Heritage Council decisions to issue a direction are reviewable by the ACT Civil and Administrative Tribunal.

REPAIR DAMAGE DIRECTION — SECTION 67A

The Heritage Council may issue a direction to a person who owns or looks after or who does work that damages a heritage place or object to repair any damage to that place or object, if it can be repaired. This includes owners, occupiers, custodians and tradespeople.

The Heritage Council may give an extension of time to comply with a repair damage direction upon application from the person who has been given the direction.

It is an offence, incurring 500 penalty units (\$80,000 for an individual and \$405,000 for a corporation), to contravene a repair damage direction.

If the Territory has to carry out the requirements of a repair damage direction, costs can be recovered from the person the direction was given to. There are some exemptions to this offence.

Heritage Council decisions to issue a direction or refuse an extension of time to comply with a direction are reviewable by the ACT Civil and Administrative Tribunal.





HERITAGE ORDERS

The Heritage Council may apply to the Supreme Court for a Heritage Order when a person has contravened, is contravening, or is likely to commit certain offences, and the order is necessary to avoid harm to the heritage significance of a place or object.

The order may stop a person from carrying out certain actions or may require them to carry out an action, or both. The offences to which a heritage order may relate include:

- contravening a heritage direction;
- contravening a repair damage direction;
- damaging an Aboriginal heritage place or object;
- diminishing heritage significance of a heritage place or object;
- publishing restricted information without approval; and
- contravening an information discovery order to supply a document or information.

If a person has asked the Heritage Council to apply for a heritage order and the Council does not do so within a reasonable time, the Supreme Court may grant leave to the person to apply for a Heritage Order.

Costs may be awarded against an applicant for a heritage order:

- if the application is dismissed; or
- to compensate for loss or damage arising from the application if the offence did not happen.

INFORMATION DISCOVERY ORDERS

The Heritage Council may give a person an information discovery order if that person knows, or has a document about, information the Council needs to administer or enforce the Heritage Act.

The order identifies the person, explains why the information is required, and sets a time limit to provide the information to the Council. It advises it is an offence to intentionally contravene the order. The Heritage Council returns any documents as soon as practicable.

PROSECUTION

The Heritage Act 2004, Planning and Development Act 2007, Building Act 2004, Nature Conservation Act 2014 and Tree Protection Act 2005 include criminal offences that can be prosecuted by the ACT Government by referral of a brief to the Director of Public Prosecutions.

Alleged offences under the Criminal Code 2002 or the Crimes Act 1900 committed in the context of the legislation administered by the ACT Government are referred to ACT Policing for investigation.

FURTHER INFORMATION

For more information, please contact ACT Heritage on:

heritage@act.gov.au or 13 22 81.

Please note the material in this information sheet is provided for general information only, and should not be relied upon for the purpose of a particular matter covered by the Heritage Act 2004.

