



Northern Territory Government

Department of Infrastructure, Planning and Environment

Review of the *Heritage Conservation Act 1991*.

Briefing Notes.

Background.

The Northern Territory *Heritage Conservation Act* was drafted nearly fourteen years ago. In that time, the Territory has changed dramatically. Tourism has grown to become a major industry. Tourists now spend a total of 1026 million dollars annually in the Northern Territory. Environmental and cultural heritage tourism attracts the majority of visitors to the Territory. Statistics from the Northern Territory Tourist Commission show that 46% of all visitors are motivated to come and see natural heritage places and 17% to visit historic sites. Once in the Northern Territory, 54% of tourists visit Aboriginal art and cultural places, 50% visit natural heritage places and 45% tour historic sites. The conservation of natural and cultural heritage places is an important part of our developing tourist industry. The Territory must maintain effective heritage legislation to help conserve these places.

There are many other reasons for conserving our natural and cultural heritage. The community is becoming more interested in heritage conservation. More people are getting involved in community groups and historical societies. Researching family histories and memorabilia is fast becoming something of a national pastime. Developers are more interested in including the historic fabric of the old Territory into plans for the future.

What should be conserved?

Initial consultations with a wide range of community and business organisations preceded the drafting of the Heritage Conservation Act Review Public Discussion Paper. These organisations stressed the need to conserve the following categories of place:

- Indigenous heritage, including rock art sites, archaeological places and objects;
- Sacred sites (protected under the Northern Territory Aboriginal Sacred Sites Act) and sacred objects;
- 'Post contact' Indigenous heritage places, significant to Indigenous people since Europeans arrived;
- The relics and sites of World War II stand out as important remains of the struggle to defend Australia during the 1940s;
- The heritage of other cultures such as the Macassans and the large Chinese community in the Northern Territory;
- The Territory's unique built heritage;
- Areas and features of outstanding natural significance;
- Relics of early mining, pastoralism and exploration.

Why change the current Act?

The Northern Territory *Heritage Conservation Act* 1991 is increasingly unable to deliver on public expectations for the protection and conservation of the Territory's heritage. The original Act focused on protecting built heritage and the relics of the exploration, mining and pastoral era at the expense of other heritage places. Even with this focus, the current legislation was unable to save some significant buildings, including Hotel Darwin.

In addition, the passage of time has shown that the Act has a number of other deficiencies. These include:

- Ministerial consent is required by the owners of heritage places to perform any maintenance tasks.
- The current act has costly and time consuming administrative processes;
- The Act does not protect some categories of heritage place, including many places of significance to Aboriginal people, some WWII sites and lone graves;
- There are limited avenues for appeal; and
- The interpretation and terminology used in the Act is outdated.

The current Act does have some effective provisions. The blanket protection of Indigenous archaeological sites is an effective legislative mechanism. However, while it may be important to conserve these sites as significant to the Territory as a whole, they are not necessarily significant to Aboriginal custodians of the sites. Meanwhile, the Act has been unable to protect some places of heritage significance to Aboriginal people. These places include 'post-contact' sites such as the remains of the Rita Dixon Home on Bagot Road in Darwin. The problem is that the current legislation defines Indigenous heritage in terms of rock art sites and other archaeological sites 'pertaining to the past occupation by Aboriginal people'. This is despite the fact that large numbers of Indigenous people live in the Territory's major towns, and have many diverse histories to tell.

Another issue with the current legislation is that few places of natural heritage significance have been listed. In a landscape still supporting an ancient culture that emphasises the inseparability of place and people, the manner in which culture and the natural environment have shaped and continue to shape each other has not been captured in criteria for listing of heritage places.

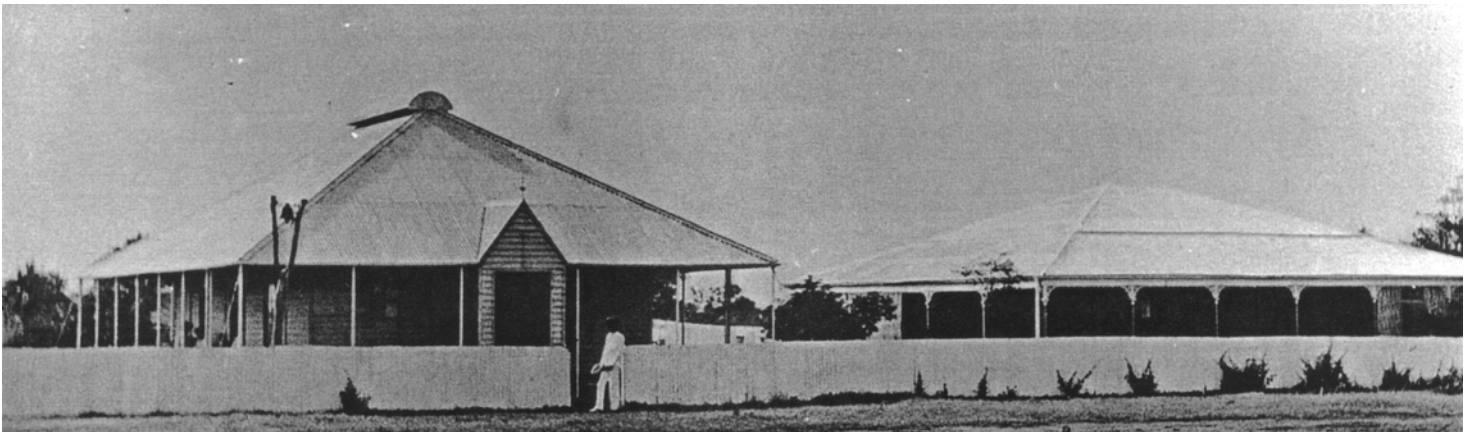


Figure 1: Wesleyan Church, Darwin. Circa 1900

Objectives of the Review.

The current Heritage Advisory Council has set the following objectives of the Review. The Council considers that the new Heritage Act should:

- Ensure the conservation and protection of Northern Territory heritage,
- Provide open and transparent processes,
- Maximise opportunities for community involvement and consultation,
- Engage Aboriginal people in the management of natural and cultural heritage,
- Provide incentives for conservation,
- Provide a consistent approach to heritage conservation across the range of Territory and other relevant legislation,
- Provide a balance of procedural prescription, policy direction and philosophical underpinning,
- Define the format of the Northern Territory Heritage Register and its uses,
- Maximise the legal certainty of appropriate protection for the Territory's heritage and declared places and objects, and
- Ensure heritage is recognised as having value and is incorporated in an appropriate way in the development of the Northern Territory.



Figure 2: Wesleyan Church, 1997.

The objectives of the *Review Process* are to:

- Maximise opportunities for public submissions to the review,
- Include as many views as possible in developing options for public consideration,
- Gain an understanding of national trends in natural and cultural heritage legislation, policy and practice,
- Develop a final report on the process of public consultation, and
- Develop a report making recommendations for a new *Heritage Conservation Act*.

Scope of the Review

These objectives require a broad-ranging review of heritage protection and conservation within the context of the future development needs of the Northern Territory. This needs to be considered within the context of the Government's vision of a Territory that has a strong knowledge-based economy, that values all of the assets of the Territory and provides opportunities for all Territorians to be involved with, and feel ownership of, the process of decision making.

What is currently protected and what should be protected?

There currently exists a range of legislative and administrative provisions at Territory and Commonwealth level to provide some form of protection for heritage places. The range of *things* protected might look something like the following table:

Natural:

- Landscapes
- Ecosystems
- Habitats
- Species
- Populations
- Individuals

▪ *Built (artificial):*

- Precincts
- Streetscapes
- Groups of sites
- Structures
- Relics

Moveable objects:

- Human remains.
- Artefacts
- Fossils

These items might be found on one of a number of Registers:

- The World Heritage Register,
- The Northern Territory Heritage Register (established under the current Act),
- The Sacred Sites Register under the *Northern Territory Aboriginal Sacred Sites Act*,
- The Register of the National Estate (maintained by the Commonwealth),
- The National Trust (NT) Register of Significant Places,
- The Register of Significant Trees (maintained by Greening Australia).



Figure 3: The former Wesleyan Church 2001

These registers sometimes overlap and provide varying degrees of protection and support for natural and cultural heritage. In addition to the registers, Commonwealth and Territory statutory law has an impact upon, provides protection for, or is in turn impacted upon, by heritage legislation itself. In attempting to identify what, precisely, heritage legislation should protect, the Review must consider all relevant legislation to identify what is already protected and how, what gaps occur and what synergies might be developed.

Relevant Acts (with linking legislation):

The review will need to consider the effects of the following acts on future NT Heritage legislation:

NT Legislation:

Building Act 1993 (currently under review).
Environmental Assessment Act 1982.
Fisheries Act 1988.
Liquor Act 1978.
Meteorites Act 1988.
Mining Act 1980.
Museum and Art Galleries Act 1999.
National Trust (NT) Act 1976.
Northern Territory Aboriginal Sacred Sites Act 1989.
Planning Act 1999.
Territory Parks and Wildlife Conservation Act 1980.
Valuation of Land Act .

Commonwealth Legislation:

Historic Shipwrecks Act 1976.
Aboriginal Land Rights (Northern Territory) Act 1977.
Australian Heritage Commission Act 1975
Environment Protection and Biodiversity Conservation Act 1999.

Proposed legislation which may effect Territory Heritage legislation:

Environment and Heritage Legislation Amendment Bill (No1) 2002
Australian Heritage Council Bill 2002
Australian Heritage Council (Consequential and Transitional Provisions) Bill 2002.

How should the items of significance for the Territory's heritage be identified and assessed?

There are currently two processes for identifying and assessing the Territory's heritage. One provides blanket protection to a range of places (called "prescribed archaeological places and objects") while the other requires a detailed process of nomination, assessment, recommendation and declaration. The former requires no community consultation while the latter provides for community and owners input at various stages. The second process might be further divided into two with the possibility of nominations of places to be protected by the community as well as by the Heritage Advisory Council of its own volition.

It may be desirable to broaden the means by which places and objects can be protected. This might include allowing the Legislative Assembly to "vote" places or objects or even living things to be protected. Other changes might include extending blanket protection to other classes of "things"; for example all objects associated with the original installation of the Overland Telegraph line, lone graves or WWII sites.

Who decides what should be protected?

Currently, the Minister is the final arbiter of what is protected and what isn't (subject of course to nomination or protection by prescription). In other States and Territories an independent body makes decisions based solely upon an assessment of heritage values.

The Heritage Advisory Council is the body established by Territory legislation for the purpose of protection of heritage, and while it does not make listing decisions, it is required to maintain the Register. Places or objects on that register are provided a relatively high degree of protection. The National Trust enters places onto its own register of its own volition, but this register has little or no formal protection. Both bodies advise the Minister, the first one formally, the second more informally.

Should decisions about providing protection to heritage places and objects (on all forms of land tenure) be vested in the Minister or an independent body capable of undertaking assessments of heritage value? If it is to be a Council, how should that Council be formed and what expertise should it have?

How should the Territory's heritage be protected?

There are currently several types of protection available for places or objects of significance under the Heritage Conservation Act. These include:

- the complete protection of pre- and proto- historic archaeological places and objects mentioned above (example: Macassan or Aboriginal archaeological site),
- interim conservation orders (90 days) for things that may be found to have heritage value and are under threat, and
- declaration as a Heritage Place or Object (example: Darwin East Point Fortifications.)

There is no automatic "interim protection" provided to heritage places, even when they are being assessed for their heritage significance. In other states, interim protection is extended to places during the assessment process, when they have been found to meet a prima facie test of their heritage value. The provision of "interim listing" may, for example, have provided legal protection for the Hotel Darwin, which was proposed to be have been declared, but had not reached that final state prior to being demolished.

Penalties are attached to convictions for inappropriate dealings with any of the three forms of protection, although these could be said to be modest on a national scale. Given the relatively small population of heritage places and objects available in the Territory it could be argued that penalties here should in fact be greater than elsewhere in the Commonwealth.

On the other hand, there have been consistent calls to develop a scheme of incentives to encourage the community to conserve heritage. A range of incentives have been introduced, but additional schemes may engender wider community involvement in heritage conservation generally.

The review will consider the most effective means of initiating heritage conservation strategies at a grass roots level. Comparison with other jurisdictions may provide best practice strategies for the implementation of schemes to ensure conservation of heritage places and preservation of heritage values.

How should protected things be administered?

The Review will consider administrative issues associated with the current Act. It will also consider the organisational and administrative implications of any legislative amendments. The Review will also take into account the degree to which the Act specifically prescribes administrative procedures. The nature of the "Register", the degree, timing and nature of community involvement and comment on the process of nomination and protection of a heritage place and access to the Council will all be considered in the Review.

Review Milestones and Timeframes.

The review process will have the following parts:

- Initial meetings with key stakeholders and regular users of the current legislation.
- Engaging a consultant to ascertain best practice in heritage legislation and policy in other jurisdictions.
- Drafting an options paper for community comment.
- A community consultation process to ascertain the communities views on heritage conservation and ideas for a new heritage act.
- Final reports and recommendations for consideration by Minister and Cabinet.
- Drafting of new legislation if so required.
- Public scrutiny of resulting Draft Bill.

The timeframe for the review including public consultation, final report and legislation preparation is 18 months from 3 Feb 2003 or sooner if possible.

Prepared by:

Richard Woolfe
Review Officer, Heritage Conservation Act Review.
Department of Infrastructure, Planning and Environment.
4 March 2003.

Richard.woolfe@nt.gov.au
Phone: 08 89244051