

Celebrating heritage in a growing city

ACT Heritage Jurisdictional Review

Final Report – Appendices A-D

July 2023



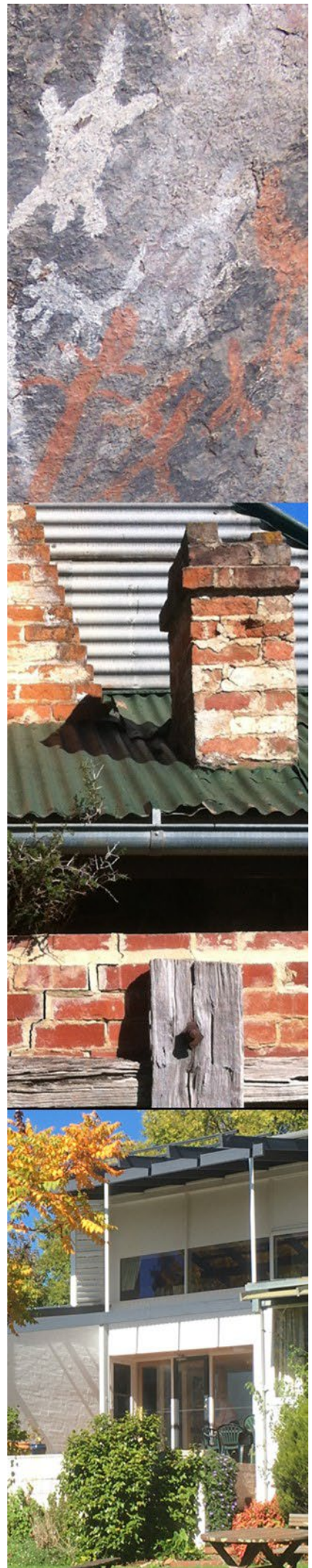
SIMPLIFYING GOVERNMENT

In association with

new insights
AUSTRALIAN PTY LTD



and Paul Knight



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Acknowledgements

Stenning & Associates thanks all stakeholders consulted for their input, together with ACT Heritage staff for their invaluable assistance.

Stenning & Associates acknowledge the Traditional Owners of country throughout Australia and recognise their continuing connection to land, waters and culture. We pay our respects to their Elders past, present and emerging.

Consulting Team

The key members of the consulting team that undertook this review were:

Mr Nick McShane & Ms Kim Sylow	Stenning & Associates
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Mr Paul Knight	
Ms Lynn Mason, AM	
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Front cover graphics provided by ACT Heritage – montage of Aboriginal rock art, Yarralumla Woolshed Shearers' Quarters and the Manning Clark House.



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Appendix A: Stakeholders consulted

Name	Organisation
Minister Rebecca Vassarotti	ACT Minister for Heritage
Paula Sutton	Minister's adviser
Ben Ponton	Director General, EPSDD
Geoffrey Rutledge	Deputy Director General, EPSDD
Bren Burkevics	Executive Group Manager, EPSDD
Di Bensley	ACT Heritage
Gabrielle Caddy	ACT Heritage
Euroka Gilbert	ACT Heritage
Jasmine Glover	ACT Heritage
Stuart Jeffress	ACT Heritage
Anne Miller	ACT Heritage
Fiona Moore	ACT Heritage
Meagan Russell	ACT Heritage
Mary Clare Swete Kelly	ACT Heritage
Jackson Taylor-Grant	ACT Heritage
James Bennett	ACT Planning
Richard Davies	ACT Planning
Alix Kaucz	ACT Planning
Daniel Santosuosso	ACT Planning
Dominic Riches	ACT Planning
John Pooley	City Renewal Authority
Lucy Wilson	City Renewal Authority
Jim Corrigan	DDG, Transport Canberra and City Services
Brendon Moyle	ACT Office for Aboriginal and Torres Strait Islander Affairs
Wally Bell	Buru Ngunnawal Aboriginal Corporation (Representative Aboriginal Organisation)

Name	Organisation
Paul Girrawah House	Mirrabee (Representative Aboriginal Organisation)
Bradley Bell	Dhawura Ngunnawal Caring for Country Committee
Caroline Hughes	Dhawura Ngunnawal Caring for Country Committee
Mary Mudford	Dhawura Ngunnawal Caring for Country Committee
Stephen Mudford	Dhawura Ngunnawal Caring for Country Committee
Duncan Marshall	Chair, Heritage Council
Catherine Skippington	Deputy Chair, Heritage Council
Kate Clark	Heritage Council
Nick Holt	Suburban Land Agency
Petra Oswald	Suburban Land Agency
Andrew Coleman	Heritage New Zealand Pouhere Taonga
Erin Dampney	Australian Department of Climate Change, Energy, the Environment and Water
Harriet Jobson	Environment and Heritage – Heritage NSW, Department of Planning and Environment (NSW)
Catherine Chambers	Environment and Heritage Policy and Programs, Department of Environment and Science (Qld)
Callum Crofton	Heritage and Property Services, Department of Planning, Lands and Heritage (WA)
Jenni Skyner	Heritage and Property Services, Department of Planning, Lands and Heritage (WA)
David Steinberg	Heritage Branch, Community Participation and Inclusion, Territory Families, Housing and Communities (NT)
Sam Kidman	Heritage NSW, Environment and Heritage Division, Department of Planning and Environment
Harry Webber	Heritage Services, First Peoples – State Relations Group, Department of Premier and Cabinet (Victoria)
Leonard Blazeby	Heritage South Australia, Environment, Heritage and Sustainability, Department for Environment and Water
Jamin Moon	Heritage Strategy, Information and Registry, First Peoples – State Relations, Department of Premier and Cabinet (Victoria)
Andrew Roberts	Heritage Tasmania, Department of Natural Resources and Environment

Name	Organisation
Steven Avery	Heritage Victoria, Planning, Planning Implementation & Heritage, Department of Transport & Planning (Victoria)

Note: the following Representative Aboriginal Organisations were invited to participate in consultations, but did not do so:

- Adrian Brown (King Brown Tribal Group)
- James Mundy (Ngarigu Currawong Clan).

The following members of the Dhawura Ngunnawal Caring for Country Committee did not attend the group consultation:

- Fred Monaghan
- Karen Denny
- Kylee Shea
- Nevada Brown
- Richie Allen
- Roslyn Brown
- Wally Bell.

Appendix B: Aboriginal Heritage Best Practice Assessment

The following best practice standards for Indigenous cultural heritage legislation have been extracted from the *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia*.

The assessment below reflects a desktop assessment of the extent to which the ACT meets the *Dhawura Ngilan* best practice standards. It considers how ACT legislation compares to that in other jurisdictions to the extent that the *Dhawura Ngilan* refers to other jurisdictional legislation. A traffic light approach is taken to indicate if the ACT meets, partially meets or does not meet the standards.

Note that *Dhawura Ngilan* refers to Indigenous Cultural Heritage (ICH). In this assessment, that term has been replaced with Aboriginal Cultural Heritage (ACH) for consistency with the rest of this document.

Heritage Governance and Administration

Best Practice Standard	ACT Situation	Best Practice Assessment
ACH legislation identifies a legitimate 'representative organisation' capable of exercising an Indigenous community's rights and responsibilities with respect to their ACH	<p>Legislation</p> <p><u>Representative Aboriginal Organisations</u></p> <p>Under section 14 (1) of the <i>Heritage Act 2004</i>, representative Aboriginal organisations are entities declared by the Minister. The Minister must first invite expressions of interest from entities willing to be declared a representative Aboriginal organisation. The Minister must then give notice of said invitation, and then declare entities to be representative Aboriginal organisations.</p> <p>The Minister may also declare criteria for whether an entity should be declared to be a representative Aboriginal organisation in the form of a disallowable instrument, after consulting the Heritage Council and affiliated Aboriginal People.</p> <p><u>Assessing heritage significance</u></p> <p>In assessing the heritage significance of reported Aboriginal places and objects, the Council must consult with each</p>	<p>Partially meets best practice definition</p> <p>Representative Aboriginal organisations are declared and determined by the Minister. While the criteria for determining them may be made in consultation with relevant Aboriginal entities, it is not required. These organisations can provide advice in a range of instances relating to Aboriginal places and objects.</p> <p>The Heritage Council is under no legislative obligation to act in accordance with the advice of representative Aboriginal organisations related to works development or land development.</p> <p>Under the <i>Heritage Act 2004</i> the Heritage Council must consider the views of the RAOs in restricted information</p>

Best Practice Standard	ACT Situation	Best Practice Assessment
	<p>representative Aboriginal organisation (s 53 <i>Heritage Act 2004</i>).</p> <p><u>Registration</u></p> <p>Representative Aboriginal organisations are consulted by the Heritage Council on matters relating to provisional registration, registration and cancellation of registration (ss 31, 45 <i>Heritage Act 2004</i>).</p> <p><u>Tree protection</u></p> <p>Representative Aboriginal organisations have the power to advise and, in some instances, direct the Conservator in relation to Aboriginal tree protection (Part 10A <i>Heritage Act 2004</i>).</p> <p><u>Declarations of restricted information</u></p> <p>In declaring restricted information, the Heritage Council must consult and consider the views of each representative Aboriginal organisation about the proposed declaration (s54 (4) <i>Heritage Act 2004</i>).</p> <p><u>Guidelines</u></p> <p>In making guidelines to promote the effective conservation of Aboriginal places and objects the council must give consultation notice to each RAO. If the RAO makes written comment on the guidelines during the public consultation period, the council must consider it.</p> <p>Policy/Guidelines/Practices:</p> <p>There are no relevant policies, guidelines or practices.</p>	<p>declarations, and the Conservator of Flora and Fauna may need to follow directions of RAOs related to tree protection.</p>
<p>The Indigenous community decides who represents them, consistent with FPIC</p>	<p>Legislation</p> <p>As per section 14 (2) of the <i>Heritage Act 2004</i>, the Minister must consult Aboriginal People who the Minister is satisfied have a traditional affiliation with the land, before determining the criteria for representative Aboriginal organisations. This set</p>	<p>Does not meet best practice definition</p>

Best Practice Standard	ACT Situation	Best Practice Assessment
	<p>of criteria is not required to exist however, and the Minister can declare representative Aboriginal organisations independently.</p> <p>Section 17(3) of the <i>Heritage Act 2004</i> requires a public representative who adequately represents, in opinion of the Minister, the Aboriginal community.</p> <p>Policy/Guidelines/Practices:</p> <p>There are no relevant policies, guidelines or practices.</p>	<p>The Minister has the opportunity to include Aboriginal People affiliated with the land in determining representative Aboriginal organisations, but is not required to do so. The representative member in the Heritage Council is appointed on the opinion of the Minister.</p>
<p>The Indigenous representative organisation engaging with proponents and assessing development proposals are performing a statutory function under the relevant jurisdiction's project assessment and approval regime</p>	<p>Legislation</p> <p><i>Heritage Act 2004</i></p> <p><u>Statement of Heritage effect</u></p> <p>Under section 61G of the <i>Heritage Act 2004</i>, persons or entities proposing activities that may damage an Aboriginal place or object can submit a plan (statement of heritage effect). This must then be approved by the Council before the activity can begin. They do not need to do so if they are engaging in conduct in accordance with development approval, an excavation permit or a conservation management plan (s76(2) <i>Heritage Act 2004</i>).</p> <p><u>Conservation Management Plans</u></p> <p>Conservation management plans can be submitted by persons or entities responsible for places or objects with heritage significance for their conservation (pt 11 <i>Heritage Act 2004</i>). The Heritage Council must assess these and may approve them if satisfied that they are adequate for conservation and responsible management of the place or object. Actions and development in accordance with conservation management plans are exempt from the offences in the <i>Heritage Act 2004</i> (section 76 of the <i>Heritage Act 2004</i>).</p>	<div data-bbox="1294 560 2054 624" data-label="Text"> <p>Does not meet best practice definition</p> </div> <p>There is no statutory function for Indigenous representative organisations assessing development proposals or engaging with proponents.</p> <p>However, there are administrative procedures in place that require consultation with representative Aboriginal organisations.</p>

Excavation:

Under section 61E of the *Heritage Act 2004* a person or entity may make an application to the Heritage Council for permission to carry out archaeological excavation work at or near an Aboriginal place or object. This includes details addressing the proposed excavation work and the measures that will be adopted to reduce the risk of damage or diminishment of heritage significance.

Advice to the Planning and Land Authority

Under section 60 of the *Heritage Act 2004* the Council may give advice to the Planning and Land Authority relating to developments that may affect heritage significance of registered articles.

Planning and Development Act 2007

The Planning and Land Authority is required to refer development applications in the impact track to the Heritage Council (s 148; reg 26(1)(f)). Where a development application is referred, the Heritage Council is required to provide advice in relation to it within 15 days (s 149). There is no provision which renders the Council's advice as binding on the Planning and Land Authority, although there are limited circumstances where it can act inconsistently to that advice (s 151).

Impact track development proposals must submit an environmental impact statement unless an exemption is granted. This is required by part 4.2 of the *Planning and Development Act 2007*.

The Planning and Land Authority may also require an applicant seeking development approval to enter a heritage agreement with the Heritage Council. They may also do so if the development relates to a place registered or nominated for registration under the *Heritage Act 2004*. This is established under section 165 (2)(m) of the *Planning and Development Act 2007*.

Best Practice Standard	ACT Situation	Best Practice Assessment
	<p>The Heritage Council may also request a review of the decision of the Planning and Land Authority to approve a development application. This request is made to the ACT Civil and Administrative Tribunal (ACAT). They may only apply for a review if they made a representation about the proposal in the application under section 156 of the <i>Planning and Development Act 2007</i>.</p> <p>Policy/Guidelines/Practices:</p> <p>Although the Heritage Council's advice in relation to a development application is non-binding, in practice it is almost always followed by the Planning and Land Authority.</p> <p>The <i>ACT Heritage Council Cultural Heritage Reporting Policy</i> sets out the process for cultural heritage assessments which inform the advice that they provide in relation to impact track development applications. Cultural heritage assessments require consultation with Representative Aboriginal Organisations.</p>	
<p>The Indigenous representative organisation engaging with proponents and assessing development proposals are adequately resourced to perform this function</p>	<p>Legislation</p> <p>The <i>Heritage Act 2004</i> does not expressly provide for any indigenous representative to engage with proponents or assess development proposals.</p> <p>However, Indigenous representatives are involved in development proposals to the extent that there are statutorily reserved seats on the Heritage Council for them, and the Heritage Council provides advice on impact track DAs.</p> <p><u>Planning and Development Act 2007</u></p> <p>The Planning and Land Authority is required to refer development applications in the impact track to the Heritage Council (s 148; reg 26(1)(f)). Where a development application is referred, the Heritage Council is required to provide advice in relation to it within 15 days (s 149).</p>	<div data-bbox="1294 885 2040 949" style="background-color: red; color: black; padding: 5px;">Does not meet best practice definition</div> <p>Representative Aboriginal organisations are not funded under the Act.</p>

Best Practice Standard	ACT Situation	Best Practice Assessment
	<p>Policy/Guidelines/Practices:</p> <p>While there is no statutory function for RAOs in assessing development proposals, they are indirectly consulted via the <i>ACT Heritage Council Cultural Heritage Reporting Policy</i>.</p> <p>Where the Council provides advice on development applications, this advice is informed by existing heritage requirements and the cultural heritage assessment process. This process requires consultation with representative Aboriginal organisations.</p> <p>The <i>Internal Assessment Procedures – Aboriginal Heritage</i> document includes confirmation that consultation with RAOs has occurred for development applications, and that reasonably opportunity for participation has been provided, and that RAO views on appropriate management have been established.</p>	
Resources to facilitate the repatriation of objects are provided to support the operation of these provisions	<p>Legislation</p> <p>The <i>Heritage (Representative Aboriginal Organisations) Declaration 2006</i> expressly states that “There is no provision for organisations to be remunerated for consultation under the Act”</p> <p>Policy/Guidelines/Practices:</p> <p>There are no relevant policies, guidelines or practices.</p>	<p>Does not meet best practice definition</p> <p>The <i>Heritage Act 2004</i> does not provide resourcing for the repatriation of objects.</p> <p>There are no relevant policies, guidelines or practices.</p>
Adequate resources must be allocated to enable the implementation of processes and protocols designed to ensure that IAR identified in country are left in country.	<p>Legislation</p> <p>There is no express provision for an ACH fund in ACT legislation.</p> <p>Grants can be and are issued by the ACT Government for Aboriginal Heritage purposes.</p>	<p>Does not meet best practice definition</p> <p>There are no provisions to allocate resources, and there is no reference to IAR.</p>

Best Practice Standard	ACT Situation	Best Practice Assessment
	Policy/Guidelines/Practices: There are no relevant policies, guidelines or practices.	

Heritage Policy

Best Practice Standard	ACT Situation	Best Practice Assessment
There is a comprehensive definition of ACH	Legislation Section 3 of the <i>Heritage Act 2004</i> highlights three key concepts that relate to ACH: <ul style="list-style-type: none"> • Aboriginal places and objects • Places and objects that have cultural heritage significance • Places and objects that have natural heritage significance. <u>Aboriginal places and objects (s 9)</u> The <i>Heritage Act</i> refers to Aboriginal places and objects as inclusive of natural or manufactured objects, or sites, buildings, settings and those features associated with the aforementioned articles, associated with Aboriginal People through Aboriginal tradition. Aboriginal tradition extends to the customs, rituals, institutions, beliefs and general way of life of Aboriginal People. <u>Cultural heritage significance (s 10B)</u> Cultural heritage significance refers to places or objects that are created, modified or associated with human activity, and meet the criteria. <u>Natural heritage significance (s 10A)</u>	<div>Meets best practice definition</div> The <i>Heritage Act 2004</i> defines ACH using three related concepts: <ul style="list-style-type: none"> • Aboriginal places and objects. • Places and objects that have cultural heritage significance. • Places and objects that have natural heritage significance.

Best Practice Standard	ACT Situation	Best Practice Assessment
	<p>Natural heritage significance refers to places or objects that form part of the natural environment and have heritage significance due to its scientific value.</p> <p><u>Heritage significance (s 10)</u></p> <p>To have heritage significance, places and objects must meet 1 or more of the following criteria:</p> <ul style="list-style-type: none"> • Importance to the course or pattern of ACT's cultural or natural history • Features uncommon, rare or endangered aspects of the ACT's cultural or natural history • Potential to yield important information that will contribute to understanding the ACT's cultural or natural history • Importance in demonstrating principal characteristics of a class of cultural or natural places or objects • Importance in exhibiting characteristics valued by the ACT community or a group in the ACT • Importance in demonstrating high degree of creative or technical achievement for a period • Has strong or special association with ACT community or cultural group for social, cultural or spiritual reasons • Special association with life or work of a person or people important to the history of the ACT. <p>Policy/Guidelines/Practices:</p> <p>The ACT Heritage Council's <i>Heritage Assessment Policy</i> provides further explanation of the heritage significance criteria under s 10 of the <i>Heritage Act 2004</i>. This includes to provide examples of Aboriginal places and objects which are likely fulfil the heritage significance criteria.</p>	

Best Practice Standard	ACT Situation	Best Practice Assessment
There are definitions of key terms such as 'Aboriginal or Torres Strait Islander cultural heritage' or 'Aboriginal and Torres Strait Islander place' that recognise that an essential role of ACH is to recognise and support the living connection between Indigenous Peoples today, our ancestors and our lands	<p>Legislation</p> <p>Section 9 of the <i>Heritage Act 2004</i> defines Aboriginal objects and places as those associated with Aboriginal People because of Aboriginal tradition. This includes the ongoing customs, rituals, institutions, beliefs or general way of life of Aboriginal People.</p> <p>The meaning of heritage significance, as outlined in section 10 of the <i>Heritage Act 2004</i>, extends to places and objects with importance in demonstrating principle aesthetic characteristics valued by the ACT community and cultural groups, and those that have strong and special associations with the ACT community and cultural groups (ss. 10 (d), (e),(g))</p> <p>Policy/Guidelines/Practices:</p> <p>There are no relevant policies, guidelines or practices.</p>	<p>Partially meets best practice definition</p> <p>The <i>Heritage Act 2004</i> makes use of a broad definition of Aboriginal objects and places. This works to include Aboriginal culture and heritage.</p> <p>It does not however, directly recognise and support the living connection (though some aspects of the heritage significance definition may indirectly work to do so).</p>
There are definitions of ACH within legislation that recognise the role of 'tradition' as it is understood today	<p>Legislation</p> <p>Section 9 (2) of the <i>Heritage Act 2004</i> refers to Aboriginal tradition as customs, rituals, institutions, beliefs or general way of life of Aboriginal People. This is used to inform the definition of Aboriginal objects and places in section 9(1) of the <i>Heritage Act 2004</i>, in turn impacting the legislative protections available.</p> <p>Policy/Guidelines/Practices:</p> <p>The ACT Heritage Council's <i>Heritage Assessment Policy</i> contains a glossary which defines tradition as 'the handing down of statements, beliefs, legends, customs, etc. from generation to generation, especially by word of mouth or by practice.</p>	<p>Meets best practice definition</p> <p>The <i>Heritage Act 2004</i> contains a broad definition of Aboriginal tradition to recognise its ongoing role.</p>
	Legislation	

Best Practice Standard	ACT Situation	Best Practice Assessment
<p>The definition of IAR incorporates local views around matters such as appropriate care of material containing human hair and other human components</p>	<p>There is no definition of IAR in the <i>Heritage Act 2004</i>.</p> <p>Aboriginal objects under the ownership of the ACT must be kept in a repository (s53A <i>Heritage Act 2004</i>). The repository must be, on the opinion of the minister, suitable for the conservation of said objects (s53B (3) <i>Heritage Act 2004</i>).</p> <p>Policy/Guidelines/Practices:</p> <p>There are no relevant policies, guidelines or practices.</p>	<p>Does not meet best practice definition</p> <p>There is no definition of IAR in the legislation, nor does it refer to appropriate care of material containing human hair and other human components.</p> <p>Aboriginal objects in the ownership of the ACT must be in an area suitable for their conservation, in the Ministers opinion.</p>
<p>The ACH legislative regime acknowledges the role of Indigenous tradition as understood today in the definition of secret or sacred for these purposes</p>	<p>Legislation</p> <p>The <i>Heritage Act 2004</i> does not expressly acknowledge the role of indigenous tradition in definition of secret or sacred objects.</p> <p>It does provide for the restriction of information to the public that may have a substantial adverse effect on an Aboriginal place or object, or its heritage significance (pt 9 <i>Heritage Act 2004</i>). Aboriginal places and objects are defined in section 9 of the <i>Heritage Act 2004</i> as those associated with Aboriginal People through Aboriginal tradition. Aboriginal tradition includes the customs, rituals, institutions, beliefs or general way of life of Aboriginal People.</p> <p>Policy/Guidelines/Practices:</p> <p>There are no relevant policies, guidelines or practices.</p>	<p>Does not meet best practice definition</p> <p>The <i>Heritage Act 2004</i> does not acknowledge the role of indigenous tradition as related to the definition of secret or sacred objects. It indirectly extends to this definition, but not intentionally nor expressly.</p>
<p>ACH consideration must be integrated as early as possible into development proposal assessment time frames to ensure adequate time to consider a proposal</p>	<p>Legislation</p> <p><u>Land development</u></p> <p>Development of Territory Land is managed under the Territory Plan, established under section 46 of the <i>Planning and Development Act 2007</i>. This document contains relevant policies and zoning requirements. The Heritage Council must first be consulted with before any variations are made to this</p>	<p>Does not meet best practice definition</p>

Best Practice Standard	ACT Situation	Best Practice Assessment
	<p>statutory document, as per 61(b)(iv) of the <i>Planning and Development Act 2007</i>. The legislation does not expressly provide for the consideration of any representative Aboriginal party input.</p> <p><u>Discretionary elements</u></p> <p>The Planning and Land Authority may require applicants to enter into a heritage agreement with the Heritage Council. They are required to do so if the area that the application relates to is registered or nominated for registration under the <i>Heritage Act 2004</i>.</p> <p><u>Approvals</u></p> <p>Development approvals that are likely to have adverse impacts on the heritage significance of a place or object require an Environmental Impact Statement. Applications must also be referred to the Heritage Council if they may have an impact on the environment of the ACT (impact track developments).</p> <p><u>Revocation</u></p> <p>Under section 189(1)(b) of the <i>Planning and Development Act 2007</i>, the Planning and Land Authority can revoke development approval if the applicant is convicted of an offence under the <i>Heritage Act 2004</i>.</p> <p><u>Policy/Guidelines/Practices:</u></p> <p>The <i>ACT Heritage Council Cultural Heritage Reporting Policy</i> recommends a cultural heritage assessment at the earliest possible stage of planning a development with potential heritage impact (cl 2.4). Consultation with Representative Aboriginal Organisations is a requirement of a cultural heritage assessment.</p> <p>The <i>Internal Assessment Procedures – Aboriginal Heritage</i> document highlights relevant factors when determining development applications that include:</p>	<p>The Heritage Council must be consulted when varying fundamental planning and development procedures. It also may be included in the approval of development activities.</p> <p>There is limited inclusion of the Aboriginal community in the Heritage Council, and by extension, the development-approval process.</p>

Best Practice Standard	ACT Situation	Best Practice Assessment
	<ul style="list-style-type: none"> • Impacted cultural and heritage values • Registered Aboriginal organisations views on cultural values and management outcomes • Areas of sensitivity • Potential damage to Aboriginal places or objects. <p>Compliance with relevant conservation management plans, heritage guidelines and policy requirements.</p>	
<p>Land development activity addresses Aboriginal cultural heritage impacts before development begins</p>	<p><i>Heritage Act 2004</i></p> <p><u>Statement of Heritage effect</u></p> <p>Under section 61G of the <i>Heritage Act 2004</i>, persons or entities proposing activities that may damage an Aboriginal place or object can submit a plan (statement of heritage effect). This must then be approved by the council before the activity can begin. They do not need to do so if they are engaging in conduct in accordance with development approval, an excavation permit or a conservation management plan (s76(2) <i>Heritage Act 2004</i>).</p> <p><u>Conservation Management Plans</u></p> <p>Conservation management plans can be submitted by persons or entities responsible for places or objects with heritage significance for their conservation (pt 11 <i>Heritage Act 2004</i>). The Heritage Council must assess these and may approve them if satisfied that they are adequate for conservation and responsible management of the place or object. Actions and development in accordance with conservation management plans are exempt from the offences in the <i>Heritage Act 2004</i>, as per section 76 of the <i>Heritage Act 2004</i>.</p> <p><u>Excavation:</u></p> <p>Under section 61E of the <i>Heritage Act 2004</i> a person or entity may make an application to the Heritage Council for</p>	<div data-bbox="1294 582 2051 647">Partially meets best practice definition</div> <p>There are procedures in place that require the acknowledgement of impacts on Aboriginal places and objects. Under the ACT's planning system the role of the Heritage Council is advisory only for development applications.</p>

Best Practice Standard	ACT Situation	Best Practice Assessment
	<p>permission to carry out archaeological excavation work at or near an Aboriginal place or object. This includes details addressing the proposed excavation work and the measures that will be adopted to reduce the risk of damage or diminishment of heritage significance.</p> <p><u>Advice to the Planning and Land Authority</u></p> <p>Under section 60 of the <i>Heritage Act 2004</i> the council may give advice to the Planning and Land Authority relating to developments that may affect heritage significance of registered articles.</p> <p><i>Planning and Development Act 2007</i></p> <p>The Planning and Land Authority is required to refer development applications in the impact track to the Heritage Council (s 148; reg 26(1)(f)). Where a development application is referred, the Heritage Council is required to provide advice in relation to it within 15 days (s 149). There is no provision which renders the Council's advice as binding on the Planning and Land Authority.</p> <p>Proposals that are likely to have an impact on heritage significance must submit an environmental impact statement. This is required by part 4.2 of the <i>Planning and Development Act 2007</i>.</p> <p>The Planning and Land Authority may also require an applicant seeking development approval to enter a heritage agreement with the Heritage Council. They may also do so if the development relates to a place registered or nominated for registration under the Heritage Act 2004. This is established under section 165 (2)(m) of the <i>Planning and Development Act 2007</i>.</p> <p>The Heritage Council may also request a review of the decision of the Planning and Land Authority to approve a</p>	

Best Practice Standard	ACT Situation	Best Practice Assessment
	<p>development application. This request is made to the ACT Civil and Administrative Tribunal (ACAT). They may only apply for a review if they made a representation about the proposal in the application under section 156 of the Planning and Development Act.</p> <p>Policy/Guidelines/Practices:</p> <p>Although the Heritage Council's advice in relation to a development application is non-binding, in practice it is almost always followed by the Planning and Land Authority.</p> <p>The <i>ACT Heritage Council Cultural Heritage Reporting Policy</i> sets out the process for cultural heritage assessments which inform the advice that they provide in relation to impact track development applications. Cultural heritage assessments require consultation with Representative Aboriginal Organisations.</p>	
<p>IAR identified in country are left in country and these resting places are protected as 'Aboriginal or Torres Strait Islander places' (howsoever described) in legislation</p>	<p>Legislation</p> <p>The <i>Heritage Act 2004</i> does not expressly provide for IAR.</p> <p>Despite this, the <i>Heritage Act 2004</i> provides for protection of Aboriginal places. This extends to sites and lands, while that are related to the Aboriginal customs, rituals, institutions, beliefs and general way of life (ss 8-9 of the <i>Heritage Act 2004</i>).</p> <p>Policy/Guidelines/Practices:</p> <p>There are no relevant policies, guidelines or practices.</p>	<p>Does not meet best practice definition</p> <p>The legislation does not explicitly provide for IAR. It does, however, indirectly extend to sites and lands. This includes burial grounds etc.</p>
<p>The ACH legislative regime:</p> <ul style="list-style-type: none"> acknowledges that property in secret and 	<p>Legislation</p>	<p>Does not meet best practice definition</p>

Best Practice Standard	ACT Situation	Best Practice Assessment
<p>sacred objects can only legitimately vest in the community of origin of the object</p> <ul style="list-style-type: none"> deploys mechanisms to achieve the repatriation of these objects <p>This vesting occurs irrespective of the identity of the organisation or individual currently in possession of these objects</p>	<p>The <i>Heritage Act 2004</i> does not expressly provide for the repatriation of property in secret or sacred objects.</p> <p>Part 9 of the <i>Heritage Act 2004</i> provides for the declaration, restriction and approvals to publish restricted information relating to Aboriginal places and objects. This relates to situations in which public disclosure of the Aboriginal place or object would have a substantial adverse effect on it, or its heritage significance (s 53(2) <i>Heritage Act 2004</i>).</p> <p>The Minister may surrender the ACT government's legal interest in Aboriginal objects under the control of the Territory (s 53C <i>Heritage Act 2004</i>).</p> <p>Policy/Guidelines/Practices:</p> <p>There are no relevant policies, guidelines or practices.</p>	<p>The <i>Heritage Act 2004</i> provides that ACH objects located on territory land are owned by the ACT unless the object is owned by another person or entity or the Minister has declared that the ACT surrenders its legal interest in the ACH object.</p> <p>The <i>Heritage Act 2004</i> provides for restricting the publication of information relating to ACH and acknowledges the potential for public disclosure causing damage to Aboriginal objects or places.</p> <p>The <i>Heritage Act 2004</i> also provides for the surrender of the ACT's legal interests in Aboriginal objects it has control over, though this does not extend to repatriation or directly refer to secret and sacred objects.</p>
<p>The ACH legislative mechanisms protecting secret or sacred objects and regulating the trade in movable ACH are nationally uniform or supported by Commonwealth legislation or both</p>	<p>Legislation</p> <p><u>ACT:</u></p> <p>Aboriginal Object Protection</p> <p>All Aboriginal objects are legally protected under the <i>Heritage Act 2004</i>, and it is an offence to cause damage to, destroy, or disturb an Aboriginal object under s 75.</p> <p>Aboriginal Object Trade Regulation</p> <p>There is no express regulation on trading movable ACH in the <i>Heritage Act 2004</i> (ACT). This is not nationally uniform as it is out of step with other jurisdictions.</p> <p>The <i>Protection of Movable Heritage Act 1986</i> (Cth) prevents the international export of objects relating to 'members of the Aboriginal race of Australia...' without a permit.</p> <p>Secrecy Protection</p> <p>Part 9 of the <i>Heritage Act 2004</i> provides for the declaration, restriction and approvals to publish restricted information</p>	<div>Does not meet best practice definition</div> <p>There is no express regulation on trading movable ACH in the <i>Heritage Act 2004</i> (ACT).</p>

Best Practice Standard	ACT Situation	Best Practice Assessment
	<p>relating to Aboriginal places and objects. This relates to situations in which public disclosure of the Aboriginal place or object would have a substantial adverse effect on it, or its heritage significance (s 53(2) <i>Heritage Act 2004</i>).</p> <p>The law in the ACT, as outlined above, is not nationally uniform as it is different from the approach taken in other jurisdictions. See examples of other jurisdictions below:</p> <p><u>SA:</u></p> <p>It is offence to sell or dispose of an Aboriginal object under s 29 of the <i>Aboriginal Heritage Act 1988</i> (SA).</p> <p>Information relating to Aboriginal sites or objects that is entered into archives must remain confidential (unless approval is obtained by traditional owners) under s 10 of the <i>Aboriginal Heritage Act 1988</i> (SA).</p> <p><u>Victoria:</u></p> <p>Aboriginal Object and Secrecy protection</p> <p>Ownership of secret and sacred objects in Victoria is determined under the division 3 of the <i>Aboriginal Heritage Act 2006</i>. These objects formerly in private collections are in the custody and ownership of the Aboriginal Heritage Council.</p> <p>The Aboriginal Heritage Council is then required to either:</p> <ul style="list-style-type: none"> • transfer the object to an Aboriginal person or party it is satisfied is entitled to and willing to take custody of the object; or • transfer the object to the Museums Board for safekeeping; or • deal with the object as it thinks appropriate. <p>If an Aboriginal person or entity requests an object back from a public entity the entity must comply to the maximum</p>	

Best Practice Standard	ACT Situation	Best Practice Assessment
	<p>reasonable extent provided it is satisfied the Aboriginal person or entity is the owner of said object.</p> <p><u>Aboriginal Object Trade Regulation</u></p> <p>Section 34 of the <i>Aboriginal Heritage Act 2006</i> disallows sale of Aboriginal objects, or their removal from Victoria.</p> <p>Policy/Guidelines/Practices:</p> <p>There are no relevant policies, guidelines or practices.</p>	

Heritage Recognition

Best Practice Standard	ACT Situation	Best Practice Assessment
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Heritage Conservation

Best Practice Standard	ACT Situation	Best Practice Assessment
The affected Indigenous Community is the ultimate arbiter of the management of the ACH aspects of any proposal that will affect that heritage	<p>Legislation</p> <p><u>Heritage Council (s 17(3)(a))</u></p> <p>The Heritage Council contains a minimum of one representative of the Aboriginal community, and one of the ACT community (this could include another Aboriginal representative).</p> <p><u>Registration and management of places and objects</u></p> <p>As per section 31 of the <i>Heritage Act 2004</i>, the Heritage Council must consult each representative Aboriginal organisation before making a decision under section 6 about</p>	<div>Partially meets best practice definition</div> <p>The <i>Heritage Act 2004</i> provides some indigenous community representation in the decision-making process through both inclusion of representatives in the Heritage Council and a requirement on the Heritage Council to consult with representative Aboriginal organisations in some decisions.</p>

Best Practice Standard	ACT Situation	Best Practice Assessment
	<p>provisional registration relating to Aboriginal places and objects.</p> <p><u>Statements of heritage effect</u></p> <p>The Council are the only arbiter of the approvals of statements of heritage effect. This is outlined in section 61H of the <i>Heritage Act 2004</i>.</p> <p><u>Land development</u></p> <p>The Council gives advice on the effect of developments on heritage significance to the planning and land authority that must be considered, and may apply to the ACAT for reviews of decisions (pt 10 <i>Heritage Act 2004</i>)</p> <p><u>Tree damage</u></p> <p>The Council and a representative Aboriginal organisation may give advice to those undertaking tree activities and advise and impose advice on the Conservator of Flora and Fauna related to tree damaging activities. To do so, the Heritage Council or relevant representative Aboriginal organisation giving advice must be satisfied that the activity would damage the tree or that the tree management plan proposal does not adequately protect the tree (s 61B(1) <i>Heritage Act 2004</i>)</p> <p>Policy/Guidelines/Practices:</p> <p>The <i>ACT Heritage Council Cultural Heritage Reporting Policy</i> requires all cultural heritage reports submitted to the Heritage Council to contain specific content. This includes evidence and a summary of consultation with and the participation of Representative Aboriginal Organisations in the preparation of the report.</p> <p>The above policy also refers to a 'Representative Aboriginal Organisations (RAO) Consultation Policy', but states that it is in development (as of 2015). There is no record of the RAO Consultation Policy on the relevant ACT Heritage website.</p>	

Best Practice Standard	ACT Situation	Best Practice Assessment
	<p>The <i>Internal Assessment Procedures – Aboriginal Heritage</i> document outlines the key considerations undertaken by the Heritage Council when assessing applications for development. One of these is whether Representative Aboriginal Organisations have been consulted and provided with reasonable opportunity to participate in the assessment. It also recommends consideration of areas of sensitivity, and RAO views on cultural values and management outcomes.</p>	
<p>The ultimate decision regarding whether interference with ACH is acceptable or not rests with the affected Indigenous community</p>	<p>Legislation</p> <p>S 61G of the <i>Heritage Act 2004</i> provides for a process whereby individuals/entities proposing to undertake an activity likely to impact heritage significance or to damage an Aboriginal place or object can apply to the Heritage Council with a statement of heritage effect for approval. The Heritage Council may approve this without consulting representative Aboriginal organisations.</p> <p>Policy/Guidelines/Practices:</p> <p>There are no relevant policies, guidelines or practices.</p>	<div data-bbox="1294 544 2049 608" data-label="Text"> <p>Does not meet best practice definition</p> </div> <p>The Heritage Council is the only arbiter that may approve interference with ACH.</p>
<p>The IAR regime ensures that the management of IAR is the right and duty of the Indigenous community of origin of the ancestor in question</p>	<p>Legislation</p> <p>The <i>Heritage Act 2004</i> does not expressly provide for IAR and does not provide for specific management of IAR.</p> <p>Relevant legislative provisions</p> <p>The ACT has ownership over Aboriginal objects located on territory land, unless other entities hold legal interests in them, or the Minister declares that the Territory is surrendering its legal interest in the object (s 53C <i>Heritage Act 2004</i>).</p> <p>The Territory must then ensure that each Aboriginal object owned by the Territory under S 53C <i>Heritage Act 2004</i> is kept in a repository (s 53A <i>Heritage Act 2004</i>). Repositories are those places declared by the Minister under s 53B of the</p>	<div data-bbox="1294 967 2049 1031" data-label="Text"> <p>Does not meet best practice definition</p> </div> <p>The legislation does not provide for management of IAR.</p> <p>The <i>Heritage Act 2004</i> instead provides ownership over Aboriginal objects to the ACT, unless there is another legal interest, or the ACT's legal interest is surrendered.</p> <p>These objects are then managed by the ACT in repositories.</p>

Best Practice Standard	ACT Situation	Best Practice Assessment
	<p><i>Heritage Act 2004</i> on consultation with representative Aboriginal organisations. The minister must also be satisfied that the place is suitable for conservation of Aboriginal objects owned by the territory.</p> <p>Policy/Guidelines/Practices:</p> <p>There are no relevant policies, guidelines or practices.</p>	
<p>Significant legislative sanctions apply if proponent interfere with ACH without an authorisation or fail to comply with the terms of an authorisation</p>	<p>Legislation</p> <p><u>Unauthorised interference</u></p> <p>It is an offence under s 51 of the <i>Heritage Act 2004</i> to fail to take reasonable steps to report an Aboriginal place or object. The maximum penalty for this offence is 5 penalty units (\$800.00 in April 2023)</p> <p>It is also an offence under s 75 to engage in conduct that causes damage to an Aboriginal place or object. The maximum penalty for this offence varies depending on the level of fault that can be established:</p> <ul style="list-style-type: none"> • Recklessness: 1000 penalty units (\$160,000.00 in April 2023) • Negligence: 500 penalty units (\$80,000.00 in April 2023) • Strict Liability: 100 penalty units (\$16,000.00 in April 2023) <p>The Planning and Land Authority may revoke development approval if an applicant is convicted of an offence under the <i>Heritage Act 2004</i> (s 189 (1)(b) <i>Planning and Development Act 2007</i>).</p> <p>It is also an offence knowingly to publish restricted information about a place or object (s 55(1) <i>Heritage Act 2004</i>). The</p>	<div data-bbox="1294 528 2049 595">Meets best practice definition</div> <p>Legislative sanctions apply if ACH is interfered with without authorisation.</p> <p>Legislative sanctions also apply to those that fail to comply with terms of authorisation.</p>

Best Practice Standard	ACT Situation	Best Practice Assessment
	<p>maximum penalty that applies is 50 penalty units (\$8000 in April 2023).</p> <p><u>Heritage Directions</u></p> <p>It is an offence to intentionally contravene a requirement of a heritage direction. Heritage directions are those made by the Heritage Council for the purpose of conserving and protecting a place or object with heritage significance, or that is an Aboriginal place or object. The maximum penalty that applies is 1000 penalty units (\$160,000.00 in April 2023).</p> <p><u>Repair damage directions</u></p> <p>It is an offence to fail to comply with a repair damage direction without a reasonable excuse. Repair damage directions are made if a person causes repairable damage to a place or object with heritage significance or an Aboriginal place or object in an unauthorised manner. They are written directions to repair damage to the place or object. The maximum penalty that applies is 500 penalty units (\$80,000.00 in April 2023).</p> <p>As the unauthorised interference offences apply to actions not in accordance with an excepted permit or approval, they extend to activities undertaken by authorised people that are not in scope of the authorisation.</p> <p>Policy/Guidelines/Practices:</p> <p>There are no relevant policies, guidelines or practices.</p>	
<p>Prohibits any interference to ACH that satisfies the statutory definition unless there is a statutory authorisation in place</p>	<p>Legislation:</p> <p><u>Prohibition of interference:</u></p> <p>Offences/requirements under the act:</p> <ul style="list-style-type: none"> Conduct that damages an Aboriginal place or object - Section 75 provides offences if the person causes damage and additionally if they are reckless or 	<div data-bbox="1294 1131 2049 1198" data-label="Text"> <p>Meets best practice definition</p> </div> <p>The <i>Heritage Act 2004</i> provides:</p>

Best Practice Standard	ACT Situation	Best Practice Assessment
	<p>negligent about whether the conduct would cause damage to an Aboriginal place or object.</p> <ul style="list-style-type: none"> Advice about tree damaging activity or tree management plan (s 61(3)) – the Heritage Council may impose requirements/conditions on the Conservator of Flora and Fauna relating to activities damaging to Aboriginal heritage trees, or those trees that form part of an Aboriginal place. <p><u>Exceptions to offences:</u></p> <p>Section 76 of the <i>Heritage Act 2004</i> contains the following exceptions to the offences in ss 74 and 75:</p> <ul style="list-style-type: none"> A governmental officer exercising a function for this Act or another Territory law or engaging in authorised conduct; and Any person engaging in conduct in accordance with: <ul style="list-style-type: none"> A heritage guideline A heritage direction A repair damage direction A heritage agreement A conservation management plan approved by council Development approval under ch 7 of the <i>Planning and Development Act 2007</i> An excavation permits A statement of heritage effect approved by Council. <p><u>Statutory authorisation:</u></p> <p>Authorisation is available in the following forms:</p>	<ul style="list-style-type: none"> for offences that prohibit unauthorised conduct that interferes negatively with registered and Aboriginal places and objects for statutory authorisations under the oversight of the Heritage Council.

Best Practice Standard	ACT Situation	Best Practice Assessment
	<ul style="list-style-type: none"> • Permit to excavate (s 61F) – permit to undertake archaeological excavation work at or near a registered or Aboriginal place or object. • Approval of statement of heritage effect (plan) (s 61H) – approval of plan to undertake activities likely to diminish the heritage significance, or damage, an Aboriginal place or object. • Approval of conservation management plan (s 61K) – approval of plan to manage heritage site by the person or entity responsible for the place or object with heritage significant, or an Aboriginal place or object. <p>Policy/Guidelines/Practices:</p> <p>The <i>ACT Heritage Council Cultural Heritage Reporting Policy</i> provides for the processes to be undertaken to grant the exemptions to the above offences.</p> <p>E.g., for the Council to approve an excavation permit under s 61E, it must be satisfied that:</p> <ul style="list-style-type: none"> • The proposed excavation is a justifiable part of work required at a registered place or object or heritage site • There are no reasonably practicable alternatives to excavation and reasonable steps have been identified to reduce the risk of diminishing the heritage significance of or damage to the place. <p>The <i>Internal Assessment Procedures – Aboriginal Heritage</i> document suggests consideration of damaging of Aboriginal places and objects by development applications. It suggests consideration of:</p> <ul style="list-style-type: none"> • Whether a statement of heritage effect is required • Whether heritage values have been adequately assessed through consultation with representative 	

Best Practice Standard	ACT Situation	Best Practice Assessment
	<p>Aboriginal organisations and through research and surveying</p> <ul style="list-style-type: none"> • Whether the proposal complies with heritage guidelines • Whether it complies with relevant conservation management plans (considered best practice). 	
<p>There is national consistency in both the structure and penalty regime of ACH offence provisions</p>	<p>Legislation</p> <p>Structure</p> <p>The ACT ACH protection scheme applies the same offence structure as most jurisdictions. This is a requirement to report ACH and a prohibition on harming ACH, with the penalty determined by the offender's level of fault.</p> <p>Penalty</p> <p>In NSW, the maximum penalties are substantially higher for the equivalent ACH offences than the ACT (s 86 <i>National Parks and Wildlife Act 1974</i>)</p> <p>In Victoria, the maximum penalties for equivalent ACH offences are also higher than the ACT (s 27 <i>Aboriginal Heritage Act 2006</i>)</p> <p>In South Australia, the maximum penalty for failing to report the discovery of an Aboriginal site or object is \$10,000.00 for an individual.</p> <p>Policy/Guidelines/Practices:</p> <p>There are no relevant policies, guidelines or practices.</p>	<div data-bbox="1294 517 2049 584">Partially meets best practice definition</div> <p>The ACT ACH protection scheme applies the same offence structure as most jurisdictions. When compared to other jurisdictions, the ACT has relatively low penalties for breaches of its ACH offences.</p>

Best Practice Standard	ACT Situation	Best Practice Assessment
<p>The ACH legislative regime regulating the trade in movable ACH:</p> <ul style="list-style-type: none"> prohibits trade in secret or sacred ACH objects allows a potentially affected community to determine the status of an object proposed to be traded. 	<p>Legislation</p> <p>There is no express prohibition on trading movable ACH in the <i>Heritage Act 2004</i>. However, all Aboriginal objects are legally protected under the Act, and it is an offence to cause damage to, destroy, or disturb an Aboriginal object (s 75). These offences serve as an indirect prohibition on trading movable ACH.</p> <p>Policy/Guidelines/Practices:</p> <p>There are no relevant policies, guidelines or practices.</p>	<p>Does not meet best practice definition</p> <p>There is no express regulation of trading movable ACH in the <i>Heritage Act 2004</i>, nor is there a direct prohibition on trading movable ACH.</p> <p>However, Aboriginal objects are already protected from disturbance under the <i>Heritage Act 2004</i>.</p>
<p>There is provision for the care of IAR where no Indigenous community of origin can be immediately identified</p>	<p>Legislation</p> <p>The <i>Heritage Act 2004</i> does not expressly provide for the care of IAR.</p> <p>Policy/Guidelines/Practices:</p> <p>There are no relevant policies, guidelines or practices.</p>	<p>Does not meet best practice definition</p> <p>There is no provision for care of IAR where no indigenous community of origin can be identified.</p>
<p>Where there is no possible alternative to the relocation of IAR, this relocation takes places in accordance with the wishes of the affected community</p>	<p>Legislation</p> <p>The <i>Heritage Act 2004</i> does not expressly provide relocation of IAR.</p> <p>Policy/Guidelines/Practices:</p> <p>There are no relevant policies, guidelines or practices.</p>	<p>Does not meet best practice definition</p> <p>There is no reference to the relocation of IAR in the <i>Heritage Act 2004</i>.</p>

Best Practice Standard	ACT Situation	Best Practice Assessment
Affected Indigenous communities are adequately empowered and resourced to undertake necessary compliance and enforcement functions	<p>Legislation</p> <p><i>Empowerment of compliance and enforcement</i></p> <p><u>Tree protection</u></p> <p>The Heritage Council, and representative Aboriginal organisations may give advice and impose requirements on the Conservator of Flora and Fauna on proposed tree damaging activities (pt 10A <i>Heritage Act 2004</i>). They must receive a notice from the Conservator of Flora and Fauna and be satisfied that the proposed tree damaging activity would harm a tree or that the management plan does not adequately protect a tree.</p> <p><u>Revocation of development approval</u></p> <p>The Planning and Land Authority may revoke development approval if the applicant is convicted of an offence under the <i>Heritage Act 2004</i>. There is no input on this form from affected indigenous communities, the Heritage Council or representative Aboriginal organisations.</p> <p><u>Resourcing</u></p> <p>The Heritage Council is funded through the ACT Budget. It receives funding as an entity beneath the Environment, Planning and Sustainable Development Directorate.</p> <p>Representative Aboriginal organisations do not get funding under the budget, or the legislation.</p> <p>Policy/Guidelines/Practices:</p> <p>There are no relevant policies, guidelines or practices.</p>	<p>Does not meet best practice definition</p> <p>Representative Aboriginal organisations do not get legislative empowerment to undertake necessary compliance and enforcement functions.</p> <p>Compliance and enforcement activities under the <i>Heritage Act 2004</i> are undertaken by a specialist enforcement unit within Access Canberra.</p>
The IAR regime included within ACH legislation provides an effective regime for the expeditious return to the affected	<p>Legislation</p> <p>The <i>Heritage Act 2004</i> does not expressly provide for IAR.</p>	<p>Does not meet best practice definition</p>

Best Practice Standard	ACT Situation	Best Practice Assessment
communities of IAR held in institutional and other 'collections'. Wherever possible such provisions should have extra-jurisdictional application	<p>The Minister may surrender the legal interest of the ACT in Aboriginal objects owned by the ACT. (s 53C <i>Heritage Act 2004</i>) This is done by form of disallowable instrument.</p> <p>Policy/Guidelines/Practices:</p> <p>There are no relevant policies, guidelines or practices.</p>	There is no provision that provides for effective and expeditious return of IAR to affected communities. The <i>Heritage Act 2004</i> allows the Minister to surrender the ACT's legal interests in Aboriginal objects.

Community Engagement

Best Practice Standard	ACT Situation	Best Practice Assessment
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Appendix C: Detailed issue / gap analysis

Aboriginal Cultural Heritage Framework

This section outlines, against the heritage management system model, the ACH key issues / gaps and the proposed reform directions, specific reforms and their expected outcomes. The ACH issues / gaps have been identified through consultations with RAOs and other relevant stakeholders and an assessment of the extent to which the ACT heritage management arrangements meets the *Dhawura Ngilan* best practice legislation standards (see [Appendix B](#)).

Heritage Governance and Administration

Table 1: Identified issues / gaps, reform directions and expected outcomes for Heritage Administration

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
Governance	<p>Under the Heritage Act, Aboriginal People are not the decision makers in relation to the management and evaluation of ACH objects, places and practices. While RAOs are required under the Heritage Act to be consulted on a range of heritage matters, they are not the ultimate decision-makers on ACH.</p> <p>Rather, the Heritage Council is the decision-maker for heritage registration matters and provides advice (ultimately non-binding) on the impact on heritage of development proposals to the ACT planning and land authority (EPSDD).</p> <p>This largely results in ACH being interpreted through a western scientific paradigm that does not reflect Aboriginal Peoples' cultural connection and values.</p> <p>Under current arrangements, the RAOs may have differing views of the cultural values of a place and therefore could potentially be played off against each other to obtain the result sought.</p>	<p>Establish an ACHB that gives Aboriginal People the role of determining ACH recognition, protection and management.</p> <p>The ACHB should:</p> <ul style="list-style-type: none">• have an independent chair and comprise of representatives from the ACT's RAOs that have cultural heritage authority• seek to have gender balance to support the assessment of gender specific cultural values• develop a consensus decision-making approach that strongly recognises mutual and beneficial interests as well as divergent cultural values• should have delegated decision-making powers from the ACT Heritage Council on the recognition and management of ACH in the ACT<ul style="list-style-type: none">– this should include providing advice on the impacts on ACH of statutory referrals under the	<p>An ACH governance arrangement that meets <i>Dhawura Ngilan</i> best practice standards regarding decision-making and management and which is consistent with UNDRIP.</p>

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
	Current structures in Australian jurisdictions also provide a perverse incentive towards the destruction of Aboriginal cultural heritage sites as it is the only mechanism through which Aboriginal community members can generate some form of financial compensation / remuneration. There is no funding or support that is directed to protection and conservation.	<p><i>Planning and Development Act</i> and the <i>Tree Protection Act</i>.</p> <p>Consultations raised the issue of whether the ACHB needed male and female co-chairs to deal with gender specific ACH issues. This approach is being adopted under the new Aboriginal Cultural Heritage Council in Western Australia. It is considered that this is not necessary, as such issues are ACH policy issues that can be dealt with in appropriately constituted taskforces or committees, providing recommendations to the ACHB for decision.</p> <p>The remit of the ACHB should encompass:</p> <ul style="list-style-type: none"> • Providing initial and ongoing capacity development support to the RAOs to ensure they can participate effectively in the ACHB • Enabling the ongoing development of Aboriginal values in a modern context to support not only the individual values of traditional owner / custodian groups (recognising their right to their own independent values for areas), but also the development of these values as a collective • Enabling the RAOs to discuss openly the values of a place as it relates to them and their community values, recognising these could differ from other groups <p>Currently, under the <i>Heritage Act</i> the Minister for Heritage appoints RAOs. However, while the Act makes provision for criteria for deciding whether an entity should be declared to be a RAO, it is understood that such criteria have not been developed. Ensuring that RAOs have demonstrable cultural heritage authority will be important to the integrity of the ACHB if its membership is derived from RAOs. Hence, it is suggested that the initial ACHB should develop clear criteria and an assessment</p>	

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		<p>process to guide the Minister for Heritage when deciding whether to register new RAOs under the Heritage Act.</p> <p>The ACHB should be established within the current single legislative framework of the <i>Heritage Act 2004</i>. This will support the layered approach to heritage recognition and management proposed in . The Heritage Council would remain responsible for the general heritage recognition and management policy and mechanisms under the <i>Heritage Act</i>. The delegation arrangements would ensure that the Council would accept the ACHB's decisions on ACH recognition and management policy and mechanisms.</p> <ul style="list-style-type: none"> • Ideally, in the longer term the ACHB would be legislatively established, however this will require amendments to the <i>Heritage Act</i> and will take time. In the interim, the ACHB should be established administratively, with its decisions on ACH being accepted and endorsed by the Heritage Council without intervention. <p>The New Zealand model provides the best example on which to base an ACHB, as it establishes within a single legislative framework a Māori Heritage Council that operates in conjunction with an overarching Heritage New Zealand Board. The Council has powers to make determinations in relation to Māori cultural heritage issues. There are 4 members of the Māori Council who are also members of the Heritage New Zealand Board.</p> <p>The ACHB concept has been well received by the ACT Aboriginal communities consulted during this jurisdictional review. However, there are some issues relating to the governance model that still need to be resolved. Accordingly, ongoing consultation by the ACT Government with ACT Aboriginal communities is required on the model of governance, including the name of the body and appointment of members. This will need to</p>	

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		<p>involve Aboriginal community members with cultural rights relating to heritage within the ACT, including traditional and proven custodial cultural relationships to the ACT.</p> <p>The success of the ACHB will depend on the capacity of ACT Aboriginal People to participate in the recognition, protection and management of ACH. Our observation is that, while the RAOs have people that are experienced and knowledgeable in this area, this capability is potentially thinly spread. Accordingly, in the medium term, the ACHB should consider how to build the ongoing capacity of RAOs and their communities to effectively participate in the new governance model. This will assist in succession planning and mitigate the risk that there is insufficient depth in the Aboriginal community with appropriate experience in recognising, protecting and managing ACH.</p> <p>The ACHB should investigate establishing mechanisms (including finances) to support ACH protection and conservation to the same level as destructive activities such as salvage and excavation.</p> <p>To overcome current perverse incentives, the ACHB should explore the establishment of structures that enable the Aboriginal community to generate economic returns from protecting and conserving places of Aboriginal cultural value significance, that are at least equal to the value of return from destructive measures such as salvage/excavation.</p> <p>The ACHB should build the ongoing capacity of ACT Aboriginal People to participate in the recognition, conservation and management of ACH.</p>	

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		<p>The success of the ACHB will depend on the ongoing capacity of ACT Aboriginal People to participate in the recognition, protection and management of ACH. Our observation is that, while the RAOs have people that are experienced and knowledgeable in this area, this capability is potentially thinly spread. Accordingly, in the medium term, the ACHB should consider how to build the ongoing capacity of RAOs and their communities to effectively participate in the new governance model. This will assist in succession planning and mitigate the risk that there is insufficient depth in the Aboriginal community with appropriate experience in recognising, protecting and managing ACH.</p> <p>For example, this could be achieved by developing a program that educates the ACT Aboriginal community and heritage practitioners in the values of protecting and conserving Aboriginal cultural heritage values associated with a place. This should be accompanied by funding models that support Aboriginal community engagement in ACH practices.</p> <p>We are not aware of any Australian jurisdiction that currently has processes, programs or policies to build this capacity.</p>	

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
Resourcing	<p>RAOs identified that they felt that there was a lack of ACT Heritage staff experienced in ACH to be able to deliver on the Aboriginal community expectations for ACH management.</p> <p>ACT Heritage is not sufficiently resourced to adequately deal with emerging ACH demands. This means it is not able to deliver ACH services that meet the needs of the Aboriginal community and other stakeholders.</p> <p>This has led to poor communication between Heritage ACT and the Aboriginal community.</p>	<p>Ensure adequate resources are provided to support the establishment and ongoing operation of the ACHB and to enable ACT Heritage to support ACHB functions.</p> <p>This will require ACT Heritage to procure additional expertise in ACH. This could be done through direct recruitment of additional ACH experienced staff or procuring that expertise through a Service Level Agreement with another ACT agency (for example, the Office of ATSI Affairs within the Community Services Directorate).</p> <p>This should include resources that enable the ACHB to provide initial and ongoing capacity development support to the RAOs.</p> <p>The cost of this resourcing should be offset by developing a fees-based approach to ACH Heritage management, recognising the costs involved in processing and managing ACH determinations, objects and data.</p>	ACH recognition and management is adequately resourced.

Heritage Policy

Table 2: Identified issues / gaps, reform directions and expected outcomes for Heritage Policy

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
Definitions	There are several gaps in the Heritage Act in terms of definitions that are required by the <i>Dhawura Ngilan</i> best practice standards:	<p>Amend the <i>Heritage Act</i> to:</p> <ul style="list-style-type: none"> Extend the definition of Aboriginal object and places to include 'recognise and support the 	ACT heritage arrangements will meet <i>Dhawura Ngilan</i> best practice standards with respect to key

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
	<ul style="list-style-type: none"> The Act broadly defines Aboriginal objects and places, but does not directly recognise and support the living connection between Aboriginal Peoples today, their ancestors and their lands There is no definition of Indigenous Ancestral Remains (IAR) in the Act The Act does not acknowledge the role of indigenous tradition as related to the definition of secret or sacred objects. 	<p>living connection between Aboriginal Peoples today, their ancestors and their lands'</p> <ul style="list-style-type: none"> Include a definition of IAR Include a definition of secret and sacred objects that acknowledges the role of indigenous tradition as understood today. <p><i>Dhawura Ngilan</i> indicates that there are several best practice examples of ensuring that the definition of Aboriginal object and places recognises and support the living connection between 'Aboriginal Peoples today, their ancestors and their lands'. These include:</p> <ul style="list-style-type: none"> Section 4(1) of the then proposed NSW Aboriginal Cultural Heritage Bill 2018¹ Section 5 of the Victorian <i>Aboriginal Heritage Act 2006</i> The Northern Territory <i>Aboriginal Sacred Sites Act 1989</i> The Commonwealth's <i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i>. <p>In terms of the definitions of IAR and secret and sacred objects, <i>Dhawura Ngilan</i> indicates that Section 4 of the Victorian <i>Aboriginal Heritage Act 2006</i> provides contemporary and workable definitions.</p>	<p>definitions, which in turn support more appropriate management of ACH.</p>

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
Principles	<p>Consultations indicate that Aboriginal People believe that cultural heritage values are overridden by other heritage considerations and the practice of looking at heritage through a layering of activity is not applied in ACH situations.</p> <p>Some places or objects can have conflicting cultural values which may affect policy development and management decisions. The term cultural values refers to those beliefs which are important to a cultural group, including but not limited to political, religious, spiritual and moral beliefs. This is broader than values associated with cultural significance.</p> <p>It is important that all cultural values are recognised and that these values are layered and that all heritage in this context should start with absolute recognition that Aboriginal cultural heritage and its associated social, spiritual and industry was present before any modern use or construct. Therefore, all heritage should commence from an Aboriginal values base.</p>	<p>The Heritage Council, in conjunction with the ACHB, develop and implement a policy and supporting decision-making processes that establish a layered approach to heritage in which ACH is the starting point for heritage recognition, conservation and management in the ACT.</p> <p>This will enable a holistic approach to recording and managing heritage values.</p> <p>The current approach to heritage recognition, conservation and management in the ACT (and elsewhere in Australia for that matter) generally does not <u>explicitly</u> provide for the concurrent recognition and management of different layers of heritage.</p> <p>The establishment of a policy should ensure heritage recognition, conservation and management starts with the Aboriginal cultural heritage layer, with other heritage contexts being layered on top.</p> <p>The policy and framework should provide mechanisms to resolve situations where there were competing interests between the needs of different heritage layers related to heritage sites or works.</p> <p>It is expected that establishing this policy and framework will be an iterative process as the Heritage Council and the ACHB deal with the inevitable challenges of a layered heritage approach.</p>	<p>A holistic, integrated approach to natural, cultural and Aboriginal heritage recognition and management in the ACT.</p>
	<p>Consultations indicate that Aboriginal People consider that:</p> <ul style="list-style-type: none"> ACH assessments (whether for registration or in relation to assessment of the impacts of development proposals) do not fully demonstrate that they have comprehensively assessed the cultural values for the 	<p>Strengthen the existing policy and supporting practices to require:</p> <ul style="list-style-type: none"> pre-approval development assessment processes to be established that ensure the 	<p>That ACH:</p> <ul style="list-style-type: none"> consideration is integrated as early as possible into development proposal

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
	<p>place or object, through an Aboriginal values perspective. The perception is that although Aboriginal people may value an object, site or landscape highly the archaeological assessment may value it low as it seeks to provide a scientific weighting to the assessment.</p> <ul style="list-style-type: none"> Due to the bias of assessment processes towards destructive mechanisms of excavation and salvage during ACH assessment, RAOs felt that there was a lack of recognition that there are opportunities to enhance the cultural values of an object or place in the interest of protection, conservation and management. This can occur from the restoration of landscape, including interpretive design elements and elevating the oral and historic histories into the context of the sites <ul style="list-style-type: none"> This indicates there is a need to have a stronger but more flexible approach to the ACH assessment process, given the potential impacts of climate change, particularly with reference to the potential for significant vegetation change as well as storm impacts. <p>Further, Aboriginal People indicated that consideration of ACH does not meet their expectations and that this needs to be addressed systemically across the ACT's development proposal assessment process.</p> <ul style="list-style-type: none"> <i>Dhawura Ngilan</i> best practice requires that land development activity addresses Aboriginal cultural heritage impacts before development begins. <p>There are procedures in place that require the acknowledgement of impacts of development proposals on ACH. The role of the Heritage Council is advisory only in the development assessment process.</p>	<p>ACHB is involved in the development process at the earliest possible time</p> <ul style="list-style-type: none"> when assessing the ACH significance of an area, that a comprehensive analysis to be undertaken of historic records, oral histories, ethnographic and anthropological data to ensure any actions or knowledge of past activities is included in the assessment of the current context. <p>When working with the Aboriginal community in the assessment of a place or objects, the current context should be considered and supported.</p> <ul style="list-style-type: none"> This approach should be taken and evaluated with final consent provided by the Aboriginal owners / custodians that have a connection This approach should be taken before and as part of determining the mitigation process for the assessed ACH site or object. <p><i>Dhawura Ngilan</i> indicates the early integration of ACH into development proposal assessment is already incorporated into many existing government policies and cites two relevant examples:</p> <ul style="list-style-type: none"> The Commonwealth Government's Engage Early - Guidance for proponents on best practice Indigenous engagement for environmental assessments under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> Section 52 of Victoria's <i>Aboriginal Heritage Act 2006</i>, which requires a cultural heritage plan to be approved prior to statutory approval of a development activity. 	<p>assessment time frames to ensure adequate time to consider a proposal before it begins</p> <ul style="list-style-type: none"> assessments fully demonstrate that they have comprehensively assessed the cultural values for the place or object.

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
	<ul style="list-style-type: none"> The <i>ACT Heritage Council Cultural Heritage Reporting Policy</i> recommends a cultural heritage assessment at the earliest possible stage of planning a development with potential heritage impact (cl 2.4). Consultation with Representative Aboriginal Organisations is a requirement of a cultural heritage assessment. The feedback from Aboriginal People indicates that this policy, while applied, may in instances not meet their expectations. 		

Heritage Recognition

Table 3: Identified issues / gaps, reform directions and expected outcomes for Heritage Recognition

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
Register	<p>Consultations indicate that Aboriginal People in the ACT consider that the Heritage Register does not contain an appropriate recognition and representation of ACH.</p> <p>There also seemed to be limited knowledge in the Aboriginal community of the value of having cultural values listed.</p>	<p>Educate the Aboriginal community in the process and benefits that align to a Heritage listing.</p> <p>Review known ACH sites to identify significant sites for listing on the Heritage Register, as well as developing a strategic priority for future ACH listings.</p> <p>ACT Heritage to engage staff/contractors to undertake all ACH assessments. This work will improve Heritage protection and management outcomes as well as identify ACH values to be recorded on the Heritage Register.</p> <p>This latter solution is based on the approach taken in New Zealand. This has allowed for heritage to be assessed independently of any development as the</p>	Improved recognition and representation of ACH on the ACT Heritage Register.

assessment is not being paid for by the developer, which can be seen to influence the objective assessment of the consultant.

Consultation with Heritage New Zealand identified that they believed this model:

- removes the conflict of the developer paying for the assessment
- improves objectivity in the reports
- ensures Maori cultural values are appropriately reflected and recorded
- improves the listing of Maori cultural sites on the Heritage register as the assessment provides the information necessary for the listing.

Heritage Conservation

Table 4: Identified issue / gaps, reform directions and expected outcomes for Heritage Protection

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
Strategy	<p><i>Dhawura Ngilan</i> best practice requires that:</p> <ul style="list-style-type: none"> • the affected Indigenous Community is the ultimate arbiter of the management of the ACH aspects of any proposal that will affect that heritage • the ultimate decision regarding whether interference with ACH is acceptable or not rests with the affected Indigenous community. <p>ACH decisions by the Heritage Council regarding development approvals are advisory only and are not considered consenting actions by RAOs.</p>	<p>Work with the ACT Planning and Land Authority to develop policy, guidelines and processes that to ensure that all ACT planning decisions under the new Planning Act have regard to valuing, conserving and promoting Aboriginal knowledge, culture and tradition and the conservation of Aboriginal places.</p> <p>The pending commencement of the <i>ACT Planning Act 2023</i> provides an opportunity for the ACHB to enhance and strengthen the way in which ACH is considered within the planning system.</p>	Stronger protection of ACH that is impacted by development proposals.

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
	<p>Expectations by Aboriginal communities and the principles contained in UNDRIP and <i>Dhawura Ngilan</i> are that Aboriginal communities should be the consenting body in relation to how their ACH is managed, recognising the diversity of Aboriginal communities which may exist in an area such as the ACT.</p> <p>The pending new <i>Planning Act 2023</i> will somewhat strengthen the consideration of ACH in the planning and development approval process.</p> <p>Specifically, the Act requires that <i>'the knowledge, culture and tradition of the traditional custodians of the land'</i> must be considered in achieving the objects of the Act.</p> <p>The Act goes on to require that the consideration of the <i>'object of this Act and the following principles of good planning in developing planning strategies, plans and policies'</i>. One of the principles is cultural heritage conservation principles, which is defined as meaning the following:</p> <ul style="list-style-type: none"> • planning and design should promote the unique cultural heritage of the ACT by acknowledging established heritage significance in design and placemaking; • development should: <ul style="list-style-type: none"> – respect local heritage; and – avoid direct impacts on heritage or, if a direct impact is unavoidable, ensure that the impact is justifiable and proportionate. <p>Further, the Act (Sections 182 and 184) provides that <i>'for an approval in relation to a place registered, or nominated for provisional registration, under the Heritage Act 2004'</i> the decision maker may approve a development application subject to a condition that <i>'the applicant must enter into a heritage agreement under that</i></p>	<p>This is based on Section 5(2)(d) of the Queensland <i>Planning Act 2016</i>, which requires that functions performed under the Act must be performed in a way that advances the purpose of this Act – which includes <i>'valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition'</i>.</p>	

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
	<p><i>Act for the conservation of the heritage significance of the place.</i></p> <p>However, the Act retains the current arrangements where the advice of the Heritage Council on planning approvals is advisory only.</p>		
Works / Interference	<p>There is a view that Aboriginal Cultural Heritage is generally treated as an afterthought and therefore a barrier to development or action. This occurs because planning or development decisions are usually made only in the context of the development in the first instance, and then tested against constraints.</p> <p>Although the ACT development process recognises the planning constraints in the initial phase, ACH is considered as a secondary consideration.</p> <p>This approach creates a fundamental barrier to heritage consideration as it becomes a blocker rather than the objective that frames the proposed activity or development.</p>	<p>Establish a proactive community engagement strategy to recognise ACH in the ACT.</p> <p>We have not identified any best practice approaches regarding this initiative.</p>	Improved ability of the ACT to retain its ACH.
	<p><i>Dhawura Ngilan</i> best practice requires that the ACH legislative regime regulating the trade in movable ACH:</p> <ul style="list-style-type: none"> prohibits trade in secret or sacred objects allows a potentially affected community to determine the status of an ACH object proposed to be traded. <p>Under the <i>Heritage Act 2004</i>, ACH objects are protected from disturbance. However, there is no express regulation of trading movable ACH, nor is there a direct prohibition on trading movable ACH.</p>	<p>Introduce provisions to the Heritage Act to:</p> <ul style="list-style-type: none"> regulate the trade in movable ACH prohibit the trade in secret or sacred ACH movable objects allow the ACHB to determine the status of an ACH object proposed to be traded. <p>We have not identified any best practice approaches regarding this initiative.</p>	Increased protection for ACH movable objects.

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
	<p><i>Dhawura Ngilan</i> best practice requires that:</p> <ul style="list-style-type: none"> the IAR regime ensures that the management of IAR is the right and duty of the Indigenous community of origin of the ancestor in question there is provision for the care of IAR where no Indigenous community of origin can be immediately identified. <p>The Heritage Act provides that ACH objects located on territory land are owned by the ACT unless the object is owned by another person or entity or the Minister has declared that the ACT surrenders its legal interest in the ACH object.</p>	<p>The ACHB design and establish a program to support the care of IAR where no Indigenous community of origin can be immediately identified.</p> <p>We have not identified any best practice approaches regarding this initiative.</p>	<p>IAR is protected even when no Indigenous community of origin can be immediately identified.</p>
	<p>Aboriginal communities generally have a preference to retain cultural objects in situ. This preference draws an alignment between any objects and sites and the cultural landscapes with the use and practices that are inherently constructed within these places.</p> <p>Ideally, when any change is being considered, including for temporary use, a range of options should be explored to ensure any activities protect fabric, but also protect the values for which the site is known.</p> <p>Some cultural practices, such as those relating to ceremonial grounds, birthing areas and resource gathering areas should also be reflected in any assessment for temporary or permanent use and these values supported and reflected in any proposed activity or change.</p> <p>Reversible changes should be considered temporary. Non-reversible change should only be used as a last resort and should not prevent further conservation action.</p>	<p>Strengthen policy to require that:</p> <ul style="list-style-type: none"> when assessing a change to the context or fabric of a site, the initial approach should be to consider change that is minimal or reversible and which is sympathetic to the Aboriginal cultural context and values of the site Aboriginal People who have a cultural relationship to the place or object can provide recommendations and consent to proposed changes through the ACHB. <p>The processes for ACH recognition and consideration of development activities that affect ACH should seek to support the notion of minimal and reversible change or change that advances or enhances the cultural values associated with the place or object.</p>	<p>Increased retention of ACH in situ.</p>

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
Custodianship	<p><i>Dhawura Ngilan</i> best practice requires that IAR identified in country are left in country and these resting places are legislatively protected as 'Aboriginal or Torres Strait Islander places' (howsoever described).</p> <ul style="list-style-type: none"> The Heritage Act does not meet this requirement to explicitly provide for IAR recognition and retention. It does, however, indirectly extend to sites and lands. This includes but is not limited to burial grounds, birthing sites, ceremonial areas, resource gathering sites and occupation areas. <p><i>Dhawura Ngilan</i> best practice also requires that the ACH legislative regime:</p> <ul style="list-style-type: none"> acknowledges that property in secret and sacred ACH objects can only legitimately vest in the community of origin of the object and that this vesting occurs irrespective of the identity of the organisation or individual currently in possession of these objects have effective mechanisms to achieve the repatriation of these objects and IAR held in institutional and other 'collections', either in the ACT or elsewhere. <p>The Heritage Act and current practices do not meet these requirements. The Act provides that ACH objects located on territory land are owned by the ACT unless the object is owned by another person or entity or the Minister has declared that the ACT surrenders its legal interest in the ACH object.</p> <p>The Act does, however, provide for:</p> <ul style="list-style-type: none"> restricting the publication of information relating to ACH and acknowledges the potential for public disclosure causing damage to Aboriginal objects or places 	<p>Introduce to the <i>Heritage Act</i>:</p> <ul style="list-style-type: none"> a definition of IAR and provisions ensuring that IAR identified in country are left in country and these resting places are protected as 'Aboriginal or Torres Strait Islander places' (howsoever described) an amendment that acknowledges that property in secret and sacred objects can only legitimately vest in the community of origin of the object. <p><i>Dhawura Ngilan</i> did not identify any best practice approaches to these issues.</p> <p>Explore the potential to develop a program that facilitates the expeditious return to the affected communities of secret and sacred ACH objects or IAR held by others (persons, institutional and other 'collections') within the ACT.</p> <p>Most Australian jurisdictions have programs to effect the return of secret and sacred ACH, however they are usually under-resourced and opportunistic in the way they function.</p> <p>It is noted that the Australian Government currently supports the international repatriation of cultural materials through the Return of Cultural Heritage program run by the Australian Institute of Aboriginal and Torres Strait Islander Studies.</p>	<p>IAR identified in country will be left in country and legislatively protected.</p> <p>Increased clarity in the ownership of secret and sacred ACH objects.</p> <p>Effective mechanisms are in place to achieve the repatriation of secret and sacred ACH objects and IAR.</p>

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
	<ul style="list-style-type: none"> the surrender of the ACT's legal interests in Aboriginal objects it has control over, though this does not extend to repatriation or directly refer to secret and sacred objects. 		
Data access / management	<p>Consultation indicates that ACH sites, objects, places are not comprehensively documented and therefore decisions are made without this context. Equally, damage is being done to sites with the excuse that the object was unknown or not documented.</p> <p>ACH values may extend across borders and all RAOs cover areas within and outside the ACT's jurisdiction, which means in some cases the same ACH objects and places will need to be uploaded on two separate databases.</p>	<p>Establish as a priority a dataset of ACH that is not on the Heritage Register that is appropriately accessible by all stakeholders, including consultants, developers, other Government agencies and most importantly the Aboriginal community.</p> <p>The database should allow for stakeholders to upload information quickly and easily to ensure that a comprehensive dataset of ACH is in place.</p> <p>ACT Heritage should consider partnering with Heritage NSW in the development and implementation of the ACH database.</p>	<p>Improved recognition and management of ACH sites and objects.</p> <p>Elimination of accidental damage to ACH as the visibility of sites is improved.</p> <p>Improved recognition and management of ACH values and landscapes that extend across the ACT border.</p>
Enforcement / Compliance	<p><i>Dhawura Ngilan</i> best practice requires that affected Indigenous communities are adequately empowered and resourced to undertake necessary compliance and enforcement functions.</p> <p>Under the Heritage Act, RAOs are not empowered to undertake necessary compliance and enforcement functions relating to ACH.</p>	<p>Ensure that the ABG has oversight of ACH compliance and enforcement activity through Access Canberra.</p>	<p>ACT Aboriginal People take responsibility for ACH compliance and enforcement activities.</p>

Community Engagement

Table 5: Identified issue / gaps, reform directions and expected outcomes for Community Engagement

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
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Education	There is a lack of understanding in the ACT Aboriginal community about the structures and relationships between the Heritage Council/ACT Heritage and other government agencies.	The ACHB to provide an education program for the ACT Aboriginal community to strengthen its understanding of the ACT heritage arrangements and the interaction between those arrangements and the roles and the responsibilities of other ACT government agencies.	Improved ACT Aboriginal community understanding of how the ACT heritage arrangements protect and conserve ACH. Improved knowledge and expertise across the ACT Aboriginal community to facilitate succession planning on heritage matters.
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Underlying Heritage Framework

This section outlines, against the heritage management system model, the key issues / gaps in the management of the ACT's underlying heritage framework and the proposed reform approach and their expected outcomes. The issues / gaps have been identified through stakeholder consultations and desktop research.

Heritage Governance and Administration

Table 6: Identified issue / gaps, reform directions and expected outcomes for Heritage Governance and Administration

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
Governance (Ministerial expectations)	Consultations indicated that there was no structured mechanism in place to enable the Minister to convey their expectations to the Heritage Council on its strategic priorities and approach.	<p>Establish clear strategic expectations between the Minister for Heritage and the Heritage Council.</p> <p>This should commence with the Minister issuing a Statement of Expectations (SOE) to the Heritage Council.</p> <ul style="list-style-type: none">The SOE has been implemented by the Minister. This outlines the Minister's expectations and priorities and reiterates Heritage Council accountability. It requires the Council to provide an annual report to the Minister on its performance against the SOE. <p>The process should include the Heritage Council issuing a Statement of Intent to the Minister that outlines how it will achieve the Minister's SOE. This ensures there is clarity about the Heritage Council's approach and provides an early opportunity for the Minister to identify any areas where they consider the Council needs to adjust its approach.</p> <p>This process should be supported by ongoing communications arrangements between the Minister and the Heritage Council Chair and ACT Heritage. This should include:</p>	<p>Strong alignment of expectations and strategic priorities between the Minister and the Heritage Council.</p> <p>The Minister is informed of Heritage Council business and emerging issues (a no-surprises approach).</p>

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		<ul style="list-style-type: none"> Quarterly meetings between the Minister and the Heritage Council Chair Detailed briefings of the Minister's adviser by ACT Heritage following each Council meeting on the decisions and outcomes of the meeting and as required on any other issues. <p>On this latter point, it is understood that regular briefings have been occurring in 2023, serving to greatly improve the level of engagement between ACT Heritage and the Minister.</p>	
Governance (Minister's decision-making powers)	<p>Discussions with EPSDD officers indicated that, in light of the events leading up to the dissolution of the Heritage Council in late 2022 and subsequently, there was some concern as to whether the Minister needed enhanced decision-making powers.</p> <p>Under the Heritage Act, the Heritage Council is responsible for all decisions on heritage recognition and management (except on statutory referrals under the ACT planning system, where its role is advisory), and the Minister is responsible for:</p> <ul style="list-style-type: none"> Declaring RAOs and approving delegation arrangements Appointing the Heritage Council Directing further consideration by the Heritage Council in the making of guidelines and in several registration matters Declaring repositories for heritage objects Making decisions on the surrender of ACT legal interests in Aboriginal objects Entering heritage agreements. 	<p>The current split of decision-making responsibilities between the Minister and the Heritage Council is broadly consistent with the approach in Victoria, Queensland, South Australia, Tasmania and New Zealand.</p> <p>We consider this approach to be best practice, as it protects the integrity of heritage decisions by ensuring that they are based on consistent principles and policy rather than ad hoc political decisions.</p> <p>Indeed, when debating the <i>Heritage Legislation Amendment Bill</i> in 2013, the then Minister for Environment and Sustainable Development stated that:</p> <p><i>The government has considered that in the ACT the minister should not be responsible for all decisions. In many cases, there is benefit for the minister to distance himself or herself from heritage registration decisions, with an independent statutory body responsible for the decision-making process, to remove public and community scrutiny, pressure and lobbying.</i>²</p> <p>That amendment had proposed that the Minister be given the power to 'call-in' decisions on heritage registration.</p>	-

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		<p>That proposal was ultimately withdrawn by the Government, with Mr S Rattenbury MLA observing that:</p> <p><i>I have spoken already of the call-in power, but one of the most significant changes that this legislation had proposed was a call-in power for the minister to decide whether something has heritage value or not. This is not something that the Greens believe that the minister should decide. There is an independent body, the Heritage Council, which determines the heritage values of nominations. If there is a political or economic imperative to override this value, this should be a separate decision, rather than our creating a way to undermine the assessment process.³</i></p> <p>We note that Heritage Council decisions on registration and selected other matters are reviewable decisions before the ACT Civil and Administrative Tribunal. Hence, aggrieved parties do have recourse to judicial review of key Heritage Council decisions.</p> <p>Further, the Minister currently also has mechanisms available to clearly communicate the Government's priorities. The Ministerial Statement of Expectations provides for clarity in relation to focus areas for the Heritage Council when administering the Heritage Act. Alongside this, the Minister can appoint Heritage Council members and participate in their induction, attend Heritage Council meetings and provide feedback on Strategic and Corporate Plans.</p> <p>Consequently, we do not consider that a compelling reason has been identified for changing the current allocation of decision-making responsibilities within the Heritage Act.</p>	

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
Governance (Heritage Council)	<p>Consultations with ACT Heritage indicate that the Heritage Council does not have a contemporary strategic management framework in place to guide its decision-making and operations.</p> <p>The Nous Group report indicated that the understanding of the roles and responsibilities between the Council and ACT Heritage were misaligned. To ensure good governance and working relationship outcomes, there is a clear need for Heritage Council members to clearly understand their roles and functions under the Heritage Act.</p>	<p>Implement a strategic management framework to guide Heritage Council decision-making and operations, including a Risk Register and a detailed induction process for Heritage Council members.</p> <p>In the short- to medium-term, there is a need to transition to a mature strategic management framework including improved direction, structures, processes and oversight that will provide confidence in the Heritage Council's ability to make balanced, timely, independent, sound decisions. Priority tasks include;</p> <ul style="list-style-type: none"> • Develop a Strategic Plan for the Heritage Council and ACT Heritage including a clear vision statement, strategic priorities, goals, initiatives, task forces and performance measures aligned to the Act, Ministerial SoE that responds to the operational context. The majority of other jurisdictions have a strategic plan (Victoria, Western Australia and Tasmania's Strategic Plans are available online). • Development of a Strategic Planning Framework setting out the planning timetable, review, situational analysis etc. for subsequent renewal of the adopted Strategic Plan • Development of the Statement of Intent (which is a formal response by the Heritage Council to the Ministerial SoE) to demonstrate how the Heritage Council intends to deliver, or otherwise, the SoE • Develop a Corporate Plan demonstrating how the Heritage Council is to deliver all prioritised activities for the coming year • Develop a detailed annual work plan in consultation with ACT Heritage for the delivery of all prioritised Council initiatives 	<p>A well-managed and strategic approach to heritage recognition and management.</p> <p>Alignment of the roles and responsibilities between the Council and ACT Heritage.</p>

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		<ul style="list-style-type: none"> • Develop a Risk Register detailing operational and strategic risks and accompanying mitigation and / or management measures • Develop a priority list of policies across all functions, such as: delegations (including oversight and testing of delegated decisions), triage, stakeholder communications and engagement (including a focus on pre-lodgement engagement), categorisation of works applications, prioritised assessment listing, conflicts of interest, etc. • Develop a priority list of guidelines across all functions, such as: works guidelines, registration guidelines, standard set of planning conditions, induction manual for new Council members • Establish skill enhancement and knowledge sharing strategies for ACT Heritage staff to support the strategic management framework • Establish a rigorous and documented induction process for new Heritage Council members to ensure they are clear on their roles and responsibilities within the context of the Act and the SoE. It should include reference to their obligations under the ACT Public Sector Code of Conduct. <ul style="list-style-type: none"> – A comprehensive induction session was held in May 2023 for the new Heritage Council members. • Where appropriate, adopted strategies, policies and guidelines are communicated, promoted and made publicly available • The Council reviewing and reporting its performance against the Act, SoE and the agreed governance 	

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		<p>framework – this will assist in driving continuous improvement.</p> <p>It is important that the Minister be consulted on the Council's Strategic Plan, Risk Register and Corporate Plan. This will increase the Minister's confidence that the work of the Heritage Council is consistent with the Ministerial SoE and that strategic and operational risks have been identified, mitigated and or managed.</p> <p>Establish a governance framework for the Heritage Council that clearly establishes the services to be provided by EPSDD to support Council's operations and describe how they will work together and how it will be resourced.</p> <p>The governance framework between ACT Heritage and the Council should provide guidance on protocols on the respective roles and responsibilities. These protocols can provide guidance on how, where and when Council members can add value to ACT Heritage operations and the system. They can also clarify how Council members can assist by providing ACT Heritage staff with opportunities for mentoring / professional development / sounding board.</p> <p>Review delegations, with a view to expanding the list of delegated functions from Heritage Council to ACT Heritage to enable greater decision-making capacity in a timely manner.</p> <p>ACT Heritage exercises extensive delegations on behalf of the Heritage Council (approximately 97% of decisions are exercised under delegation) except for decisions on registration, Heritage directions and repair damage directions. There is a need for ACT Heritage to be able to respond quickly where there is an immediate risk to a</p>	

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		<p>Heritage listed place or object. This may be from non-compliance with a previous decision or rule or where there is an imminent threat or need to protect a heritage place or object, or the need to order the repair where damage has occurred.</p> <p>Convening the Heritage Council does not allow the timely response that may be necessary. A review of delegations to address this gap is required.</p> <p>Furthermore, given the performance of the Council is dependent on the delegated decision-making arrangements, it is important that the Council has a process for satisfying itself that those arrangements are operating consistent with Council approved policies. It is understood that this is achieved as part of EPSDD's normal internal assurance and audit processes.</p>	
Governance (Heritage Council skill base)	<p>Currently, the Heritage Act provides for an 11-member council, with two ex-officio members, three members representing defined community/industry groups and six members covering a range of professional heritage or building related disciplines.</p> <p>Contemporary governance approaches involve developing a skill matrix to ensure that an organisation's governance arrangements have the skills, knowledge and experience needed to effectively steer the organisation forward.</p> <p>The new Heritage Council was appointed using a skills matrix approach to ensure a broad range of skills to inform its decision-making and guide its strategic direction.</p> <p>Nevertheless, consultations indicated that the current Act limited the Minister's ability to appoint a Council with broad skill requirements outside of listed professional disciplines. For example, in appointing the recent</p>	<p>Amend the Heritage Act 2004 to provide the Minister with increased flexibility in the appointment of new Council members to ensure its breadth of skills and experience align with the Council's business and governance priorities.</p> <p>Most other jurisdictions have broadly similar approaches to the ACT in terms of the composition of their Heritage Councils, with a mix of representative based members and skill and expertise-based members – predominately in a range of professional heritage or building related disciplines. A number similarly have ex-officio members.</p> <p>Both Western Australia and South Australia, whilst specifying a number of skill/expertise disciplines, provide flexibility in appointments through the capacity to appoint members from other relevant disciplines.</p> <p>Further, Western Australia provides for the appointment of a Chair with '<i>demonstrated knowledge, experience,</i></p>	Heritage Council has the appropriate skills and expertise to inform decision-making and strategic direction.

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
	<p>Heritage Council, the Minister was unable to select a member who was solely a governance expert.</p> <p>The skills required by the Heritage Council should not be confined to heritage and building related disciplines, but should cover areas such as governance, risk management, communications, stakeholder engagement, legal expertise. For example, the Council may benefit from expertise other than that listed in section 16 (4) of the Heritage Act, such as those with expertise in governance, risk management, communications, stakeholder engagement or legal matters.</p>	<p><i>skills or qualifications relevant to the position of chairperson</i>¹.</p>	
Administration (workflow management)	<p>Consultations indicated that Heritage Council/ACT Heritage decisions / responses were taking too long.</p> <p>While officers indicate that work is triaged, resource constraints have meant that work priorities and response times were often driven by maximum response timeframes for statutory referrals.</p> <p>ACT Heritage currently has insufficient resources to carry out the functions necessary to appropriately support the work of the Heritage Council, particularly in light of increasing demands placed on it by the planning system, Government and the wider ACT community. This is evident from extensive delays in decision-making and client service provision and has contributed to the current backlog of work.</p> <p>Consultations with the EPSDD Planning managers indicated that wait times were considerable, with an example site perhaps requiring:</p> <ul style="list-style-type: none"> • <i>ACT Heritage advice on TPV – 20 working days</i> 	<p>Establish an effective triage system to appropriately guide unit work priorities, informed by a risk register.</p> <p>Improving the effectiveness and efficiency of the heritage system is critical. Central to this is establishing, documenting and resourcing a formal triage system to ensure that work across the various work teams is appropriately prioritised.</p> <p>The triage system will be assisted by the implementation of a strategic management framework and its associated annual work plan. The annual work plan will prioritise activities providing clarity to ACT Heritage for its workflow in its role of supporting the Council.</p> <p>The triage system should be supported by a risk-based and structured team-based approach to prioritising case management appropriately across ACT Heritage's workflow. It will need to be supported by adequate staff resources.</p>	<p>Improved timeliness of Heritage Council decisions/responses.</p> <p>Ready public access to an authoritative pre-lodgement advisory service.</p>

¹ Section 14(2) of the Western Australian [Heritage Act 2018](#)

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
	<ul style="list-style-type: none"> <i>Sites-specific investigations: ACT Heritage S57 applications – up to 6 months</i> <i>Consultant prepares Draft CHA and test excavation method - 2 weeks</i> <i>ACT Heritage review of draft CHA - 60 working days</i> <i>ACT Heritage excavation permit application - 70 working day minimum timeframe – up to 6 months</i> <i>Consultant undertakes test excavations with supervision of RAOs – 1 month</i> <i>Consultant Drafts SHE Report – 1 month</i> <i>ACT Heritage SHE applications - 80 working days – up to 6 months</i> <i>Allow for 1 round of ACT Heritage comments, report revisions, final review and approval – 2 months</i> <i>Total estimate – 24 months (after TPV approval)⁴</i> <p>We have also sighted advice issued by the ACT Heritage that indicates significant wait times:</p> <ul style="list-style-type: none"> <i>Restricted information requests - 60 working days</i> <i>Submissions for development proposals or conservation works - 100 working days</i> <i>Cultural Heritage Assessment reports - 100 working days</i> <i>Excavation Permit applications - 100 working days</i> <i>Statement of Heritage Effect applications - 120 working days</i> <i>Conservation Management Plan applications - 180 working days.</i> 	<p>Establish and resource pre-lodgement engagement and customer support services to streamline submissions.</p> <p>This will involve establishing and promoting a pre-lodgement 'concierge/help desk service', such as that offered in Tasmania, to assist applicants to understand the requirements and reasons for applications. Ideally this should be delivered in-house to eliminate the risk of incorrect or misguided advice being given by external contractors.</p> <p>Even with the publication of plain language policy and guidelines, some applicants still require support and guidance.</p> <p>It will be important to ensure the arrangements are adequately resourced, as the community must have trust that they can access/call and obtain some assistance and guidance on the seemingly complex world of heritage management.</p> <p>Sound pre-lodgement engagement arrangements, supported by appropriate policies and guidelines, will improve the quality of nominations and applications received by the Heritage Council. It will also assist in reducing the potential for appeals.</p> <p>Further:</p> <ul style="list-style-type: none"> strategies should be developed to deal with pre-lodgement engagement with other ACT agencies such as the Suburban Land Agency and the City Renewal Agency it is critically important to procure and implement business systems to support specialised ACT Heritage operations and improve responsiveness, triaging and case management. Improving business 	

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
	<p>ACT Heritage officers indicated that available resources limited their ability to undertake pre-lodgement engagement.</p> <p>There is also a lack of adequate support in interpreting policy or obtaining guidance on applications, with ACT Heritage advising that responding to some non-timed enquiries takes 100+ days.</p> <p>Currently there is an advisory service that is delivered by an external contractor, however staff report difficulties in the consistency of the advice provided through this service.</p>	<p>systems will enable better access to information to assess works and provide general advice and information.</p> <ul style="list-style-type: none"> consideration should be given to establishing a major projects unit to provide a consistent interface with major projects, given the significant number of major projects being planned or progressed in the ACT. This will ensure that major projects receive early and positive Heritage Council guidance. 	
Governance (Taskforces)	<p>Discussions with ACT Heritage staff indicate that the structure and membership of the Heritage Council Taskforces does not ensure they have the requisite skill, knowledge and guidance required to acquit their task. Further, consultations with staff indicated that Taskforce past operations were not strategically focused.</p>	<p>Increase the remuneration budget for the Heritage Council to provide for adequate composition and meeting frequency of the Council Taskforces, enabling greater assessment capacity.</p> <p>Taskforces/committees in other jurisdictions (e.g., Tasmania) perform the heavy lifting on policy and guideline development. This frees up the Heritage Council to focus on its strategic priorities including the ultimate approval of work performed by the Taskforces. Based on practice in other jurisdictions, ACT Heritage should be delegated to do most of the work to research and propose recommendations, with the Taskforces guiding output, and the Heritage Council or Chair making final decisions.</p> <p>All taskforces require clear Terms of Reference detailing objectives, outcomes, timetable and desired outcomes that are consistent with their objectives. Wherever possible (noting taskforces other than the Registration Taskforce are convened as required) they should each also have an approved annual work plan in line with the Heritage Council's Strategic Plan. The Heritage Council</p>	<p>Taskforces that support the achievement of the Heritage Council's Strategic Plan.</p>

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		<p>should monitor Taskforce performance against their work plans.</p> <p>Ideally each Taskforce should be 4-6 people, comprising Council members supplemented by non-Heritage Council external members.</p> <p>It is recommended that the Chair of the Heritage Council should not chair any Taskforces.</p> <p>Taskforces should meet regularly (suggest 4-6 times per year). Taskforce work plans will need to be managed in consultation with ACT Heritage, which needs to provide supporting resources. They should provide minutes of Taskforce meetings to the Heritage Council and report quarterly to the Council on progress against their work plans, including full statistics on enquiries, advice, cases, outcomes, appeals etc.</p> <p>Additional remuneration funds will be required to support the increased work and external membership of the Council's Taskforces.</p> <p>Consideration could also be given to establishing a Taskforce that focuses on pro-active external engagement. This approach occurs already in Victoria and other jurisdictions. The Taskforce could help expand and run the Heritage Festival and undertake public activations or initiatives. This would also assist in strengthening community engagement and reputation.</p>	
Resourcing	Consultations indicated that ACT Heritage were well regarded for their skills and knowledge by external government stakeholders. However, consultations with ACT Heritage officers indicated that it is under-resourced and understaffed.	<p>Review the structure and resourcing of ACT Heritage to ensure it can adequately support the functions of the Heritage Council including requisite skills / knowledge / experience.</p> <p>Resourcing and staffing for ACT Heritage is a matter for EPSDD.</p>	A well-resourced, fit for purpose organisation that can effectively support the Heritage Council to achieve its Strategic Plan.

Element	Issue/Gap	Suggested Reform Approach	Expected outcome												
	<p>This means it is not able to service the current work needs of the Heritage Council or reduce the Council’s current large backlog of work.</p> <p>This situation results in the perceived burden of ‘never getting ahead’, which is demoralising for staff.</p> <p>It is understood many of the existing staff are on temporary contracts (due to ACT Heritage’s current budgetary situation), with this contributing to staff uncertainty and posing obvious risks to business continuity should key staff seek more secure employment elsewhere.</p> <p>It is observed that ACT Heritage comprises skilled team members, however it does lack the necessary structure (and a variety of management skills and experience) that is necessary to ensure the effective management and prioritisation of the workflow.</p> <p>Staffing numbers across jurisdictions vary significantly. Direct comparisons are difficult as jurisdictions operate differently, with different workflows and systems. Full time equivalent staffing of Australian jurisdictional heritage management functions is outlined below.</p> <table><tr><th>Jurisdiction</th><th>FTEs</th></tr><tr><td>ACT</td><td>9.9</td></tr><tr><td>NSW</td><td>113</td></tr><tr><td>Northern Territory</td><td>6</td></tr><tr><td>Queensland</td><td>27.45</td></tr><tr><td>Western Australia</td><td>48</td></tr></table>	Jurisdiction	FTEs	ACT	9.9	NSW	113	Northern Territory	6	Queensland	27.45	Western Australia	48	<p>On the evidence of long wait times for responses and work backlogs, it is clear that current staffing levels are not adequate to address the current volume of work, nor will they be adequate to deal with the additional activities proposed by this review.</p> <p>A clear plan for improving efficiency will assist to some degree, however the resource gap indicates that a restructured and better resourced ACT Heritage is required.</p> <p>It is likely that clearing the current backlog of work in all areas will likely require a year of additional focused effort, planning and staff time.</p> <ul style="list-style-type: none">It is noted that additional staff have been recently employed specifically for this purpose. <p>Accordingly, a review of the structure and resourcing of ACT Heritage should be undertaken. The review should seek to ensure ACT Heritage has the mixture of specialist and support staff it needs to cope with its workload, as well as those with strategic and personnel skills necessary for facilitating change. The review should include considering how best to implement strategies to improve shared support and education of ACT Heritage staff.</p> <p>A well-resourced, fit for purpose organisational design will contribute to an improvement in effectiveness and efficiency within ACT Heritage. Existing dedicated staff should be allocated to positions that best fit their skills and experience.</p> <p>Whilst the review is being undertaken, ACT Heritage Director and managers should continue to have weekly meetings to build staff levels of morale, output, strategies, and to manage possible challenges of changing or improving internal systems.</p>	
Jurisdiction	FTEs														
ACT	9.9														
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Element	Issue/Gap	Suggested Reform Approach	Expected outcome
	<div>South Australia20.4</div> <div>Victoria29</div> <div>Tasmania9</div>	<p>Reclassify positions within ACT Heritage to be more competitive with the private sector to attract and retain staff with appropriate specialist skills.</p> <p>ACT Heritage staff indicated that the current classification levels of the unit made it difficult to attract and retain staff with appropriate specialist skills. This indicates that there is a need to reclassify positions within ACT Heritage to be more competitive with the private sector.</p> <p>Consideration should also be given to providing staff with increased security of tenure in their positions as this will greatly add to the individual and collective staff confidence.</p> <p>Providing permanent administrative support capacity for specialist teams within ACT Heritage.</p> <p>A whole layer of permanent administrative support capacity is needed for specialist teams within ACT Heritage. Presently Heritage specialist staff are undertaking basic administrative work, which is an inefficient use of their time.</p>	
Risk to unregistered properties	<p>There is a substantial chance of damage/demolition of nominated sites by delays in assessing/endorsing nominations.</p> <p>A considerable backlog exists in this section of ACT Heritage. There are currently eighty-five outstanding registration nominations, with only 4-5 being processed per year (as advised by ACT Heritage staff). No current strategy to fix backlog.</p>	<p>Amend the Heritage Act to:</p> <ul style="list-style-type: none"> remove all nominations for provisional registration to the ACT Heritage Register that were made under the previous Land, Planning and Environment Act 1991 (i.e., pre-2003) expand the grounds for dismissal of a nomination application to the Heritage Register allow automatic refusal of incomplete nominations 	Reduced risk of damage/demolition of ACT heritage.

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		<ul style="list-style-type: none"> establish a time limit (e.g., 1 year) for a decision on provisional registration pertaining to new nominations. <p>Increase resourcing to research, assess and process outstanding nomination applications to the ACT Heritage Register. This will require significant resources to ensure this task is completed in a timely manner (maximum 1-2 years).</p> <p>A program is required to deal with the current backlog of registration nominations. This will require additional resources to research, assess and process outstanding nomination applications to the ACT Heritage Register.</p> <p>This will require support through amendments to the Heritage Act to improve the capacity of the Heritage Council to clear the nomination backlog and to efficiently undertake its registration functions. They include amendments to remove pre-2003 nominations, tighten and clarify the nomination requirements and introduce a definitive time limit for assessing nominations not currently provided in the Heritage Act. This will create a measurable standard against which to judge workload/staff requirements, enable tracked performance, and hasten the protection of vulnerable nominations.</p>	
Performance Management	Consultations indicate that Heritage Council and ACT Heritage performance is only being monitored through the Annual Report process. The Council provides an annual report as an annex to the EPSDD's annual report. ACT Heritage reports on its performance against three accountability indicators in the EPSDD Annual Report.	<p>The Heritage Council to establish a performance review program to assess its performance in relation to its roles and responsibilities.</p> <p>The Council should report to the Minister annually on its performance against its Strategic Plan and annual business plan.</p>	Confidence that ACT Heritage and in turn the Heritage Council is performing well against the Strategic Plan.

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
	It is important that the Heritage Council is accountable to the Minister for its performance against its strategic agenda.	<p>This will provide a mechanism to assure the Minister that decisions are being made and activities being undertaken that are consistent with its strategic agenda.</p> <p>This may involve undertaking, when appropriate, an external performance reviews that gauge Council performance as perceived by external stakeholders or audit activities.</p>	

Heritage Policy

Table 7: Identified issue / gaps, reform directions and expected outcomes for Heritage Policy

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
Definitions and principles	<p>A review of the ACT Heritage website and other documents provided by ACT Heritage indicate there are few publicly available policies and guidelines on the operations and expectations of the ACT heritage. This contrasts with most other jurisdictions.</p> <p>Consultations indicated that there is excessive Conservation Management Plan (CMP) use in the ACT.</p> <p>CMPs are not mandatory, although the Council or Minister can direct one to be prepared by a public authority under s 110 of the Heritage Act. The Planning and Land Authority may impose a CMP required as a condition on a development approval on Heritage Council advice. A person or entity responsible for a heritage place or object may also choose to develop and seek approval for a CMP.</p>	<p>Strengthen and build on the suite of public policy and guidance material for heritage owners, managers and the community regarding the decision-making principles and processes used by the Heritage Council / ACT Heritage.</p> <p>Improve the transparency of decision-making processes by publishing the expanded suite of policy and guidance material. This creates clarity and certainty for stakeholders and the community.</p> <p>The development and publication of policies and guidelines is consistent with practices across Australian jurisdictions. The Western Australia Heritage Council website is a great example of how this is done elsewhere.</p>	<p>Better information, knowledge and understanding of the operations and expectations of the ACT's heritage management system.</p> <p>Improved confidence and trust in ACT's heritage management system.</p> <p>A more efficient and flexible approach to ensuing heritage conservation.</p>

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
	<p>While CMPs are best practice, and technically should fit the scale of the project, they tend to be large and a heavy solution and therefore expensive to produce. Unnecessary reliance on their use imposes reputational damage by imposing high consultant costs on projects that perhaps don't warrant them.</p> <p>The current CMP approval system uses excessive staff time to assess / endorse. The Heritage Council may request that a CMP be renewed every five years. This five-year expiry of CMPs causes an unproductive repeated cycle of work, especially where circumstances and context has not changed.</p>	<ul style="list-style-type: none"> • Policies will outline the decision-making principles and processes used by the Heritage Council. • Guidelines provide a clear articulation of the expectations of the Heritage Council in applying its policies and ensure decisions are made in accordance with Council policies. <p>The open publication of documentation ensures the community/ developers/ planning professionals have access to the information required to understand the system/ performance/ expectations of all components of the ACT heritage management system.</p> <p>The highest priority of these is the development of Works Guidelines. Clear transparent Works Guidelines will improve the quality of works applications and, in many cases, reduce the number of appeals.</p> <ul style="list-style-type: none"> • These guidelines can be formal guidelines with legal force made under Part 5 of the Act, or policy or practice guidelines. • These guidelines should provide clear transparent guidance about the Heritage Council's approach to assessment, including how it approaches issues such as facilitating adaptive re-use and catering for climate change impacts on heritage. • The initial development of these guidelines will require a very driven 6-12 month process with extra staff allocation (or allocated) specifically for this task. Similar documents in other jurisdictions can be a structural guide. • Once the draft guidelines are produced, community engagement, particularly with heritage professionals should be undertaken. The feedback and refinement of the guidelines final form provides additional strength, validation and credibility. 	

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		<ul style="list-style-type: none"> Once produced, the effectiveness of these documents should be regularly reviewed and updated by the relevant Taskforce. <p>This will lead to superior heritage outcomes, and thereby the improved conservation of heritage significance and values. The other advantage (as found in Tasmania when utilising guidelines with pre-lodgement engagement) is a significant reduction in appeals. Consideration should be given to basing the Works Guidelines on those developed by Tasmania, which have been utilised and adapted by several other jurisdictions.</p> <p>Following the development of the Works Guidelines, the next priority should be the review and amendments of the Heritage Assessment Policy to provide a standard format for any supporting information for Registrations, including length / photography / historical drawings / information. This will bring further efficiencies to the system, providing a systematic path to addressing the registration nomination backlog (see Strategic Reform 5) and protect ACT's most important places and objects.</p> <p>It is recommended that a Guideline should be produced that explains in plain language the heritage principles of the <i>Burra Charter</i> and how they are applied in the Heritage Council's strategy and work. South Australia provides a good online resource in this vein.</p> <p>The development of policies and guidelines will be assisted by attendance and active participation at HCOANZ in the sharing and exchange of ideas, policy and problem solving.</p> <p>As part of the policy review and expansion, the Heritage Council's current policy regarding the use of Conservation Management Plans should be reviewed, with a view to introducing less costly alternatives.</p>	

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		<p>The CMP system should be streamlined and CMPs restricted to only large complex projects. Many applicants don't understand that a CMP can be very modest for a small project.</p> <p>Other less costly alternatives can be considered such as Conservation Management Strategies (used in Western Australia) or Heritage Impact Statements (used in most other jurisdictions) to manage one-off or modest-scale change for listed heritage sites.</p> <p>The Heritage Council should publish clear guidelines/benchmarks on when a CMP or an alternative approach will be required.</p> <p>The Heritage Council should also introduce a flexible approach to the current five-year re-approval / renewal requirement, especially where circumstances or context is unchanged. This should also be clear in the new guidelines</p>	

Heritage Recognition

Table 8: Identified issue / gaps, reform directions and expected outcomes for Heritage Recognition

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
Assessment	<p>Consultations, together with a review of some examples, indicate that information supporting new Registrations produced by ACT Heritage are often too long / detailed.</p> <p>While these are beautiful historic documents completed to a very high standard, the length is excessive and causes problems with timeliness and goes well beyond providing information that is required under the Act.</p>	<p>Amend the Heritage Assessment Policy to set clear expectations on the size / format for new Registrations, and the inclusion of guidance on future development.</p> <p>The Heritage Assessment Policy should be reviewed and amended as a priority to provide a standard format for producing any supporting information for Registrations, including length/photography/historical</p>	<p>Improved timeliness in the consideration of nominations to the Heritage Register.</p> <p>Improved staff productivity.</p> <p>Improved public understanding of the heritage significance of</p>

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		<p>drawings/information. It should also cover the inclusion of guidance on future development. The production of supporting information for Registrations should be a timed deliverable, with pre-agreed scope depending on the complexity of histories and research effort required.</p> <p>Similar assessment policies are currently being utilised or developed in a number of other jurisdictions, including Tasmania.</p> <p>All new Registration documentation should be written with Works team input and with a view to likely future development, to simply and clearly explain what is of heritage significance and value.</p> <p>This prevents Works staff having to reinvestigate the whole site history to identify areas of significance for every works application.</p>	listings on the Heritage Register.
Register	<p>Access to heritage data is problematic, with the ACT Heritage register system being old and not fit for purpose.</p> <p>Consultations indicated that ACT Heritage's document management system for managing heritage data (known as the heritage database) is out-of-date.</p> <p>This results in large amounts of stretched staff's time being used to find / gather information. It also heightens reputational risk for the Heritage Council as ACT Heritage cannot locate or readily access all relevant information that it possesses.</p>	<p>Resource the establishment of a new online Heritage Register that is accurate, searchable and discoverable.</p> <p>A pathway for digitisation of the Register is currently underway (albeit at an early stage), with the development of a new heritage register database being currently in the design description and requirements stage.</p> <p>All jurisdictions in Australia now have digitised Registers, but the standard and clarity of available information varies widely.</p> <p>Access to a digitised Register by staff, assessors, other agencies, developers, site managers and the community will transform the recognition, management and protection of heritage in the ACT. It will be a powerful tool that should:</p>	<p>ACT has a credible, accurate, searchable, discoverable and accessible Heritage Register.</p> <p>Research time is effective and efficient.</p> <p>Reputational risk is minimised by ACT Heritage unit having all information to hand.</p>

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		<ul style="list-style-type: none"> • make assessment of works and future registrations easier and faster • provide public access to ACT's unique stories • be linked to the ACT's land information system so that it provides the currently missing 'heritage' layer • provide the ability to understand what collectively is registered and what 'ways of life' and 'themes' are not currently represented on the register. <p>A digitised register will be of most use if:</p> <ul style="list-style-type: none"> • the search function provides for searchability of types, themes, styles, periods, important people in the pattern of history of the ACT, etc. • the framework built provides for discoverability • the spatial information is audited and accurate • it is linked, and/or a layer, in the overall land information system • it provides for open, free and public access • it provides for downloadable certified confirmation of an affected place • the digitised register is promoted and celebrated. <p>The digitisation of the register is not a quick or easy undertaking. However, the long-term advantages, along with the community expectations to be able to easily access this information, flag this as a high priority initiative. Interim arrangements will be necessary ahead of the major reforms underway with the development of a new heritage register.</p>	

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		<p>Procure and implement business systems to support specialised ACT Heritage operations and improve responsiveness, triaging and case management.</p> <p>ACT Heritage should procure and implement new business systems to support ACT Heritage operations.</p> <p>This will involve specifying ACT Heritage user requirements and then procuring and deploying suitable products. Reference should be made to the systems used by other jurisdictions – for example, Victoria has a good system, which South Australia and Queensland have duplicated.</p> <p>The new systems should be integrated with the new ACT digital Heritage Register to ensure research time is effective and efficient.</p> <p>It is understood that a data extraction project being undertaken by ACT Heritage will provide improved interim capacity for information location and retrieval.</p>	
	Discussions with ACT Heritage staff and a review of entries on the ACT Heritage Register indicate that it is populated with some early places/objects with little current information.	<p>Undertake a systematic review of all Registrations on the ACT Heritage Register to ensure listing information meets current <i>Heritage Act 2004</i> requirements and supporting Heritage Guidelines are made, where applicable.</p> <p>Early register entries in most jurisdictions can have little or generalised information, making it difficult to understand heritage significance or values and the spatial area nominated.</p> <p>An audit of the spatial accuracy of the Register can be undertaken at the same time. In other jurisdictions, these audits undertaken prior to digitisation have uncovered</p>	A credible and accurate register.

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		<p>inaccurate location information, double listings and in some cases information that renders the listing invalid.</p> <p>Items with insufficient information should be ordered in a list of priority for review/augmentation, commencing with places under threat.</p>	
Themes	Past and current Registrations aren't themed / structured, but have been developed in response to public nominations.	<p>Develop a thematic approach to guide the growth in the Heritage Register.</p> <p>With the advantage of the digitised Register, ACT Heritage will be able to interrogate data and a granular level, including understanding the gaps in representation on the Register.</p> <p>This will enable the development of a thematic approach to the listings on the register. This would be guided by the Strategic Plan and apply to current and likely listings. Grouping new nominations thematically would assist the speed of processing and improve press content/ delivery and public understanding.</p> <p>A thematic approach will provide an opportunity for engagement with the community with a call for nominations for places around particular themes.</p> <p>The Heritage Council's Strategic Plan should provide some guidance as to the prioritisation of future Registrations according to themes.</p> <p>Utilising this guidance, a PALS (Priority Assessment List for Registration) should be developed to plan the long-term registration efforts.</p>	A Heritage Register that is representative of ways of life in the ACT, and which protects the ACT's most important places and objects.

Heritage Conservation

Table 9: Identified issue / gaps, reform directions and expected outcomes for Heritage Protection

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
Strategy	<p>The Heritage Council is not the decision-maker for statutory referrals under the ACT planning system, rather, its role is advisory only.</p> <p>Consultations indicate that, while the predominate practice of the Land and Planning Authority is to reflect the Heritage Council's advice, there are instances where this is not the case.</p> <p>For example, we were advised of instances (involving development applications from other government agencies) where the Heritage Council advice has been to not approve a development application, but the Land and Planning Authority approved the application with the condition that the applicant work out the heritage issues with the Heritage Council. This has led to a stalemate due to the nature of the heritage considerations, with the Heritage Council placed in a no-win situation.</p> <p>The situation means that the Heritage Council can be compromised in its quest to protect heritage that it has recognised and listed. This results in weaker protection for the use, development, protection and conservation of ACT's heritage.</p> <p>Furthermore, there has been a lack of alignment between the ACT's integrated planning system and the Heritage Act, leading to decisions being made in isolation without consideration of the broader objectives of the planning system.</p> <p>Under the objects of the Heritage Act, the Heritage Council has been given the responsibility to recognise, register and conserve ACT's valued heritage. The Act requires that functions under the Act must be exercised, as far as</p>	<p>To work with the ACT Planning and Land Authority to develop policy, guidelines and processes to ensure that all ACT planning decisions under the new Planning Act have regard to valuing, conserving and promoting heritage early in the development process.</p> <p>The new <i>Planning Act 2023</i> expands the object of the planning legislation to establish an outcomes-focused system. In doing this it seeks to ensure that heritage considerations are fully integrated into the development assessment process at an early stage.</p> <p>The pending commencement of the new Act provides the Heritage Council with an opportunity to strengthen the consideration of heritage matters within the ACT's integrated planning system. This should include:</p> <ul style="list-style-type: none"> establishing and resourcing pre-lodgement engagement arrangements that provides timely and consistent advice on heritage matters are considered early in planning processes working with the ACT Planning and Land Authority to develop policy, guidelines and processes that to ensure that all ACT planning decisions under the new Planning Act have regard to valuing, conserving and promoting heritage and that heritage is considered early in the development process. <p>Furthermore, the Heritage Council should develop a policy that requires all Heritage Council decisions on heritage registration and management to be sustainable within the</p>	<p>Heritage recognition, management and conservation decisions are sustainable within the context of the broader stated objectives of the planning system.</p> <p>Stronger protection for the use, development and conservation of ACT's heritage.</p>

practicable, to achieve conservation of heritage and to maximise the community's ability to benefit from that heritage. However, heritage conservation and management must be undertaken in an environment that is subject to constant social, economic, technological and environmental change.

Arguably, the ACT's current approach to heritage conservation and management needs to be broadened to have due regard to ongoing change so that it can achieve a sustainable balance between recognition, management and protection of heritage outcomes and other societal demands. This will strengthen the ability of the system to address issues such as facilitating adaptive re-use of heritage assets, mitigating the effects of climate change and contributing to the liveability, health and wellbeing of the community.

Finally, the Heritage Council currently is not a referral entity under the Planning Act in cases where a site subject to a development proposal is adjacent to a site on the Heritage. In those situations, the Council can make a representation to the Land and Planning Authority regarding the development proposal, but its views have no special status (unlike the case where it is a referral entity). This inhibits the Council's ability to adequately manage the integrity of registered heritage sites.

context of the broader stated objectives of the planning system.

A broadly similar approach currently operates in Tasmania, where Section 7 of the *Historic Cultural Heritage Act 1985* states that one of the functions of the Heritage Council is '*to work within the planning system to achieve the proper protection of Tasmania's historic cultural heritage*'. In effect, this requires the Tasmanian Heritage Council to have regard to the objectives of Tasmania's Resource Management and Planning System, which are set out in Schedule 1 to the *Land Use Planning and Approvals Act 1993*. Those objectives have a focus on 'sustainable development', which is defined as "*...managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety...*'

Queensland and South Australia also have similar approaches in written their Heritage Acts

Develop a policy in conjunction with the ACT Planning and Land Authority, with a view to amending the Planning Act, to clarify the circumstances where the Planning Authority may deviate from Heritage Council advice. (i.e., in limited and well-defined circumstances, such as are in place for the Conservator of Flora and Fauna).

We did consider the potential to reform the Planning Act to establish the Heritage Council as the consent authority for decisions on heritage matters within the ACT's integrated planning system (presently, and under the new Act, it is advisory only to the Planning and Land Authority). This is the approach taken in some other jurisdictions, for example, Victoria, South Australia and Tasmania.

However, discussions with EPSDD officers indicated this would potentially have major implications for the way in which the planning system operates.

In light of this, a better approach would be for the Heritage Council to work with the ACT Planning and Land Authority to develop a policy and associated amendment to the Planning Act to clarify the circumstances where the Planning Authority may deviate from Heritage Council advice. Such diversions should occur in limited and well-defined circumstances, such as are in place for the Conservator of Flora and Fauna². This would increase the transparency and certainty regarding heritage considerations within the planning system.

Amend the Heritage Act and the Planning Act to allow the Heritage Council to be a referral entity in cases where a site subject to a development proposal is adjacent to a site on the Heritage.

Consideration should be given to amending the Heritage Act and the Planning Act to allow the Heritage Council to be a referral entity in cases where a site subject to a development proposal is adjacent to a site on the Heritage. This approach is employed in Queensland and South Australia and would strengthen the ability of the Heritage Council to manage the integrity of registered heritage sites.

Enforcement / compliance	No public policy or guidelines are in place dealing with the Heritage Council's approach to compliance and enforcement.
	ACT Heritage officers indicate that all enforcement actions are undertaken by Access Canberra's enforcement team.

Develop an enforcement / compliance policy in conjunction with Access Canberra

Public education / early engagement and clear Works Guidelines will aid compliance by applicants and the public generally.

Improved compliance and enforcement.

² See Section 186 of *Planning Act 2023* relating to restrictions on development approval.

Possible enforcement actions or non-action can cause reputational damage to the Heritage Council. Consequently, it is important that the Heritage Council has a clear approach to enforcement actions and liaises with the enforcement team.

Any enforcement once has commenced it needs to be seen through to its conclusion. This is often expensive and time consuming. Enforcement must be assessed in the context of reputational risk analysis and the prospects of success. Often a negotiated outcome is more likely to afford heritage protection. However, it is important that the community understand that enforcement will be undertaken when non-compliance is detected.

The enforcement/compliance policy should:

- Ensure all refusals and controversial changes are considered/managed by the Senior Director in consultation with the Heritage Council Chair
- Encourage, where possible, engagement with non-compliant owners to secure a positive heritage outcome.

Community Engagement

Table 10: Identified issues / gaps, reform directions and expected outcomes for Community Engagement

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
Communications and stakeholder engagement (General)	<p>There is no strategic approach to stakeholder mapping, engagement or messaging by the Heritage Council or ACT Heritage.</p> <p>This is in an environment where the general population is highly educated, with heightened expectations of response times.</p>	<p>Develop and implement a Stakeholder Engagement and Communications Plan.</p> <p>The Plan should map out stakeholder groups, identify stakeholder interest / influence / frequency of contact / communication channel, spokesperson, approach and messaging.</p> <p>More engagement / updating and management of expectations is required, including harnessing the unique enthusiasm with a volunteer program.</p> <p>Regularly publishing details of improvements in the system and Heritage Council's performance against</p>	Managed, predictable and planned communication with stakeholders to further the objectives of the Heritage Council strategic plan

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		<p>strategic goals will help deepen an appreciation of the depth and complexity of the work of the Heritage Council and ACT Heritage.</p> <p>The Plan should ensure that the Heritage Council is highly visible to the public and other agencies through the regular publication of updates on Heritage Council activities, including celebrating achievements such as reducing the nominations backlog.</p> <p>Raising and improving the profile, understanding and engagement with Heritage in the ACT will improve stakeholder engagement and create clarity and certainty for stakeholders and the community. It will be important to:</p> <ul style="list-style-type: none"> • Investigate ways of strengthening the independence of the Heritage Council and ACT Heritage, so it looks like an 'Office' that is independent of the Planning and Land Authority • Improve the transparency of decision-making processes by publishing the expanded suite of policy and guidance material. 	
	<p>Consultations indicated that EPSDD and ACT Heritage officers perceived there was a lack of understanding within the community of the purpose and roles of the Heritage Council and ACT Heritage, leading to a lack of support.</p> <p>This has undoubtedly been impacted by the issues highlighted by the recent Nous Group report.</p>	<p>Improving the brand/reputation of the Heritage Council and ACT Heritage should be an objective in developing the Stakeholder Engagement and Communications Plan. The plan should detail the communication and messaging of a pathway to an improved system and of progress along the way. This approach is part of business as usual in other jurisdictions.</p> <p>Reputational improvement will be assisted by improving the transparency of the heritage management system. This requires open and transparent communications including the publication of guidelines, policies, changes in structure, processes, strategic plans and progress reports.</p>	<p>The public has a clear understanding of the purpose and operations of the Heritage Council and ACT Heritage.</p> <p>The Heritage Council brand and reputation is restored.</p>

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		The collection and publication of statistics on approvals and enforcement actions will assist in resetting the notion that the Heritage Council / ACT Heritage has a 'no' culture.	
	Strong precinct groups are great advocates with passions that run high, but need to be managed and worked with so they do not inhibit ACT Heritage / Planning outcomes.	<p>The Stakeholder Engagement and Communications Plan should include activities aimed at working with precinct groups to learn from their networks and utilise them as a sounding board to help populate more detailed design advice guidelines.</p> <p>This could include operating regular (at least annual) workshops with these groups to ensure alignment of expectations/ possibilities. New policies and guidelines should be explained to these groups, so that knowledge can be disseminated by interest groups peer to peer.</p>	Further engagement by passionate advocates. Ensures listening and exchange of ideas is part of any planned communications and engagement.
Communications (with Government)	<p>Lack of support, interest or understanding by past governments as to the extent and importance of ACT Heritage and the complex and demanding works it undertakes.</p> <p>Irregular communication with Minister and Minister's Office in past has led to the Minister being unaware of emerging issues and risks.</p>	<p>The development and implementation of the Stakeholder Engagement and Communications Plan will support open, regular and consistent lines of communication between the Heritage Council, ACT Heritage, the Minister's office and other parts of the ACT Government.</p> <p>It is clear that communications have improved significantly with the appointment of the new Council and a focus on improving and mending relationships within the heritage ecosystem.</p> <p>Mutual support, trust and respect must be built through greatly increased communication. Ideally the Minister and or Minister's Office must be encouraged to engage/endorse and support strategies and progress on improvements to the heritage management system.</p>	The building of trust between the Government parties within the heritage ecosystem.
Communications (with applicants)	Poor response times to enquiries and necessary juggling / prioritising of tasks has	The development and implementation of the Stakeholder Engagement and Communications Plan	Increased confidence and trust in the ACT heritage arrangements.

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
	<p>led to significant reputational damage, and risks to the ACT Heritage team, Heritage Council and the system.</p> <p>Lack of trust across the heritage ecosystem.</p>	<p>will support open, regular and consistent lines of communication with applicants and the broader community.</p> <p>Clearing the backlogs as discussed above, establishing guidelines, improving access to data and information will assist ACT Heritage to transition to a proactive culture of pre-lodgement advice and engagement.</p> <p>The evidence revealed by this review indicates that the ACT's approach to heritage recognition and management needs adjustment to achieve this sustainable balance. A number of stakeholders consulted (for example, the Suburban Land Agency) indicated that a lack of access to timely and consistent advice on heritage matters, or a lack of clarity on the heritage values to be conserved has impeded their ability to appropriately incorporate heritage considerations into land release proposals. Equally, criticisms come from residential owners that there is insufficient accommodation of glazing upgrades and solar panels.</p> <p>Communicated progress towards improving the system and a transition to a proactive approach will improve stakeholder engagement and increase confidence and trust in the organisations and systems.</p>	
Brand	Poor public/community understanding of the value of heritage.	<p>Develop a long-term ACT Heritage Strategy.</p> <p>Heritage must be understood as the chance to celebrate shared stories. To achieve this, it is proposed that the ACT Government, in collaboration with the Heritage Council, develop a long-term ACT Heritage Strategy that fosters community appreciation of heritage. An outward facing long-term Heritage</p>	Improvement in the understanding of the social, environmental, economic and intrinsic value of heritage in the ACT.

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		<p>Strategy will outline the Government's vision and objectives for Heritage in the ACT.</p> <p>Similar strategies are used in a variety of areas by the ACT Government to guide long term decision-making and inform stakeholders, for example:</p> <ul style="list-style-type: none"> • ACT Climate Change Strategy • ACT Planning Strategy • ACT Housing Strategy • ACT Digital Strategy <p>Finally, the strategy should include clear engagement about the growth in the Heritage Register going forward. As discussed earlier, it is critical that the Heritage Council uses a thematic approach to guide the population of the Register going forward, and it is an excellent form of education and involvement to explain themes to the public and invite nominations within themes going forward.</p> <p>Create a link between the value of heritage and the ACT's Wellbeing Framework.</p> <p>The ACT has an established Wellbeing Framework and supporting program to gauge the impact of government activities on the wellbeing of people living in the ACT. It contains some reference to heritage through an Arts and culture indicator under the Identity and Belonging domain within the framework.</p> <p>Identifying ways to strengthen the link between heritage and community well-being will support an improved understanding of the positive role that heritage recognition and management plays in the ACT.</p>	

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		<p>Undertake a study into the value of heritage in the ACT, covering both economic value and social strengthening (non-tangible).</p> <p>This will provide the hard evidence and data that can be utilised in the conversations with the community and funders by the Minister, the Heritage Council and ACT Heritage.</p> <p>It will support strategic change through the provision of hard data and evidence that is credible and attractive to funders/treasury.</p> <p>Importantly, it will assist the development and operation of an ACT Heritage Strategy by providing measurable outcomes. Like other jurisdictions (for example, Victoria and Tasmania and the UK), the ACT Government should undertake a study into the value of heritage in the ACT, covering both its economic and social value (non-tangible). This will record the status of heritage now and will be a marker to show change in 5-10 years, when another similar study should be undertaken.</p> <p>It is understood a panel survey is about to be released to gauge the public understanding and value of heritage. This may support this initiative. Similar documents have already been produced in Victoria and now being undertaken in Tasmania).</p>	
	<p>Need to promote the resource-saving concept of adaptive re-use, i.e., that 'the greenest building is the one already on site'.</p> <p>Currently, there is no incentive or ready mechanism for developers to suggest complex / creative adaptive re-use ideas for heritage buildings.</p>	<p>Establish public policies and guidance material to proactively support, encourage and enable improved sustainable heritage outcomes, including adaptive re-use, the use of solar panels and accessibility. The policies should balance heritage values with the need for sustainability in the broader context of the ACT planning system</p>	<p>Informed and engaged stakeholders that can constructively help shape the discussion about the future of heritage in the context of an evolving city.</p> <p>The activation and use of currently empty heritage buildings.</p>

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		<p>and emphasise the sustainable advantages of re-using existing structures.</p> <p>There is a clear need to provide improved guidance on how to achieve sustainable heritage outcomes that support adaptive re-use, the appropriate use of solar panels and accessibility. This will assist the ACT to meet the challenges of heritage buildings reaching the end of their initial use lifecycle, climate change, energy efficiency and improving accessibility.</p> <p>Improved adaptive re-use of heritage can be supported by</p> <ul style="list-style-type: none"> • promotion of the adaptive re-use concept • inviting possible proposals for adaptive re-use • encouraging partnerships / discussions with developers with prior proven skill in adaptive re-use. <p>This will require building an understanding of this concept in the context of ACT and identifying what is needed to build resilience for the protection of heritage against the impacts of climate change.</p> <p>This initiative should aim to deepen the appreciation that:</p> <ul style="list-style-type: none"> • a utilised heritage building affords it the best chance of protection • the greenest building is an existing building with an open pathway for adaptive re-use. <p>This initiative should involve engaging with the public, promoting discourse, and entertaining some radical proposals.</p>	

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		South Australia and Victoria have adaptive re-use programs, and the Newcastle central business district was rehabilitated by such a program.	
	<p>An unusual mix of ACT Listed properties (more modern / brutal buildings than early colonial properties) means ACT heritage is a harder concept to understand than in other states.</p> <p>The ACT does not embrace its unique Heritage Brand</p>	<p>The ACT jurisdiction has idiosyncrasies, and these must be identified, recognised, celebrated and discussed by those in the heritage eco-system. To do this, the Heritage Council and ACT Heritage must own/celebrate its Brand.</p> <p>Improving reputation, brand and relationships will encourage broader advocacy, understanding and support. There will be less fear about places and objects being listed. It further provides the opportunity to redefine the outdated concepts of 'what heritage is' to a more contemporary version that is best fit for the unique mix of heritage in the ACT.</p> <p>This will be assisted by the development and implementation of a comprehensive Stakeholder Engagement and Communications Plan.</p>	<p>Improved understanding of heritage is likely to lead to a more representative balance of heritage listings on the Heritage Register; more advocates and less friction between stakeholders.</p>
	<p>Existing engagement activities are valuable in promoting the importance of heritage (e.g., the Heritage Festival), and additional programs would further promote a deeper understanding of the value of heritage to wider audiences.</p> <p>Currently the Heritage Council has no school engagement program or focus.</p> <p>Further, the engagement of libraries as an aid to heritage education is negligible.</p> <p>The current grants program is helpful, but can be confusing and narrow in scope.</p>	<p>Develop a program to strengthen and promote the importance of heritage in the community.</p> <p>If the community, including developers, understand and appreciate heritage, it is more likely that it will be valued by them. Community engagement is a strong focus in Western Australia. A program to strengthen and promote heritage could include, for example:</p> <ul style="list-style-type: none"> • delivering regular 'good-news stories' on heritage issues • support or contribute to an awards system to encourage and celebrate good heritage/adaptive-reuse outcomes 	<p>Improved understanding and valuing of heritage within the ACT community.</p> <p>A sustainable Heritage Festival program.</p> <p>Improved strategic use of grants support to further heritage protection in the ACT.</p>

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		<ul style="list-style-type: none"> enhancing the grants program by increasing its scope, flexibility, marketing and advisory support for grant applicants reshape the Heritage festival to emphasise its potential and value as a tourism driver. This includes resourcing appropriately for long term continuity engage the Education Directorate to develop a school engagement heritage program, and Libraries ACT and museums to enhance their current heritage engagement programs. <p>The regular delivery of 'good-news stories' on heritage issues, together with supporting or contributing to an awards system, are cost effective measures to encourage and celebrate good heritage outcomes. For example, celebrating adaptive-reuse outcomes can lead to further innovative and exciting developments or conservation projects being proposed.</p> <p>Enhancing the grants support program can assist in bringing forward investment decisions for conservations works. Following the development of the Heritage Council's new Strategic Plan, the grants program should be reviewed and enhanced to further the objectives and priorities of the plan. This initiative should be informed by reviewing the many heritage grant programs in other jurisdictions.</p> <p>The delivery of the Heritage Festival currently falls on too few. The current ACT Heritage festival organiser needs to be supported by an 'understudy' resource. It is important to mitigate risks to risks to this popular engagement and participation activity, for example, by preventing the loss of knowledge that could come with staff turnover (i.e., avoid single points of dependency).</p>	

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
		<p>This will ensure that the Heritage Festival program is continued, grown and future proofed.</p> <p>Encouraging the Education Directorate to develop a school engagement heritage program should include a 'Heritage near Me' and similar work units to match various levels of the National Curriculum. This will encourage opportunities for students to contemplate interests, careers or just increase their appreciation of heritage in their home city. This could be an opportunity for active learning in ACT schools.</p> <p>Start young! In Victoria, the Department of Education includes Heritage programs that align with the National Curriculum at several age levels / subjects.</p> <p>Great examples of education resources can also be found in the UNESCO toolkit.</p> <p>There is also scope to encourage Libraries ACT and museums to enhance their current heritage engagement programs. Such programs should support / encourage young people's understanding of heritage around them.</p>	
Independence of Heritage Council	<p>Consultations and several submissions to the ACT Legislative Assembly inquiry into ACT's Heritage Arrangements indicate that the Heritage Council and ACT Heritage are not seen as independent entities and that they have low recognition, both publicly and within the ACT Government.</p> <p>In their submission to the Legislative Assembly's Inquiry into ACT's heritage arrangements, Australia ICOMOS noted that the 'role of both ACT Heritage and the Council should be defined in a way that the public understands their respective roles</p>	<p>Establish an 'Office of Heritage' to administratively deliver the independent statutory obligations of the Heritage Council and to raise and improve the profile, understanding and engagement with Heritage in the ACT.</p> <p>Developing and implementing a Stakeholder Engagement and Communications Plan will assist in raising the public profile of the Heritage Council and ACT Heritage. However, success in this area is likely to be hindered by the perception that ACT Heritage is simply part of the EPSDD Planning division.</p>	Improved confidence in the independence of the ACT Heritage arrangements.

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
	<p>and there is clarity regarding what matters are assessed by the Council or under delegation'</p> <p>Another submission to the Inquiry suggested that change was needed to <i>'ensure the Council is an active rather than a passive protagonist, with powers independent of EPSDD and that are not subordinate to the DA process or the politics around land its ownership, and its redevelopment.'</i></p> <p>One submission to the Inquiry suggests that ACT Heritage lacks independence: <i>'The current Acting Secretary/Secretary position to the ACT Heritage Council is largely managerial and operates under the umbrella of the EPSDD rather than having independence and autonomy from that government directorate. There is considerable merit in changing the current governance structure of the Unit and appointing an ED with functions and responsibilities as permitted in the Victorian legislation. In my experience it assists in fine tuning the workload of the Council and still ensures transparency and accountability in decision-making.'</i></p> <p>It is noted that the ACT Heritage Council is required to have its annual report annexed in the Director-General Annual Report for the Directorate. This is the same arrangement as for the Conservator of Flora and Fauna and the Energy Efficiency (Cost of Living) Improvement Administrator, both</p>	<p>The establishment as an 'Office' will improve the heritage 'brand' and will assist in building a greater understanding of the independence and transparency of the Heritage Council and ACT Heritage.</p> <p>The arrangements for supporting administrative bodies vary across jurisdictions. All are located within a larger government department, and most of the administrative support units do not have a separate profile to their Heritage Council. The exception is Heritage Victoria which has a separate profile linked to the Heritage Council they support.</p> <p>There are a number of similar arrangements in place in the Directorate – for example the Office of Water, Office of the Surveyor-General and Land Management and the Office of the Commissioner for Sustainability and the Environment – all of which are supported by EPSDD.</p> <p>The latter two support statutory positions, indicating that the status of 'Office' is appropriate for ACT Heritage as it provides administrative support to the statutorily appointed Heritage Council.</p> <p>It is common in the jurisdictions to have a heritage website, either separately (for example, Heritage Tasmania) or within a departmental site (for example, NSW). In some jurisdictions, the Heritage Council has its own presence (for example, the Heritage Council of Victoria and the Heritage Council of Western Australia).</p>	

Element	Issue/Gap	Suggested Reform Approach	Expected outcome
	<p>of which are supported by units within the Directorate.</p> <p>It is important that the public have confidence in the ACT heritage arrangements if they are to understand and value heritage. For the sustainable and successful engagement of the public the Heritage Council and ACT Heritage need to lift their public profile.</p>		

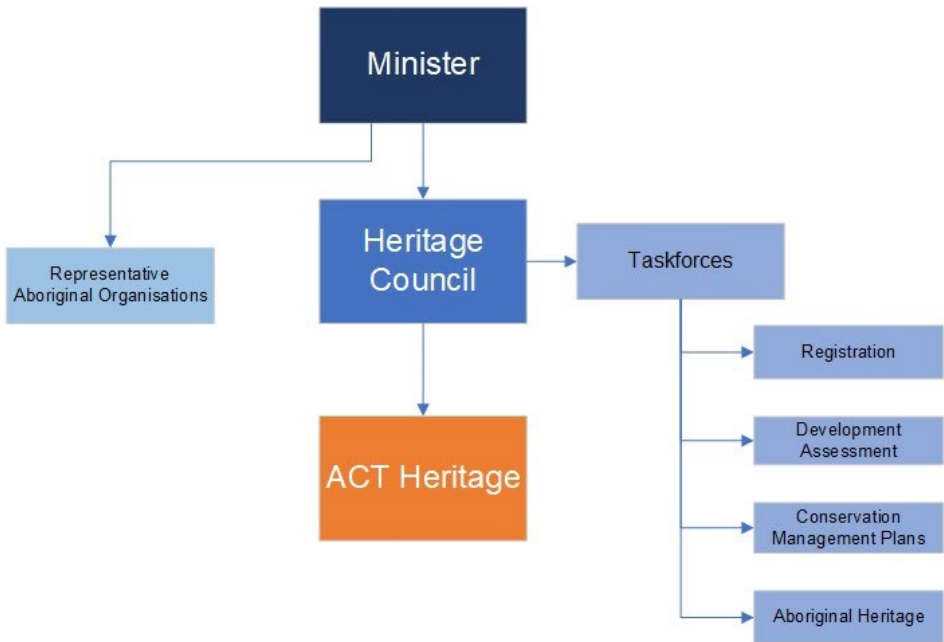
Appendix D: Jurisdictional overview

Australian Capital Territory

Area	Summary
Legislative framework and regulatory settings	<p>The <i>Heritage Act 2004</i> establishes a process to nominate, register, protect and manage heritage places and objects. This includes an ordinary and provisional registration process.</p> <p>The <i>Heritage Act 2004</i> also protects Aboriginal cultural heritage by automatically imposing protections for all Aboriginal places and objects without a need for registration. It also provides for representative Aboriginal organisations.</p> <p>The scope of the <i>Heritage Act 2004</i> includes heritage recognition and management of:</p> <ul style="list-style-type: none">• Natural heritage• Cultural heritage• Aboriginal places and objects. <p>The <i>Heritage Regulations 2006</i> provide for the mechanisms of the Heritage Council.</p> <p>The <i>Planning and Development Act 2007</i> also regulates development applications, including developments on Aboriginal and heritage lands.</p>

Governance settings

ACT Heritage governance arrangements



Responsible entities

The following entities are responsible for advising on, managing and protecting environmental heritage:

- The Minister for Heritage
- Heritage Council

- Environment, Planning and Sustainable Development Directorate
- Representative Aboriginal Organisations
- Planning and Land Authority.

Responsibilities of the Minister for Heritage

In administering heritage regulation, the Minister is responsible for the following:

- Declaring representative Aboriginal organisations and governmental officers for the purposes of the *Heritage Act 2004*
- Appointment of public representatives and experts in the Heritage Council
- Directing further consideration by the Council in the making of guidelines, registering of objects and cancellation of registered objects
- Declaration of repositories and the surrender of legal interests in Aboriginal objects
- Entering heritage agreements
- Calling Heritage Council meetings.

Responsibilities of the Heritage Council

The Heritage Council is responsible for:

- Identifying, assessing, conserving and promoting ACT places and objects with natural and cultural heritage significance
- Advising the Minister about heritage management and promotion issues
- Encourage and assist in registration and appropriate management of heritage places and objects.
- Making decisions under the Heritage Act on excavation permits, conservation management plans and statements of heritage effect.

Promoting public education, interest and tourism in relation to heritage places and objects and Aboriginal heritage.

Internal procedures of the Heritage Council

ACT Heritage is a unit within the Environment, Planning, and Sustainable Development Directorate. Different teams within the Unit provide administrative support to the Heritage Council and advise the Minister for Planning and Land Management on heritage matters.

ACT Heritage receives submissions to the Council and provides advice and approvals on relatively minor matters. It refers any complex, contentious or sensitive submissions to Council taskforces after preliminary assessment.

The four taskforces have been established administratively to administer and assess complex heritage matters that are referred to them. They consist of selected members of the Council.

Representative Aboriginal Organisations

Representative Aboriginal organisations appointed by the Minister and are consulted with in the making of decisions related to Aboriginal places and objects. The following procedures include representative Aboriginal organisation consultation:

- Provisional registration of heritage places or objects
- Cancellation of heritage places or objects
- Assessing heritage significance of Aboriginal places or objects
- Tree management

- Making declaration of restricted information in relation to Aboriginal places or objects.

Planning and Land Authority

- The Planning and Land Authority is responsible for administering the Territory Plan and regulating the development of land, including determining the outcome of development applications.
- Development applications in the ACT are divided into three 'assessment tracks' based on their potential impact, complexity, location, size and other such factors. In order from most to least impactful the tracks are impact track, merit track and code track. Each assessment track has different assessment procedures.
- Impact track applications must be referred to the Heritage Council for advice. The Planning and Land Authority must make decisions consistent with the advice of the Heritage Council unless the former is satisfied that all applicable guidelines, development options, and solutions, and all alternatives have been considered AND the decision is made in line with the territory plan.
- The Planning and Land Authority can impose heritage requirements on development applications.

Consultation between parties

The Environment, Planning and Sustainable Development Directorate submits an annual report detailing its operations. The Heritage Council is included within this report.

Public authorities responsible for heritage places or objects must give the Heritage Council a written 'heritage report' every three years.

Strategic policy framework

The decision-making process of the Heritage Council is guided by:

- The Heritage Assessment Policy
- The series of 'Internal Assessment Procedures' documents
 - Advice – Internal Assessment Procedures – Aboriginal Heritage
 - Advice – Internal Assessment Procedures – Aboriginal Built and Historic Heritage
 - Advice – Internal Assessment Procedures – CMPs
 - Advice – Internal Assessment Procedures – Section 57 Applications.

Decisions by the Heritage Council on the heritage significance of places or objects are made following the criteria provided by the Act.

Guidance is available to applicants and those undertaking works that relate to heritage areas and places in:

- A series of factsheets that describe the procedures and processes relating to heritage registration, protection, guidance and impacts
- A flowchart on the heritage listing process
- A series of conservation management policies
- The Heritage Council may also provide guidelines relating to the management of heritage areas that provide guidance and conservation management.

Structure, obligations and responsibilities of parties

Heritage Council

The Heritage Council is responsible for the majority of the functions in the heritage framework of the Australian Capital Territory. These functions include:

within the framework

- Establishing, maintaining, and providing public access to the Heritage Register
- Assessing the heritage significance of places and objects
- Declaring restricted information
- Giving advice relating to the Planning and Land Authority developments, impact track developments and variations to the Territory Plan
- Giving advice to the Conservator of Flora and Fauna relating to trees with heritage significance and Aboriginal trees of cultural significance
- Making guidelines to promote the conservation of registered and Aboriginal places and objects
- Making decisions on
 - Applications to excavate
 - Statements of heritage effect
 - Conservation management plans
- Issuing heritage directions to owners, custodians and those working on Aboriginal places and objects and those with heritage significance
- Issuing repair directions to those who have caused unlawful damage to places and objects with heritage significance or Aboriginal places and objects
- Applying for Heritage Orders from the Supreme Court.

Minister for Heritage

The Minister for Heritage is responsible for various roles and obligations under the framework. The Minister has high-level powers in appointing, reviewing, and directing the work of the Heritage Council and related public authorities. The Minister may also enter heritage agreements for the conservation of heritage.

Specific functions of the Minister for Heritage include:

- The declaration of representative Aboriginal organisations, and the development of criteria to determine representative Aboriginal organisations
- Appointment of public representatives and experts in the Heritage Council
- Calling a meeting of the Heritage Council
- Directing the Council to consider further factors relating to the making of guidelines, the registration of objects or the cancellation of registered objects. The Council must comply with the direction of the Minister in these instances
- Declaration of repositories for the storage and care of Aboriginal objects, and declaration of the territory surrendering its legal interest in Aboriginal objects
- Declaring governmental officers. These are persons who are exempt from the offences under the *Heritage Act 2004* when exercising a function under the Act
- Entering heritage agreements with people for the conservation of the heritage significance of a place or object
- Directing public authorities to make conservation management plans and submit them to the Heritage Council
- Approving forms and determining fees.

Environment, Planning and Sustainable Development Directorate

The Environment, Planning and Sustainable Development Directorate is responsible for developing and implementing a wide range of policies and programs across city planning and development, climate change and the environment. There are two divisions within

the Directorate dedicated to the delivery of positive environment outcomes for the Territory. These are:

- The Environment, Water and Heritage Division - responsible for heritage, conservation research, nature conservation policy, catchment management and water policy and environment protection policy.
- The Climate Change and Sustainability Division - responsible for developing and implementing strategies to mitigate and adapt to climate change.

Representative Aboriginal Organisations

Representative Aboriginal organisations have an advisory role in the current heritage framework and are consulted with for the purpose of determining registration outcomes, management of Aboriginal trees and heritage reports.

The main roles of representative Aboriginal organisations are as follows:

- The Heritage Council must consult representative Aboriginal organisations in determining the provisional registration, cancellation and heritage significance of an Aboriginal place or object
- Representative Aboriginal organisations may give advice to the Conservator of Flora and Fauna relating to the management of Aboriginal trees
- In submitting cultural heritage and archaeological reports to the Heritage Council, applicants must provide evidence of participation of representative Aboriginal organisations in the preparation of the report.

Planning and Land Authority

The Planning and Land Authority has broad powers over development and planning in the ACT. It regulates such activities with advice from the Heritage Council regarding heritage considerations.

Some relevant functions of the Planning and Land Authority include:

- The authority may require applicants for development approval to enter into heritage agreements with the Heritage Council
- The management of public land in line with heritage related objectives
- Management of environmental impact statements.

Relationships
between the
parties
including
delegations

Heritage Agreements and Heritage Guidelines

The Heritage Council has the function of advising the Minister for the purpose of entering, making and ending heritage agreements. The Heritage Council is also required to report to the Minister about public consultation in registration, cancellation of registration and the making of heritage guidelines. After receiving the report, the Minister may direct the Heritage Council to give further consideration to issues relating to the report and the Council's functions.

Provisional and Cancellation of Registration

In determining provisional and cancellation of heritage registration in relation to Aboriginal places and objects, the Heritage Council must consult and consider the views of each representative Aboriginal organisation. It must also do so in considering the heritage significance of reported Aboriginal places and objects.

The Heritage Council must also consult and consider the advice of the scientific committee about provisional registration and cancellation of places or objects that form part of natural heritage. The Heritage Council must also consider and inform the scientific committee in making decisions about matters affecting natural heritage.

Planning and Land Authority

The Planning and Land Authority may receive advice from the Heritage Council on merit track development proposals. It must consult with or refer to the Heritage Council when determining impact track development proposals. The Heritage Council must be considered when changes to the Territory Plan are proposed.

The Planning and Land Authority may also require planning and development applicants to enter heritage agreements with the Heritage Council, and revoke approval if the applicant is convicted of a heritage related offence.

Tree Protection

On receiving a tree referral, the Heritage Council and the representative Aboriginal organisations may give advice to the Conservator of Flora and Fauna in relation to proposed tree damaging activities and tree management plan proposals and applications. The advice may include advice that the conservator must comply with.

Repositories and Restricted Information

The Minister must consult and consider the views of each representative Aboriginal organisation in determining the repositories for Aboriginal objects and places under the ownership of the ACT.

The Council must consult and consider the views of each representative Aboriginal organisation about proposed restricted information declarations.

Delegations:

- The Heritage Council may delegate any function under the *Heritage Act* 2004 to the Director-General. The Director-General may then subdelegate any such delegated function to any public employee or person.

Compliance
and
enforcement
arrangements
and reporting
requirements

Reporting requirements

Public authorities are required to give the Heritage Council a written heritage report if responsible for a heritage place or object at any time within a 3-year heritage reporting period. Reports must include details about each place and object, and any information about disposal if the place or object is disposed of.

Public authorities must also include in their annual report the actions taken by the authority in response to any recommendations made by the Council.

Both the Minister and the Heritage Council may direct any public authority that is responsible for a heritage place and has not had a CMP approved for the relevant place or object in the last 5 years to prepare a CMP for that place. The public authority must then prepare a plan and get it approved by the Council or revise it until it is approved.

Compliance and enforcement powers

Heritage Guidelines

The Heritage Council may make guidelines for the conservation of registered places or objects or Aboriginal places and objects.

Conservation Management Plans

Conservation management plans are used to determine procedures for the conservation and responsible management of an Aboriginal place or object, or a place or object with heritage significance (heritage place).

Conservation management plans aim to:

- Set out conservation measures that must be adopted and conditions on future use
- Identify threats and potential threats to heritage significance and sets out a plan to manage them
- Include a description, history and details about the heritage significance of the heritage place.

A person or entity responsible for a heritage place, may apply to the Council with a CMP for approval. Reasons for a CMP could include:

- Exempting particular activity from offences under the *Heritage Act 2004*
- Providing for the ongoing protection of a heritage place.

Development advice:

In giving advice to the Planning and Land Authority about the effect of a development on a place or object that has heritage significance, the Heritage Council may propose conditions. One such condition is the approval of a conservation management plan by the Council conditional to the granting of development approval. This is merely advice, and as such is not enforceable.

Offences

Various heritage offences exist to punish conduct which damages or diminishes the heritage significance of places or objects. These offences apply to activities that are not exempted by:

- A heritage guideline
- A heritage direction
- A repair damage direction
- A heritage agreement
- A conservation management plan approved by the Heritage Council
- Development approval
- An excavation permit
- A statement of heritage effect approved by the Heritage Council.

There are also offences that relate to failures in compliance with authorised directions under the *Heritage Act 2004*.

Failure to comply with the conditions of these directions and guidelines is an offence and penalties apply.

Access Canberra undertakes the enforcement activities.

Authorised People

The director-general may appoint any public service to be an authorised person to carry out functions under the *Heritage Act 2004*.

Authorised people have powers in the following areas:

- General powers to enter premises
- Powers to inspect, examine and take samples and records of things in premises
- Powers to seize things connected with an offence
- Powers to require the names and addresses of people suspected of committing an offence.

Repair Damage Directions

The Heritage Council may direct a person who has caused unauthorised damage to an Aboriginal place or object, or place or object with heritage significance, to repair said damage. It is an offence not to comply with such a direction.

Heritage Directions

The Heritage Council may give directions to owners, custodians, workers and occupiers of places and objects with heritage significance or Aboriginal places or objects. These directions must comply with any guidelines, and are only available for the immediate protection of an imminent threat to an Aboriginal place or object, or a place of heritage significance.

Protection orders

The Heritage Council may apply to the Supreme Court for a heritage order. The Supreme court may impose protection orders that prevent or require actions to protect objects or places from offences under the *Heritage Act 2004*.

Heritage
registration
and
management

Registering Heritage

Provisional registration

Any person may make a request for the Heritage Council to provisionally register a place or object. The Council may also decide to provisionally register a place that is not a nominated place or object. In deciding whether to grant provisional registration, the Council must only do so if the asset in question is likely to have heritage significance.

If the provisionally registered place or object is not subject to a decision of the Council as to whether or not it is registered, the provisionally registered place or object is taken to be a nominated place or object once the provisional registration ends.

Registration

After making the decision to provisionally register a place or object, the council must notify the public of the decision, including an invitation for public comment regarding the registration of the place.

After the period for public comment is closed, the Heritage Council must report to the Minister. After considering any further direction given by the Minister, the Council must decide to either register, or not register, the place or object. The decision to register a place or object may only be made if the Council is satisfied that the place or object has heritage significance.

Places or objects with heritage significance must meet one or more of the following criteria:

- a) Importance to the course or pattern of the ACT's cultural or natural history
 - b) Have uncommon, rare or endangered aspects of the ACT's cultural or natural history
 - c) Potential to yield important information that will contribute to an understanding of the ACT's cultural or natural history
 - d) Importance in demonstrating the principal characteristics of a class of cultural or natural places or objects
 - e) Importance in exhibiting particular aesthetic characteristics valued by the ACT community or a cultural group in the ACT
 - f) Importance in demonstrating a high degree of creative or technical achievement for a particular period
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- g) Have a strong or special association with the ACT community, or a cultural group in the ACT for social, cultural or spiritual reasons
 - h) Have a special association with the life or work of a person, or people, important to the history of the ACT.

Removal

A person, or the Heritage Council on its own initiative, may propose the cancellation of a registered place or object. The Council must consult representative Aboriginal organisations or the scientific committee established under the *Nature Conservation Act 2014* if it is in relation to an Aboriginal or natural heritage place or object respectively. The Council must also undertake public consultation prior to deciding the cancellation. The decision to cancel the registration of the place or object may only be made when the place or object no longer has heritage significance.

Managing and maintaining heritage

Plans and protection

Persons or entities responsible for places or objects with heritage significance or Aboriginal places or objects may apply for the approval of a conservation management plan (CMP). Conservation management plans are used to determine procedures for the conservation and responsible management of an Aboriginal place or object, or a place or object with heritage significance.

Heritage agreements

The Minister may enter into heritage agreements with persons in relation to the conservation of the heritage significance of a place or object. This agreement may contain terms about the following:

- Conservation of the place or object
- Provision of financial, technical or other professional advice or assistance needed for the conservation of the place or object
- Review of the valuation of the place or object
- Restrictions on the use of the place or object
- Requirements to carry out work
- Standards to which any work is to be carried out
- Restrictions on work that may be carried out
- Public appreciation of the heritage significance of the place or object
- Availability of the place or object for public inspection.

Guidelines

The Heritage Council may make guidelines that promote the conservation Aboriginal places or objects and registered heritage objects and places.

Examples of matters for which guidelines can be made under the *Heritage Act 2004* include:

- demolition of registered structures
 - alterations and additions to registered buildings
 - residential heritage precincts
 - rural heritage places
 - new buildings in heritage precincts
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- Aboriginal heritage places and objects
 - working with heritage places
 - developing heritage places
 - when, and when not, to undertake a development affecting the heritage significance of a place.

Orders

Heritage directions are available for the Heritage Council to promote the maintenance and protection of registered heritage and Aboriginal places or objects.

Examples of heritage directions include:

- to do essential maintenance to a place
 - not to adversely affect a significant feature of a heritage place
 - not to undertake a development affecting the heritage significance of a place.
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Community
and
stakeholder
consultation
and
engagement

Community and stakeholder consultation

Representative Aboriginal Organisations

The Minister may invite expressions of interest from entities willing to be declared representative Aboriginal organisations, and may then declare them to be representative Aboriginal organisations.

The current representative Aboriginal organisations are:

- Buru Ngunnawal Aboriginal Corporation
- King Brown Tribal Group
- Mirrabee
- Ngarigu Currawong Clan.

Representative Aboriginal organisations have legislative consultation roles in the provisional registration and cancellation of heritage places and objects and for tree damaging activities. There are also policy considerations that specify requirements for consultation with representative Aboriginal organisations in land development and works development.

Public access to register

The Heritage Council has provided access to the public to the Heritage Register, as well as other decisions and information published by, or submitted to, the Council.

Consultation requirements

The Heritage Council must include invitations for public comment and consultation for a set period in relation to:

- The creation of heritage guidelines
- Determining registration of a place or object, after the Council has made a decision to provisionally register that place or object.

Determining the cancellation of registration of a place or object.

Engagement

- The Heritage Festival is an annual event aimed at promoting the conservation of heritage in the ACT.

- Heritage grants are available to assist the community in conserving and promoting heritage in the ACT.
- Various programs are available to promote engagement with heritage and development in the ACT.

Protection and management of First Nations heritage

Protections of Aboriginal places and objects

There is a general protection of Aboriginal places and objects in the *Heritage Act 2004* which prohibits a person intentionally, recklessly, or negligently causing damage to them.

Exemptions from this prohibition apply for those acting in accordance with directions or approvals authorised under legislation.

Heritage Registration

Aboriginal places or objects may also be registered in the same process as natural and cultural heritage registration. The Heritage Council must consult each representative Aboriginal organisation before provisionally registering an item, or before cancelling a registration.

Restricted information

If satisfied that the public disclosure of information would have a substantial adverse effect on an Aboriginal place or object, or the heritage significance of a place or object, the Heritage Council may declare that information restricted.

Restricted information must not be published without prior approval. This restriction does not apply if the information is shared by a person with a traditional affiliation with the place or object for the purpose of:

- Sharing to another Aboriginal person
- Education about Aboriginal traditions
- Avoiding imminent risk of damage or destruction of an Aboriginal place or object.

Risks to heritage assets and mitigation arrangements

- Broad offences are available for unauthorised actions under the *Heritage Act 2004* that damage or diminish the heritage significance of heritage places or objects or Aboriginal places and objects. There are also offences for actions that are reckless or negligent, as well as those that are not in compliance with authorised actions
- Conservation management plans can be submitted by people responsible for places or objects with heritage significance or Aboriginal places and objects. Conservation management plans are approved by the Heritage Council to provide procedures and management of Aboriginal and heritage registered places
- Guidelines and heritage agreements can be made to agree on procedures, resourcing and maintenance of heritage areas
- Heritage directions are available to the Council for the immediate protection of Aboriginal or heritage places or objects.

Provisions and arrangements to enable adaptive re-use and balance sustainability goals and

There is a specific funding stream available for works to enable activation and community enjoyment of a registered heritage place.

heritage conservation	
Projects or reforms underway or recently implemented	<p><i>Planning Bill 2022</i></p> <p>The <i>Planning Bill 2022</i> is a piece of legislation proposed to repeal and replace the <i>Planning and Development Act 2007</i>. It includes a broad range of heritage considerations across the entire development procedure and directly provides for a stronger advisory function by the Heritage Council.</p> <p>The <i>Planning Bill 2022</i> specifically mentions considering integration of heritage elements in achieving the object of the Bill. In section 7, the objects of the Bill include that it is to “support and enhance the liability and prosperity of the ACT”. The objects also state that the planning system enabled by the <i>Planning Bill 2022</i> will aim to promote ecologically sustainable development, be outcome focused and provide a scheme for community participation.</p> <p>These elements, alongside the inclusion of a requirement of heritage consideration, attempt to holistically approach heritage. This is confirmed in Chapter 2 of the Explanatory Statement, which acknowledges the importance of heritage liveability, prosperity and wellbeing for Canberra’s residents.</p> <p>According to the Explanatory Statement, the Bill was developed with active consideration to section 27 of the <i>Human Rights Act 2004</i>, to promote cultural rights of Aboriginal peoples and Strait Islander peoples and other minorities.</p> <p>It does so by requiring consideration of indigenous heritage in making decisions under the Bill. It also does so by requiring development applications that may impact an Aboriginal place or object to be referred to the Heritage Council. There is a distinct section that requires decision makers to consider advice given under referral.</p> <p>Over the course of the review, the Bill passed the Legislative Assembly in June 2023 and will become the Planning Act 2023. I</p>
Relationship between heritage management and the planning system	<p>Planning and development in the ACT is guided by the Territory Plan. The Territory Plan is a legislative instrument that guides and manages land use, helps in development assessment and guides new development projects. The Heritage Council must be consulted in any proposed changes to this document.</p> <p>The Planning and Land Authority must also refer some development applications to the Heritage Council for advice. The Planning and Land Authority must make decisions in line with this advice unless it is satisfied that:</p> <ul style="list-style-type: none"> • all applicable guidelines, development options and solutions and alternatives have been considered • the decision is in line with the Territory Plan <p>Impact track developments also require an Environmental Impact Statement unless an exemption has been granted.</p> <p>The Planning and Land Authority assesses development applications. In doing so, it may approve development applications on the condition that the applicant enters a heritage agreement with the Heritage Council.</p> <p>The Planning and Land Authority may also revoke development approval if the approval relates to a heritage place and the applicant is convicted of an offence under the <i>Heritage Act 2004</i>.</p>
Approximate number of Heritage Unit staff (FTE)	9.9

Approximate number of registered heritage places	298
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New South Wales

Area	Summary
Legislative framework and regulatory settings	<p>Natural and cultural heritage is regulated, managed and protected under the:</p> <ul style="list-style-type: none"> • <i>Heritage Act 1977 (NSW)</i> <ul style="list-style-type: none"> – <i>Heritage Regulation 2012.</i> <p>Aboriginal cultural heritage is managed and protected under the:</p> <ul style="list-style-type: none"> • <i>National Parks and Wildlife Act 1974 (NSW)</i> <ul style="list-style-type: none"> – <i>Heritage Regulation 2012.</i> <p>Local heritage items are identified and protected through listing on the heritage schedule of Local Environmental Plans, made under the:</p> <ul style="list-style-type: none"> • <i>Environment Planning and Assessment Act 1977 (NSW)</i> <ul style="list-style-type: none"> – <i>Environmental Planning and Assessment Regulation 2021.</i> <p>Development and planning is managed under the:</p> <ul style="list-style-type: none"> • <i>Environmental Planning and Assessment Act 1979</i> <ul style="list-style-type: none"> – <i>Environmental Planning and Assessment Regulation 2021.</i>
Governance settings	<p>NSW Heritage governance arrangements</p>  <pre> graph TD Minister[Minister for Environment and Heritage] --> IPC[Independent Planning Commission] Minister --> LC[Local Councils] Minister --> DPE[Department of Planning and the Environment] Minister --> HNC[The Heritage Council] Minister --> ACHA[Aboriginal Cultural Heritage Advisory Committee] HNC --> HNSW[Heritage NSW] </pre>

Area	Summary
	<p>The following entities are responsible for advising on, managing and protecting natural and cultural heritage:</p> <ul style="list-style-type: none"> • The Minister for Environment and Heritage • Heritage NSW • The Heritage Council • Local Councils • The Independent Planning Commission. <p>The following entities are responsible for advising on, managing, and protecting Aboriginal cultural heritage:</p> <ul style="list-style-type: none"> • The Minister for Environment and Heritage • Heritage NSW • The Secretary of the Department of Planning and Environment • The Aboriginal Cultural Heritage Advisory Committee.
Strategic policy framework	<p>The Heritage Division's decision-making process is guided by the:</p> <ul style="list-style-type: none"> • Heritage Compliance Policy – NSW Heritage Act 1977 • Heritage Compliance Framework: Our Shared Heritage, Places and Objects <p>Heritage interpretation at all stages is guided by the:</p> <ul style="list-style-type: none"> • Heritage Interpretation Policy – Heritage Council NSW <p>Heritage assessment is guided by:</p> <ul style="list-style-type: none"> • Assessing heritage significance <p>The role and decision-making function of local councils concerning heritage is guided by the:</p> <ul style="list-style-type: none"> • Local Government Heritage Guidelines <p>The rights and interests of Aboriginal people are sought to be included in heritage decision making through:</p> <ul style="list-style-type: none"> • Working to protect Aboriginal cultural heritage <p>The protection and management of Aboriginal cultural heritage is guided by the:</p> <ul style="list-style-type: none"> • Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales <p>Councils make determinations of development applications that could impact heritage in accordance with:</p> <ul style="list-style-type: none"> • Statements of heritage impact <p>Heritage grants are guided by the:</p> <ul style="list-style-type: none"> • Activating State Heritage Grant 2023-25 Funding Guidelines • Community Heritage Grants 2023-25 Funding Guidelines • Caring for State Heritage Grants 2023-25 Funding Guidelines • Local Government Heritage Grants 2023-25 Funding Guidelines • Aboriginal Cultural Heritage Grants 2023-25 Funding Guidelines

Area	Summary
	<ul style="list-style-type: none"> • NSW Heritage Grants 2023-25 Funding Round – Frequently Asked Questions and Guidance.
Structure, obligations and responsibilities of parties within the framework	<p data-bbox="427 365 917 398">Minister for Environment and Heritage</p> <ul style="list-style-type: none"> • Directs listing of items on State Heritage Register • Declares places to be an Aboriginal Place. • Makes interim heritage orders, or authorises local councils to do so • Enters heritage agreements with owners of items of heritage significance • Determines appeals against decisions of the Heritage Council in relation to applications for work approvals or excavation permits • Administers the Heritage Incentive Fund • Issues stop work orders • Authorises site inspections • Issues orders restricting development • Declares historic shipwrecks • Issues historic shipwreck protection orders • Commences civil enforcement or criminal prosecution proceedings • Requests valuations of items listed on the State Heritage Register for taxation and rates purposes. <p data-bbox="427 1115 608 1149">Heritage NSW</p> <ul style="list-style-type: none"> • Researches items or places that may be of state heritage significance • Provides public advice on the management of heritage items • Issues permits and approvals concerning environmental and Aboriginal cultural heritage in accordance with delegation by the Minister, Secretary or Heritage Council • Administers the NSW Heritage Grants Program. <p data-bbox="427 1433 644 1467">Heritage Council</p> <ul style="list-style-type: none"> • Is responsible for creating the criteria for heritage listing decisions • Recommends items for Heritage Listing to the Minister • Is responsible for making heritage grant registrations • Makes recommendations to the Minister in relation to conserving, exhibiting, and providing information and access to environmental heritage • Carries out investigations and arranges consultations concerning heritage matters • Issues excavation permits • Issues approvals for works on items listed on the State Heritage Register or under an interim heritage order made by the Minister • Issues orders to remedy a failure to maintain or repair an item of heritage significance

Area	Summary
	<ul style="list-style-type: none"> • Conducts community heritage education • Maintains State Heritage Inventory • Prepares an annual report for the Minister. <p>Secretary of the Department of Planning and Environment</p> <ul style="list-style-type: none"> • Holds responsibility for the protection of Aboriginal objects and Aboriginal places • Issues Aboriginal heritage impact permits • Issues stop work orders concerning Aboriginal objects or places • Issues stop work orders concerning cultural heritage on reserved land. <p>Independent Planning Commission</p> <ul style="list-style-type: none"> • Reviews and makes reports on heritage listing recommendations at the request of the Minister. <p>Aboriginal Cultural Heritage Advisory Committee</p> <ul style="list-style-type: none"> • Advises the Minister and Secretary in relation to identification, assessment and management of Aboriginal Cultural Heritage • Provides strategic advice to the Minister and Secretary on plans of management for Aboriginal Cultural Heritage and the heritage impact permit process. <p>Local Councils</p> <ul style="list-style-type: none"> • Are responsible for maintaining the heritage schedule of the Local Environmental Plan (LEP) • Make interim heritage orders • Issue approvals for works on items under an interim heritage order • Assess and determine integrated development applications concerning heritage.
Relationships between the parties including delegations	<p>The Minister for the Environment and Heritage</p> <p>The Minister for Environment and Heritage is responsible for declarations of Aboriginal cultural heritage under the <i>National Parks and Wildlife Act 1974</i>. The Secretary of the Department is responsible for the protection of Aboriginal objects and places. They conduct these functions with the advice of the Aboriginal Cultural Heritage Advisory Committee and are both empowered to delegate their functions under the <i>National Parks and Wildlife Act 1974</i> to other people, including persons employed by the Department.</p> <p>The Minister for Environment and Heritage is responsible for the administration of the <i>Heritage Act 1977</i> and holds most of the Act's regulatory and enforcement functions.</p> <ul style="list-style-type: none"> • The Minister may delegate to a person any of their functions under the <i>Heritage Act 1977</i>.

Area	Summary
	<p>The Heritage Council</p> <p>The Heritage Council provides support and advice to the Minister, as well as other independent functions provided for by the Act. These include compliance, education, enforcement, and approvals.</p> <ul style="list-style-type: none"> • The Heritage Council may delegate to a person or committee the exercise of any of its functions, provided it obtains the consent of the Minister • The Heritage Council may establish committees to assist it in any of its functions. <p>Heritage NSW</p> <p>Heritage NSW, a division of the Department of Planning and Environment, is delegated environmental and Aboriginal cultural heritage functions by both Minister, Secretary and Heritage Council. Under this delegation, it undertakes grants assessments, compliance activities, enforcement actions, and issues approvals to undertake controlled activities to heritage and Aboriginal heritage items.</p>
<p>Compliance and enforcement arrangements and reporting requirements</p>	<p>Reporting requirements</p> <ul style="list-style-type: none"> • The Heritage Council is required to prepare and present an operational report to the Minister after 30 June each year. <p>Compliance and enforcement powers</p> <ul style="list-style-type: none"> • Heritage NSW is delegated a range of compliance functions and detects compliance breaches through community reports, desktop audits, and proactive site inspections. • Where Heritage NSW identifies a potential breach, officers conduct a formal investigation into it. • Good governance in executing compliance procedures is sought through empowering only managers to approve enforcement responses, ensuring that serious enforcement action involves consultation with the Executive Director and legal services division, and providing specialised training to all relevant persons. • Compliance procedures are also governed by internal policies including a code of conduct and ethics, a disclosure of interests policy, and a complaints handling policy. • Where a breach is found to have occurred, Heritage NSW can respond with a number of actions. Non-statutory responses include: recordings of non-compliance, advisory notes, formal warnings, negotiated outcomes, and heritage agreements. Statutory responses include: stop work orders, remedy a failure to maintain heritage item orders, court orders, and prosecution.
<p>Heritage registration and management</p>	<p>Registering Heritage</p> <ul style="list-style-type: none"> • Any person can propose an area of land to be considered for an Aboriginal Place declaration – this triggers an assessment conducted by Heritage NSW that involves research, stakeholder consultation, site visits, and advice from the Aboriginal Cultural Heritage Committee. This process culminates in a report for the Minister. • The Minister uses the report to make a determination, and may declare a site to be an Aboriginal Place.

Area	Summary
	<ul style="list-style-type: none"> Criteria for Heritage Significance are created by the Heritage Council, approved by Minister and published by Gazette. These are: <ul style="list-style-type: none"> a) An item is important in the course, or pattern, of NSW's cultural or natural history; b) An item has strong or special association with the life or works of a person, or group of persons, of importance in NSW's cultural or natural history; c) An item is important in demonstrating aesthetic characteristics and / or a high degree of creative or technical achievement in NSW; d) An item has a strong or special association with a particular community or cultural group in NSW; e) An item has potential to yield information that will contribute to an understanding of NSW's cultural or natural history; f) An item possesses uncommon, rare or endangered aspects of NSW's cultural or natural history; g) An item is important in demonstrating the principal characteristics of a class of NSW's cultural or natural places or cultural or natural environments. Items on the State Heritage Register are assessed against, and considered to have met, the Heritage Council's assessment criteria Items listed on the heritage schedule of the Local Environmental Plan are assessed by councils against the Heritage Council's assessment criteria All heritage assessments seek to be carried out in accordance with the procedures described in the 'Assessing heritage significance' guideline. <p>Removal</p> <ul style="list-style-type: none"> The Minister may, after considering the recommendation of the Heritage Council, remove items from the State Heritage Register Items may only be removed if the Minister is satisfied the item is not of state heritage significance or long term conservation is not necessary and the listing either causes undue financial hardship on its owner or is incapable of reasonable or economic use due to the listing. <p>Managing and maintaining heritage</p> <ul style="list-style-type: none"> Conservation management plans are endorsed by the Heritage Council; these are supporting documents that adopt best practice principles for heritage management in accordance with the Burra Charter. Heritage agreements can be entered into between the Minister and the owner of a heritage item to assist in the management and conservation of the item. Heritage agreements can contain provisions restricting the use of the item, requirements for future works, availability for public inspection, and valuation requirements. Heritage agreements can also assist owners to manage and maintain their heritage items by providing for financial and technical advice and assistance from the government. Technical guides are provided for the management and maintenance of heritage assets.

Area	Summary
Community and stakeholder consultation and engagement	<p>Community and stakeholder consultation</p> <ul style="list-style-type: none"> • The Heritage Council has a statutory consultation function in relation to its advisory role to the Minister. • The Heritage Council is advised by a Heritage Advisory Panel on matters relating to Aboriginal cultural heritage, historic and maritime archaeology, engineering, landscapes, local government and planning. • The Heritage Council is advised by a Technical Advisory Panel on matters relating to the maintenance, management and conservation of heritage items and assets. • The assessment process for proposals to declare an Aboriginal Place includes consultation with landowners and other key stakeholders, as well as advice from the Aboriginal Cultural Heritage Advisory Committee. <p>Engagement</p> <ul style="list-style-type: none"> • There are a range of financial grants available to encourage and assist owners, custodians, managers, and communities to recognise, value and care for heritage. • A number of other initiatives exist to promote community engagement with heritage. These include the blue plaques program which celebrates heritage by recognising noteworthy people and events, and the M24 Midget submarine underwater wreck site.
Protection and management of First Nations heritage	<p>Heritage NSW has a repatriation program to facilitate the return of Aboriginal ancestral remains and objects to their rightful owners and resting places.</p> <p>Aboriginal sites and objects are managed and protected under the <i>National Parks and Wildlife Act 1974</i>:</p> <ul style="list-style-type: none"> • Applications must be made for activities that may cause harm to Aboriginal cultural heritage • Offences are available to prevent damage, disturbance and movement of Aboriginal objects and places. <p>The assessment process for proposals to declare an Aboriginal Place includes advice from the Aboriginal Cultural Heritage Advisory Committee.</p> <p>The Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW is available to promote responsible interactions with Aboriginal heritage.</p> <p>The <i>Heritage Act 1977</i> may also protect items of Aboriginal cultural heritage value that are included on the State Heritage Register.</p>
Risks to heritage assets and mitigation arrangements	<p>There is a range of offences and penalties which serve to deter would-be offenders and mitigate risk posed by non-compliance with the <i>Heritage Act 1977</i>.</p> <p>Heritage NSW classifies potential compliance breaches as low, medium or high risk, which then guides the compliance response.</p> <p>Risk is assessed by reference to:</p> <ul style="list-style-type: none"> • The extent of harm • Public interest • The culpability of the offender.

Area	Summary
Provisions and arrangements to enable adaptive reuse and balance sustainability goals and heritage conservation	<ul style="list-style-type: none"> Adaptive reuse is incentivised by grant programs such as the 'Activating State Heritage Grant Program' which promotes capital works and upgrades that increase public accessibility and usage of state registered heritage items There are some land tax and rates discounts for items listed on the State Heritage Register or local heritage schedules The City of Sydney Heritage Floor Space Scheme provides an incentive for adaptive reuse for developers Adaptive reuse is guided by 'New Uses for Heritage Places: Guidelines for the Adaption of Historic Buildings and Sites'. <p>The Burra Charter has been adopted by the Heritage Council and underpins the following adaptive reuse principles:</p> <ul style="list-style-type: none"> Understand the significance of the place Find a use which is appropriate to the heritage significance of the place Determine a level of change which is appropriate to the significance of the place Provide for the change to be reversed and for the place's future conservation Conserve the relationship between the setting and preserve significant views to and from the heritage place Provide for the long-term management and viability of the heritage place Reveal and interpret the heritage significance of the place as an integral and meaningful part of the adaption project.
Projects or reforms underway or recently implemented	<p>NSW Heritage Act Review 2021</p> <p>Review of the Heritage Act 1977 – Report to the NSW Parliament</p> <p>Key lessons learned:</p> <ul style="list-style-type: none"> The <i>Heritage Act 1977</i> should accommodate a broader and more nuanced concept of heritage, including intangible heritage and cultural landscapes There should be increased opportunity for community engagement in heritage There should be relevant heritage experience and qualifications among a majority of Heritage Council members, and two members should be an Aboriginal man and an Aboriginal woman The NSW Government should investigate categories as a way of promoting greater consistency in the heritage approvals process Existing State Heritage Register listings should be updated through a streamlined process There should be a more representative State Heritage Register – this could require initiatives to encourage the listing of items of certain categories. Aboriginal cultural heritage legislation should be reformed in tandem with the <i>Heritage Act 1977</i> The NSW Government should allocate funding for an Aboriginal War Memorial Museum and work with traditional owners to progress this The NSW Heritage Grants program should be promoted and increased Other city councils should implement a heritage floor space scheme similar to Sydney's

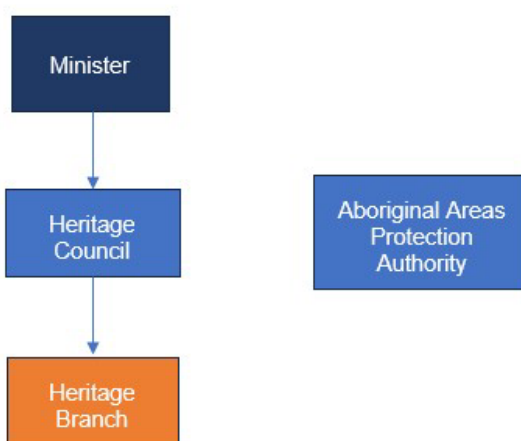
Area	Summary
	<ul style="list-style-type: none"> • The Minister should make representations to the Commonwealth concerning the introduction of tax-based incentives for owners of state-listed items • The NSW government should consider implementing a scheme similar to the UK Heritage Enterprise Grants Scheme • There should be specific funding for digitisation and video recording preservation of archives, records, and artefacts in libraries, museums and galleries. <p>Currently, the NSW Government is consulting with peak Aboriginal bodies on Aboriginal cultural heritage legislation to ensure self-determination and custodianship is at the centre of any legislation that deals with Aboriginal cultural heritage.</p>
Relationship between heritage management and the planning system	<p>The NSW development process integrates input from heritage approval bodies. In order for development that may affect or harm Aboriginal and heritage object and places, the development procedure integrates <i>National Parks and Wildlife Act 1974</i> permits, approvals under the <i>Heritage Act 1977</i> and development consent by local councils with state level development applications.</p> <p>Integrated development applications are used to holistically approach development requirements and approvals and involve multiple agencies in a streamlined application.</p>
Approximate number of Heritage Unit staff (FTE)	113
Approximate number of registered heritage places	400

Northern Territory

Area	Summary
Legislative framework and regulatory settings	<p>Cultural and natural heritage is regulated, managed and protected under the:</p> <ul style="list-style-type: none"> • <i>Heritage Act 2011</i> <ul style="list-style-type: none"> – <i>Heritage Regulations 2012</i>. <p>Aboriginal cultural heritage is also regulated, managed and protected under the:</p> <ul style="list-style-type: none"> • <i>Heritage Act 2011</i> <ul style="list-style-type: none"> – <i>Heritage Regulations 2012</i> • <i>Northern Territory Aboriginal Sacred Sites Act 1989</i> <ul style="list-style-type: none"> – <i>Northern Territory Aboriginal Sacred Sites Regulations 2004</i>. <p>Planning and development in the Northern Territory is managed and regulated by the:</p> <ul style="list-style-type: none"> • <i>Planning Act 1999</i> <ul style="list-style-type: none"> – <i>Planning Regulations 2000</i>.

Governance settings

Northern Territory Heritage governance arrangements



The following entities are responsible for advising on, managing and protecting cultural and natural heritage:

- Minister for Arts, Culture and Heritage
- The Department of Territory Families, Housing and Communities - Heritage Branch
- Heritage Council

The following entities are responsible for advising on, managing and protecting Aboriginal cultural heritage:

- Minister for Arts, Culture and Heritage
- The Department of Territory Families, Housing and Communities – Heritage Branch

Area	Summary
	<ul style="list-style-type: none"> • Heritage Council • Aboriginal Areas Protection Authority.
Strategic policy framework	<p>Heritage Council</p> <ul style="list-style-type: none"> • The Heritage Council prepares an annual report outlining procedures, undertakings, and strategy • The Council adopted a strategic plan in July 2021 to guide decision making over the next three years.
Structure, obligations and responsibilities of parties within the framework	<p>Minister for Arts, Culture and Heritage</p> <ul style="list-style-type: none"> • Makes the final determination of heritage register listings upon recommendation by the Heritage Council • Makes provisional declarations of heritage places and objects • Revokes declarations of heritage places and objects • Enters into Heritage agreements on behalf of the Territory with owners of heritage places and objects • Makes final determinations of work approvals after referral from the CEO of the Heritage Council • Issues repair orders • Delegates functions to the CEO of the Heritage Council. <p>Heritage Branch, Department of Territory Families, Housing and Communities</p> <ul style="list-style-type: none"> • Supports the Heritage Council • Provides advice about heritage management • Promotes heritage and encourages good conservation practice • Oversees the NT Heritage Grants Program and Rates Relief Program • Works with other government departments to conserve Government-owned heritage assets. <p>Heritage Council</p> <ul style="list-style-type: none"> • Assesses the heritage significance of places and objects • Recommends to the Minister the declaration of places and objects to be heritage places and objects • Recommends to the Minister the revocation of the declaration for heritage places and objects • Advises the Minister on the conservation, use and management of heritage places and objects • Advises the Minister about the carrying out of work on a heritage place or object and to decide applications for work approvals other than applications for major work • Promotes, as it considers appropriate, the public use and enjoyment of heritage places and objects in a way that is consistent with the conservation of the heritage significance of the places and objects

Area	Summary
	<ul style="list-style-type: none"> Facilitates public education and programs about the Territory's cultural and natural heritage Advises the Minister on financial incentives or concessions for heritage agreements (either in general or on particular agreements) Advises the Minister on matters affecting the Territory's cultural and natural heritage Performs other functions conferred under this or another Act or as directed by the Minister.
	<p>Aboriginal Areas Protection Authority</p> <ul style="list-style-type: none"> Oversees the protection of sacred sites in the Northern Territory.
Relationships between the parties including delegations	<p>The Minister for Arts, Culture and Heritage is ultimately responsible for the administration of the <i>Heritage Act 2011</i> and listings on the Northern Territory Heritage Register. The Heritage Council holds practical responsibility for the administration of the <i>Heritage Act 2011</i> and Heritage Register, provides heritage advice to the Minister, facilitates public heritage education, and promotes the public use and enjoyment of heritage places and objects.</p> <ul style="list-style-type: none"> The Minister can delegate any of their powers and functions to the CEO of the Heritage Council The Heritage Council can delegate any of its powers and functions to the CEO of the Heritage Council The CEO of the Heritage Council can delegate any of their powers and functions to a heritage officer. <p>The Aboriginal Areas Protection Authority is an independent statutory authority which oversees the protection of Aboriginal sacred sites. This involves registering and maintaining records of all sacred sites, providing information to the public about sacred sites, issuing authority certificates for proposed developments, and prosecuting people and organisations that damage sacred sites.</p>
Compliance and enforcement arrangements and reporting requirements	<p>Reporting requirements</p> <p>The Heritage Council is required to provide a report regarding the Heritage Act's administration to the Minister annually. The report must then be tabled to the Legislative Assembly by the Minister.</p> <p>Compliance and enforcement powers</p> <p>The <i>Heritage Act 2011</i> sets out offences for</p> <ul style="list-style-type: none"> Contravening an order issued under the Act Causing damage to a heritage place or object Removal of part of a heritage place Removal of heritage objects from the territory Failing to report the discovery of an archaeological place or object. <p>Heritage officers are provided for by the <i>Heritage Act 2011</i> and serve an enforcement function by gathering evidence for prosecuting the above offences. Heritage officers can also issue stop work orders where a person is, or is about to, carry out work that constitutes a threat to the heritage significance of a heritage place or object.</p>

Area	Summary
	<p>The Aboriginal Areas Protection Authority has an enforcement function and is empowered to prosecute individuals or organisations that damage sacred sites.</p>
<p>Heritage registration and management</p>	<p>Aboriginal and Macassan archaeological places and objects are automatically protected under the <i>Heritage Act 2011</i>.</p> <p>Registering Heritage</p> <ul style="list-style-type: none"> Heritage listings are initiated through a person nominating a place or object, the Heritage Council deciding to assess the heritage significance of a place or object, or the Minister directing the Heritage Council to assess the heritage significance of the place or object After the listing process has been initiated, the Heritage Council will assess the significance of the place or object by applying the heritage assessment criteria set out in the <i>Heritage Act 2011</i>. These are: <ul style="list-style-type: none"> a) Whether it is important to the course or pattern of the Territory's cultural or natural history b) Whether it possesses uncommon, rare or endangered aspects of the Territory's cultural or natural history c) Whether it will have the potential to yield information that will contribute to an understanding of the Territory's cultural or natural history d) Whether it is important in demonstrating the principal characteristics of a class of cultural or natural places or environments e) Whether it is important in exhibiting particular aesthetic characteristics f) whether it is important in demonstrating a high degree of creative or technical achievement during a particular period g) whether it has a strong or special association with a particular community or cultural group for social, cultural, or spiritual reasons, including the significance of the place to Aboriginal people as part of their continuing and developing cultural traditions h) whether it has a special association with the life or works of a person, or group of persons, of importance in the Territory's history After the heritage significance of a place or object has been assessed, the Heritage Council will decide whether to recommend that the Minister declare it to be a heritage place or object Declared heritage places and objects are recorded by the Heritage Council on the Heritage Register. Revocation may only be made if: <ul style="list-style-type: none"> The place or object no longer exists or is no longer of heritage significance Information available about the place or object is available that has not previously been considered by the Heritage Council Other relevant information is available that has not been taken into account by the Minister in relation to revocation. <p>Removal</p> <ul style="list-style-type: none"> The council may revoke a declaration of a heritage place or object after notifying the Minister and undergoing a public consultation process. The Minister may request this assessment.

Area	Summary
	<p>Registering Sacred Sites</p> <ul style="list-style-type: none"> • A custodian of a sacred site can apply to the Aboriginal Areas Protection Authority for the site to be registered • The Authority will then determine: <ul style="list-style-type: none"> a) the basis on and extent to which the applicant and other custodians, if any, are entrusted with responsibility for the site according to Aboriginal tradition b) the name or names and addresses of the custodian(s) c) the story of the site according to Aboriginal tradition d) the location and extent of the site e) the restrictions, according to aboriginal tradition, on activities that may be carried out on or in vicinity to the site f) the physical features that constitute the site g) whether, and if so to what extent, the period of the registration should be limited h) the restrictions, if any, that should be applied to information and matters referred to in paragraph (c) or (f) divulged by the custodian(s) • The owner of the land on which the proposed site is located is then given notice of the proposal and an opportunity to make representations to the Aboriginal Areas Protection Authority • The Authority will evaluate the above information and make a determination on whether the site should be registered as a sacred site.
Community and stakeholder consultation and engagement	<p>Community and stakeholder consultation</p> <ul style="list-style-type: none"> • The Heritage Council is required under the <i>Heritage Act 2011</i> to conduct public consultation as a part of the heritage significance assessment process • The Aboriginal Areas Protection Authority is required under the <i>Northern Territory Aboriginal Sacred Sites Act 1989</i> to consult with the owners of land on which proposed sacred sites are located. <p>Engagement</p> <ul style="list-style-type: none"> • There are financial incentives for owners of heritage and potential heritage items to engage in their conservation. These include property rates rebates and financial grants. Owners of heritage items may also be eligible to receive professional conservation advice through Heritage NT.
Protection and management of First Nations heritage	<p>Aboriginal and Macassan sites and objects are automatically protected under the <i>Heritage Act 2011</i>:</p> <ul style="list-style-type: none"> • This legislation imposes obligations on those who discover Aboriginal and Macassan archaeological places and objects to report it to the Heritage Branch. • Activities that disturb Aboriginal and Macassan archaeological places and objects must first be permitted by the Heritage Branch. • The Heritage Branch maintains an Aboriginal Archaeological Database to record and promote Aboriginal and Macassan archeological places.

Area	Summary
	<ul style="list-style-type: none"> • The Heritage Branch may provide advice, support and assess proposed activities brought before them. They may also support the carrying out of archaeological surveys in relation to proposed works and activities. • Cultural Heritage Management Plans (CHMPs) are created for large scale projects that set out management plans for Aboriginal cultural heritage over the life of the project. <p>Sacred Aboriginal Sites are protected under the <i>Northern Territory Aboriginal Sacred Sites Act 1989</i>. This legislation creates the Aboriginal Areas Protection Authority and the Register of Sacred Sites, each working to protect specific Aboriginal heritage sites. The Minister also has various functions under the legislation to support and direct the Aboriginal Areas Protection Authority. The Aboriginal Areas Protection Authority has specific functions under the <i>Northern Territory Aboriginal Sacred Sites Act 1989</i>, including:</p> <ul style="list-style-type: none"> • Responding to requests for sacred site protection • Maintaining the Register of Sacred Sites • Responding to applications for Authority Certificates, carrying out research and surveys and consulting with Aboriginal custodians • Making available for public inspection the Register of Sacred Sites and the Authority Certificate register • Enforcing the <i>Sacred Sites Act 1989</i>, including prosecuting relevant offences • Approving entry and access to sacred sites • Conducting reviews.
Risks to heritage assets and mitigation arrangements	Risks to heritage places and objects are mitigated through a range of offences under the <i>Heritage Act 2011</i> . Risks to sacred sites are mitigated through offences under the <i>Aboriginal Sacred Sites Act 1989</i> .
Provisions and arrangements enabling adaptive re-use	The Heritage Grants program encourages owners of heritage places to undertake adaptive reuse projects through grants of up to \$20,000. Relevant works include the preservation, maintenance, restoration, and reconstruction of heritage places.
Provisions and arrangements to enable adaptive re-use and balance sustainability goals and heritage conservation	N/A
Projects or reforms underway or recently implemented	N/A
Relationship between heritage management and	The chairperson of the Heritage Council sits as a member of the Northern Territory Planning Commission, which is responsible for setting planning strategy.

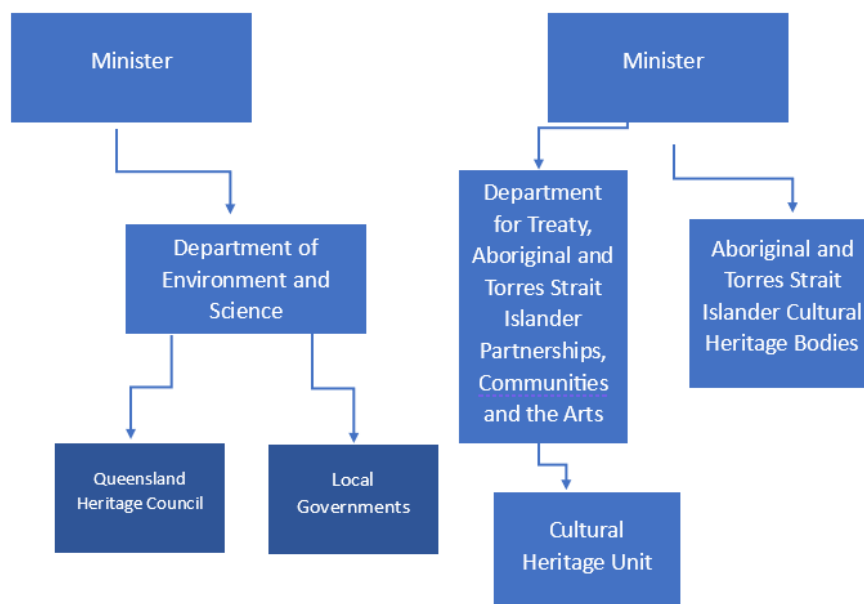
Area	Summary
the planning system	Works and development that are proposed for heritage listed properties require prior approval by Heritage NT. They must also follow the correct procedures and principles.
Approximate number of Heritage Unit staff (FTE)	6
Approximate number of registered heritage places	300

Queensland

Area	Summary
Legislative framework and regulatory settings	<p>Environmental and cultural heritage is regulated, managed and protected under the:</p> <ul style="list-style-type: none"> • <i>Queensland Heritage Act 1992</i> <ul style="list-style-type: none"> – <i>Queensland Heritage Regulation 2015</i>. <p>Indigenous cultural heritage is managed and protected under the:</p> <ul style="list-style-type: none"> • <i>Aboriginal Cultural Heritage Act 2003</i> • <i>Torres Strait Islander Cultural Heritage Act 2003</i>. <p>Planning and development is regulated under the:</p> <ul style="list-style-type: none"> • <i>Planning Act 2016</i> <ul style="list-style-type: none"> – <i>Planning Regulation 2017</i>.

Governance settings

Queensland Heritage governance arrangements



The following entities are responsible for advising on, managing and protecting environmental cultural heritage:

- Department of Environment and Science
- Minister for the Environment and the Great Barrier Reef, Minister for Science & Minister for Multicultural Affairs
- Queensland Heritage Council
- Local Governments.

The following entities are responsible for advising on, managing and protecting indigenous cultural heritage:

Area	Summary
	<ul style="list-style-type: none"> • Minister for Treaty, Minister for Aboriginal Land and Torres Strait Islander Partnerships, Minister for Communities, Minister for the Arts • Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships • Department for Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts • Queensland Heritage Council • Cultural Heritage Unit • Aboriginal Cultural Heritage and Torres Strait Islander Cultural Heritage Bodies.
Strategic policy framework	<p>The Queensland Heritage Council has adopted the Australia ICOMOS Burra Charter as establishing best practice standards.</p> <p>Broad management strategy that guides the Queensland approach to heritage issues:</p> <ul style="list-style-type: none"> • Queensland Heritage Strategy: protecting, investing in and connecting Queensland's story <p>Identification and management of local heritage places by local government is supported by:</p> <ul style="list-style-type: none"> • Guideline: Carrying out a Heritage Survey • Guideline: Identifying and Assessing Places of Local Heritage Significance in Queensland <p>Conservation management plans for the conservation and management of a heritage place are guided by:</p> <ul style="list-style-type: none"> • Guideline: Conservation Management Plans <p>Guidelines for identification, management and development of state heritage places are guided by:</p> <ul style="list-style-type: none"> • Guideline: Assessing Cultural heritage significance – Using the cultural heritage criteria • Application Guide: Entering a State Heritage Place in the Queensland Heritage Register • Application Guide: Removing a State Heritage Place from the Queensland Heritage Register • Fact sheet: Queensland Heritage Register - registering a State Heritage Place • State Development Assessment Provisions guideline – State Code 14: Queensland heritage <p>Developments are generally guided by a series of technical notes relating to works on heritage registered places as well as:</p> <ul style="list-style-type: none"> • Developing heritage places <p>Conservation of Indigenous cultural heritage is guided by:</p> <ul style="list-style-type: none"> • Cultural heritage duty of care guidelines • Cultural heritage management plant guidelines • Guidelines for the discovery, handling and management of human remains

Area	Summary
Structure, obligations and responsibilities of parties within the framework	Department of Environment and Science
	<ul style="list-style-type: none"> Provides administrative and professional support to the Queensland Heritage Council Manages the details of places on the Queensland Heritage Register.
	Minister for the Environment and the Great Barrier Reef, Minister for Science & Minister for Multicultural Affairs
	<ul style="list-style-type: none"> Makes stop orders Recommends essential repair and maintenance to the Governor in Council.
	Minister for Treaty, Minister for Aboriginal Land and Torres Strait Islander Partnerships, Minister for Communities & Minister for the Arts
	<ul style="list-style-type: none"> Notifies guidelines identifying reasonable and practicable measures managing and minimising harm to Aboriginal cultural heritage Makes stop orders Registers Aboriginal cultural heritage bodies.
	The Queensland Heritage Council
	<ul style="list-style-type: none"> Provides advice to the Queensland Government on strategic and high priority matters relating to Queensland Heritage Provides advice about development of Heritage places owned by the state Provides advice to the Minister about matters relating to Queensland cultural heritage Encourages interest in and understanding of Queensland's cultural heritage Supports and advises in relation to the conservation of Queensland cultural heritage Establishes committees for better performance of its functions Receives nominations for entrance into the Queensland Heritage Register Assesses applications to the Queensland Heritage Register Decides on entry, substantial changes and removal from the Queensland Heritage Register Determines destroyed place recommendations Receives and determines applications for approval of actions that are likely to have a significant impact on a national heritage place Reports annually on performance, timeliness and necessary measures that should be taken in relation to Queensland's cultural heritage Advises the chief executive on heritage agreements and the making of guidelines.
	Local Governments
	<ul style="list-style-type: none"> Identify places of local heritage significance List places of local heritage significance in a local heritage register Identify and protect places of local heritage significance in local government planning schemes

Area	Summary
	<ul style="list-style-type: none"> • Approve development relating to local heritage places • Provide advice to owners of local heritage places • Give notice about essential repair and maintenance of local heritage places • Appoint authorised persons. <p>Chief executive – Department of Environment and Science</p> <ul style="list-style-type: none"> • Makes heritage agreements and guidelines • Gives recommendations for actions to be taken in relation to local heritage places • Provides exemption certificates • Gives notice about essential repair and maintenance of State heritage places • Appoints authorised persons • Establishes and manages an Aboriginal Cultural Heritage Database • Approves cultural heritage management plans • Appoints authorised persons. <p>Aboriginal cultural heritage and Torres Strait Islander cultural heritage bodies</p> <ul style="list-style-type: none"> • Identify relevant Aboriginal and Torres Strait Islanders parties • Act as intermediaries between notices and relevant Aboriginal and Torres Strait Islander parties. <p>Aboriginal and Torres Strait Islander Cultural Heritage Unit</p> <ul style="list-style-type: none"> • Administers the <i>Aboriginal Cultural Heritage Act 2003</i> and the <i>Torres Strait Islander Cultural Heritage Act 2003</i>.
Relationships between the parties including delegations	<p>The Queensland Heritage Council:</p> <ul style="list-style-type: none"> • Provides advice to the Minister and to the Department of Environment and Science relating to heritage issues and conservation management • Advises the State on heritage items it owns, as well as advising other heritage owners • Delegates functions under the <i>Queensland Heritage Act 1992</i> to members, committees consisting of at least 1 member or appropriately qualified public service officers • Determines entries, changes and removal from the State Heritage Register. <p>The Department of Environment and Science:</p> <ul style="list-style-type: none"> • Manages details of entries the Heritage Register, while the Queensland Heritage Council. <p>Local governments:</p> <ul style="list-style-type: none"> • Manage local heritage • Manage the registration, maintenance and cancellation of things on the heritage register • Are directed and advised by the Chief Executive and relevant Ministers.

Area	Summary
	<p>Delegations</p> <p>The Minister for the <i>Queensland Heritage Act 1992</i> may delegate its functions to the chairperson of the council, a local government or an appropriately qualified public service officer.</p> <p>The Chief Executive may delegate all his or her functions, aside from those pertaining to compensation and notices about essential repair and maintenance, to appropriately qualified public service officers. Exemption certificates may be delegated to any qualified person by the Chief Executive.</p>
<p>Compliance and enforcement arrangements and reporting requirements</p>	<p>Reporting requirements</p> <p>The Queensland Heritage Council must prepare and present an operational report to the Minister annually, by 31 October each year.</p> <p>Compliance and enforcement powers:</p> <ul style="list-style-type: none"> • A duty of care is imposed on those using heritage and indigenous places that requires land users to take all reasonable and practicable measures to protect the place • There are various compliance procedures under the heritage legislation. Authorised officers and delegates of the minister have investigatory powers, and powers to impose stop orders on harmful or threatening activity • Penalties apply for contraventions of stop orders, failures to comply with legislative duties of care and for other unauthorised actions.
<p>Heritage registration and management</p>	<p>Registering Heritage</p> <ul style="list-style-type: none"> • Aboriginal human remains and indigenous cultural heritage owned by the state may be returned automatically or on the request of the traditional owner. Aboriginal human remains that are found must be reported to the Chief Executive • An Aboriginal heritage register is available to record information from cultural heritage studies, about Aboriginal cultural heritage bodies and whether areas are subject to cultural heritage management plans. It also contains relevant information to support the consideration of Aboriginal heritage • Indigenous heritage is automatically protected under the duties of care provided by the heritage legislation • Heritage significance is determined according to a set of criteria established under the <i>Queensland Heritage Act 1992</i>. These are: <ul style="list-style-type: none"> a) the place is important in demonstrating the evolution or pattern of Queensland's history b) the place demonstrates rare, uncommon or endangered aspects of Queensland's cultural heritage c) the place has potential to yield information that will contribute to an understanding of Queensland's history d) the place is important in demonstrating the principal characteristics of a particular class of cultural places e) the place is important because of its aesthetic significance f) the place is important in demonstrating a high degree of creative or technical achievement at a particular period

Area	Summary
	<ul style="list-style-type: none"> g) the place has a strong or special association with a particular community or cultural group for social, cultural or spiritual reasons h) the place has a special association with the life or work of a particular person, group or organisation of importance in Queensland's history. • Inclusion on the State Heritage Register is dependent on the heritage significance of a place, which is determined according to the above set of criteria • For an item to be included on the local heritage register, it will be specifically identified by the local government or in the local planning scheme. <p>Removal</p> <ul style="list-style-type: none"> • Removal of items from the State heritage register can be initiated by anybody. • Public notice is then made relating to the application for removal, and the Queensland Heritage Council determines the removal. <p>Managing and maintaining heritage</p> <p><i>Heritage Agreements and Local Heritage Agreements</i></p> <ul style="list-style-type: none"> • Heritage agreements assist in the management and maintenance of heritage places by outlining future works, conservation action or usage restrictions. The Chief Executive or local government may enter into an agreement with owners of heritage places or others who have interest in the place. Heritage agreements are generally listed on the title of the property and are binding on the owner – if a place is sold, then the agreement remains in place for the new owner. <p><i>Cultural Heritage Management Plans</i></p> <ul style="list-style-type: none"> • Cultural Heritage Management Plans are agreements between a land user and Traditional Owners which explain how land use activities can be managed to avoid or minimise harm to Aboriginal or Torres Strait Islander cultural heritage. Cultural Heritage Management Plans are required for certain projects where an environmental impact statement is also required. <p><i>Cultural Heritage Studies</i></p> <ul style="list-style-type: none"> • A Cultural Heritage Study is a comprehensive study of Aboriginal or Torres Strait Islander cultural heritage conducted under pt 6 of the <i>Aboriginal Cultural Heritage Act 2003</i>. • Cultural Heritage Studies may be sponsored by any person. Aboriginal parties are responsible for assessing the level of cultural heritage significance in an indigenous study area.

Community and stakeholder consultation and engagement

Community and stakeholder consultation

Native title parties

- Native title parties are those parties with native title claim to the area. These parties are then identified as Aboriginal and Torres Strait Islander parties, which provide advice and input on studies and proposals.

Aboriginal and Torres Strait Islander cultural heritage bodies

- Registered Aboriginal and Torres Strait Islander cultural heritage bodies are available to act as intermediaries and identifiers of Aboriginal parties for an area.

Area	Summary
	<p><i>Cultural heritage studies</i></p> <ul style="list-style-type: none"> In undertaking cultural heritage studies and cultural heritage management plans, Aboriginal, Torres Strait Islander and other related public parties are consulted. <p><i>Consultation of owners</i></p> <ul style="list-style-type: none"> Owners must be consulted prior to making essential repair and maintenance notices and decisions on destroyed place recommendations. <p>Engagement</p> <p>Community access to and public appreciation of Queensland's heritage listed sites is promoted by the Community Sustainability Action Grants Program.</p>
Protection and management of First Nations heritage	<p>The two major pieces of legislation that protect and govern indigenous cultural heritage in Queensland are the <i>Aboriginal Cultural Heritage Act</i> and the <i>Torres Strait Islander Cultural Heritage Act 2003</i>.</p> <p>Primary functions under the relevant legislation includes:</p> <ul style="list-style-type: none"> There are functions under Aboriginal heritage legislation for repatriation of Aboriginal ancestral remains and objects to rightful owners Aboriginal sites and objects are managed and protected under specific legislation Cultural heritage management plans are available for the protection of Aboriginal and Torres Strait Islander heritage. <p>Various guidelines and policies are available to support the interpretation and application of indigenous heritage legislation. This includes:</p> <ul style="list-style-type: none"> The Department of Transport and Main Roads Indigenous and Historical Cultural Heritage Organisational Policy and Cultural Heritage Process Manual relating to indigenous and historic cultural heritage Guidelines and policies published by the Department of Environment and Science and the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships.
Risks to heritage assets and mitigation arrangements	<ul style="list-style-type: none"> Offences are available which serve to deter would-be offenders and mitigate risk posed by non-compliance with heritage legislation. A duty of care is in place in regard to taking reasonable precautions to protect heritage and Aboriginal places.
Provisions and arrangements to enable adaptive re-use and balance sustainability goals and heritage conservation	N/A
Projects or reforms underway or recently implemented	<p>The Queensland Heritage Advisory Panel (QHAP) was established as a sub-committee of the Queensland Heritage Council in April 2021 at the request of the Honourable Meaghan Scanlon, Minister for the Environment and the Great Barrier Reef and Minister for Science and Youth Affairs (the Minister). QHAP's role is to provide advice to the Minister about how heritage places in Queensland can be better protected. The work</p>

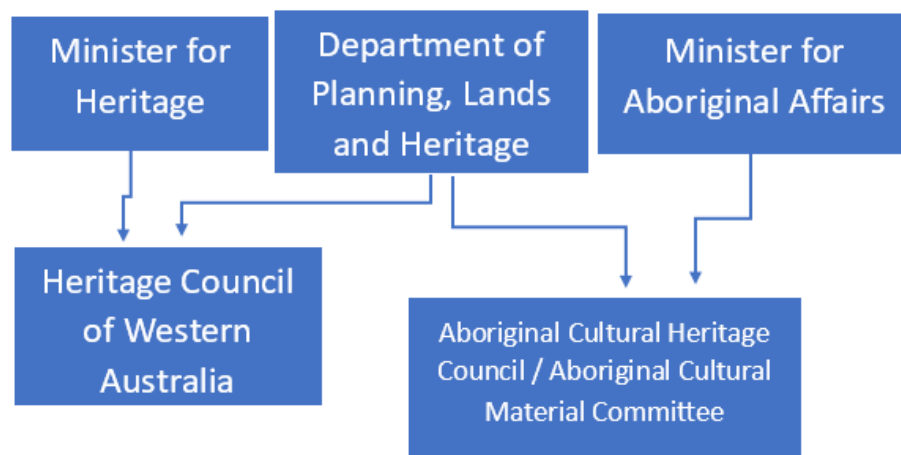
Area	Summary
	<p>identified three areas of focus to improve Queensland's protection of local and State heritage places:</p> <ul style="list-style-type: none"> Legislative reform and strengthening Queensland's heritage framework Support for heritage stakeholders Better communication, understanding and engagement.
<p>Relationship between heritage management and the planning system</p>	<p>Development on heritage places is administered and managed at a local and state level. Aboriginal cultural heritage is protected under separate legislation and managed independently.</p> <p><i>Queensland Heritage Register</i></p> <ul style="list-style-type: none"> Entries on the Queensland Heritage Register require permits to be developed. Development in this context includes alterations, repairing and disturbing landscape features, artefacts and building finishes. Exemptions are available for emergency work. <p><i>Local Heritage</i></p> <ul style="list-style-type: none"> Places of local heritage significance are protected in local government planning schemes. This means that there are various procedures available for the protection of local heritage depending on the local government authority that the heritage is listed under. <p><i>Aboriginal cultural heritage</i></p> <ul style="list-style-type: none"> Aboriginal cultural heritage is protected from development by use of cultural heritage management plans
<p>Approximate number of Heritage Unit staff (FTE)</p>	<p>27.45</p>
<p>Approximate number of registered heritage places</p>	<p>1797</p>

Western Australia

Area	Summary
Legislative framework and regulatory settings	<p>Cultural and environmental heritage is regulated, managed and protected under the:</p> <ul style="list-style-type: none"> • <i>Heritage Act 2018</i> <ul style="list-style-type: none"> – <i>Heritage Regulations 2019</i> • <i>Conservation and Land Management Act 1984</i> <ul style="list-style-type: none"> – <i>Forest Management Regulations 1993</i> – <i>Conservation and Land Management Regulations 2002</i> • <i>Biodiversity and Conservation Act 1972</i> <ul style="list-style-type: none"> – <i>Biodiversity Conservation Regulations 2018.</i> <p>Indigenous cultural heritage is managed and protected under the:</p> <ul style="list-style-type: none"> • <i>Aboriginal Heritage Act 1972</i> <ul style="list-style-type: none"> – <i>Aboriginal Heritage Regulations 1974.</i> <p>After 1 July 2023, the legislation protecting and managing Indigenous cultural heritage will be replaced by the <i>Aboriginal Cultural Heritage Act 2021</i>. This legislation has been passed and changes are ready to commence. It will come into effect on 1 July 2023:</p> <ul style="list-style-type: none"> • <i>Aboriginal Cultural Heritage Act 2021</i> <ul style="list-style-type: none"> – <i>Aboriginal Cultural Heritage Regulations 2022.</i> <p>Planning and development is managed under the:</p> <ul style="list-style-type: none"> • <i>Planning and Development Act 2005</i> <ul style="list-style-type: none"> – <i>Planning and Development Regulations 2009.</i>

Governance Settings

Western Australia Heritage governance arrangements



The following entities are responsible for advising on, managing and protecting environmental and cultural heritage:

- Department of Planning, Lands and Heritage
- Minister for Heritage

Area	Summary
	<ul style="list-style-type: none"> Heritage Council of Western Australia. <p>The following entities are responsible for advising on, managing and protecting indigenous cultural heritage:</p> <ul style="list-style-type: none"> Department of Planning, Lands and Heritage Minister for Aboriginal Affairs Aboriginal Cultural Heritage Council (<i>Aboriginal Cultural Heritage Act 2021</i>) Aboriginal Cultural Material Committee (<i>Aboriginal Heritage Act 1972</i>).
Strategic Policy Framework	<p>Heritage assessments are made with the guidance of:</p> <ul style="list-style-type: none"> Guidelines for Assessment of Local Heritage Places State Register of Heritage Places Assessment criteria for cultural heritage significance <p>General guidelines for heritage procedures include:</p> <ul style="list-style-type: none"> Guidelines for repair notices and orders Guidelines for Heritage Areas Guidelines for establishing a heritage list Guidelines for local heritage surveys Guidelines for Preparing a Local Planning Policy for Local Heritage Researching heritage places <p>Best practice for state registered places is guided by:</p> <ul style="list-style-type: none"> Best practice for site preliminaries for state registered places Development Principles for State Registered Places Policy <p>Heritage sponsorships are governed by:</p> <ul style="list-style-type: none"> Heritage Council Sponsorship Policy <p>There also exists a technical guide series to advise development of heritage properties.</p>
Structure, obligations and responsibilities of parties within the framework	<p>Minister for Heritage:</p> <ul style="list-style-type: none"> Nominates chairperson and members of the Heritage Council (the Council) for appointment by the Governor Confers with the Treasurer and Council for the provision of financial resources of the Council Directs the Council to either enter or not enter places nominated for registration, according to their own recommendation May direct the council to amend land descriptions on the recommendation of the Council Directs removal of heritage registered places from the register on the recommendation of the Council Makes protection and maintenance orders in the form of: <ul style="list-style-type: none"> Consent orders Stop work orders

Area	Summary
	<ul style="list-style-type: none"> – Continuing protection orders – Repair orders • Modifies planning instruments • Certifies the creation, termination and variation of heritage agreements • Declares compulsory acquisitions of registered land • Appoints authorised inspectors • Recommends compensation of persons applying for compensation relating to reasonably incurred expenditure under the Act. <p>Department of Planning, Lands and Heritage:</p> <ul style="list-style-type: none"> • Provides advice and oversight of Aboriginal cultural and built heritage matters • Advises the Ministers in relation to heritage matters. <p>Heritage Council of Western Australia</p> <ul style="list-style-type: none"> • Advises the Minister on the administration of the <i>Heritage Act 2018</i> • Assesses and documents places of cultural heritage significance in Western Australia • Advises the Minister on heritage matters and, in particular, on the identification, conservation and protection of places that are, or may be, of cultural heritage significance • Provides guidance to public authorities on contemporary best practice for the identification and management of heritage assets • Administers the register • Provides and facilitates provision of financial, technical and professional assistance and incentives • Provides advice to decision-making authority in relation to development that may affect registered places • Provides for conservation of places with cultural heritage significance • Advises and assists local governments in identifying and conserving places that are of cultural heritage significance. <p>Minister for Aboriginal Affairs (<i>Aboriginal Cultural Heritage Act 2021</i>)</p> <ul style="list-style-type: none"> • Appoints the members of the Aboriginal Cultural Heritage Council • Gives directions to the Aboriginal Cultural Heritage Council in respect of performance of its functions • Receives objections to decisions of the Aboriginal Cultural Heritage Council • Gives notice of protected areas • Approves guidelines. <p>Minister for Aboriginal Affairs (<i>Aboriginal Heritage Act 1972</i>)</p> <ul style="list-style-type: none"> • Receives objections to declarations of Aboriginal sites as protected sites • Undertakes compulsory acquisition of objects

Area	Summary
	<ul style="list-style-type: none"> • Provides for compensation in compulsory acquisitions • Enters covenants with persons who hold interests in lands in which Aboriginal sites are located • Appoints the Aboriginal Cultural Material Committee • Consults trustees for the protection of Aboriginal objects. <p>Aboriginal Cultural Heritage Council (<i>Aboriginal Cultural Heritage Act 2021</i>)</p> <ul style="list-style-type: none"> • Reports annually to the Minister relating to activities, operations and proceedings carried out by the Council • Establishes committees to assist it in performing functions • Designates local Aboriginal cultural heritage services to advise and manage local Aboriginal cultural heritage matters • Promotes public awareness, understanding and appreciation of Aboriginal cultural heritage • Has an advisory role to assist in recognition, protection, conservation, preservation and management of Aboriginal cultural heritage • Provides recommendations in relation to Aboriginal ancestral remains and secret or sacred objects • Determines the outcomes of Aboriginal Cultural Heritage permits and management plans • Makes recommendations relating to prohibition and remediation orders • Decides as to the endorsement of Aboriginal cultural heritage protection agreements • Maintains the Aboriginal cultural heritage directory • Advises the Minister on heritage issues. <p>Aboriginal Cultural Material Committee (<i>Aboriginal Heritage Act 1972</i>)</p> <ul style="list-style-type: none"> • Evaluates the importance of places and objects associated with Aboriginal places • Records and preserves traditional Aboriginal lore • Provides protection to Aboriginal places and objects • Recommends to the Minister places and objects with special significance to persons of Aboriginal Descent • Advises the Minister on questions referred to it by the Minister. <p>Local Governments</p> <ul style="list-style-type: none"> • Take part in local heritage surveys • Maintain the Heritage List • Implement restrictions and procedures relating to local heritage contained within the Heritage List • Determine development applications relating to areas of local heritage.
Relationships between the parties	The Heritage Council and Aboriginal Cultural Material Committee provide advice to the Minister in relation to decision-making under relevant heritage legislation. The

Area	Summary
including delegations	<p>Aboriginal Cultural Heritage Council replaced the Aboriginal Cultural Material Committee when the <i>Aboriginal Heritage Act 2021</i> came into effect on 1 July 2023.</p> <p>Delegations</p> <ul style="list-style-type: none"> • The Heritage Council and Aboriginal Cultural Heritage Council may establish committees to undertake functions under their respective legislation, and delegate to said committees. • The Minister gives directions to the Heritage Council in relation to registration of places and objects on the heritage register. • The Heritage Council may delegate any function under legislation that it has to any person. This cannot be subdelegated. • The Minister may delegate various functions under legislation, the Minister may also perform functions through officers and agents. • The Aboriginal Cultural Heritage Council and Aboriginal Cultural Material Committee may both delegate to staff certain functions under their respective legislation.
Compliance and enforcement arrangements and reporting requirements	<p>Reporting requirements</p> <ul style="list-style-type: none"> • The Aboriginal Cultural Heritage Council and Heritage Council are required to produce an annual report for their respective ministers. The reports outline the activities, operations and proceedings carried out by the Council during the previous financial year. <p>Compliance and enforcement powers</p> <ul style="list-style-type: none"> • The Department of Planning, Lands and Heritage has an investigations unit that is responsible for investigating allegations of breaches of legislation administered by the department. The enforcement and prosecution decisions are detailed in the DPLH Enforcement and Prosecution Policy • Various compliance functions are available to bodies under relevant heritage legislation. Investigatory roles are available and there are a range of response mechanisms in the form of statutory procedures available. Council procedures are bound by a code of conduct.
Heritage registration and management	<p>Registration</p> <ul style="list-style-type: none"> • Cultural heritage places are recorded in local, state or national heritage lists. These have different levels of protections • State heritage registration is the highest recognition of heritage at the State level. Heritage places are entered on the State register after an assessment process • Any member of the public, organisation or local government can nominate a place for inclusion on the State register. Registration is then determined according to whether the place has heritage significance. Factors relevant to determining heritage significance include: <ul style="list-style-type: none"> – Importance in demonstrating the evolution or pattern of Western Australia's history – Importance in demonstrating rare, uncommon or endangered aspects of Western Australia's heritage – Potential to yield information that will contribute to an understanding of Western Australia's history

Area	Summary
	<ul style="list-style-type: none"> – Importance in demonstrating the characteristics of a broader class of places – Any strong or special meaning it may have for any group or community because of social, cultural or spiritual associations – Importance in exhibiting particular aesthetic characteristics valued by any group or community – Any special association it may have with the life or work of a person, group or organisation of importance in Western Australia's history – Importance in demonstrating a high degree of creative or technical achievement – Any other characteristic it may have that in the opinion of the Council is relevant to the assessment of cultural heritage significance <ul style="list-style-type: none"> • After the assessment, the Heritage Council may determine whether to register a place on the Heritage Register. <p>Removal</p> <ul style="list-style-type: none"> • Removal may be made on the application of the owner of the registered entry. • The Heritage Council may then make a determination and submit it to the Minister. • The Minister may then accept this determination or direct the Heritage Council to give further consideration. • After receiving a satisfactory determination, the Minister may direct the Heritage Council to either remove or not remove the entry. <p>Managing and maintaining heritage</p> <p><i>Conservation management plans</i></p> <ul style="list-style-type: none"> • Conservation management plans are available to heritage places to ensure that decisions are made with regard to cultural heritage significance of heritage places. These identify the heritage significance of a place and provide guidance of maintenance and proposed changes to the place. <p><i>Guidelines</i></p> <ul style="list-style-type: none"> • Various guidelines and procedures are available to guide maintenance, development and other activities related to heritage places.
Community and stakeholder consultation and engagement	<p>Community and stakeholder consultation</p> <p>Public consultation is required for the following purposes:</p> <ul style="list-style-type: none"> • Making recommendations for heritage registration • Amendments to the land description of a heritage registered entry • Removal of a registered entity • Making of a continuing protection order. <p>First Nation consultation is required in various circumstances, including:</p> <ul style="list-style-type: none"> • On the creation of Aboriginal Cultural Heritage management plans • On the creation of relevant guidelines under the <i>Aboriginal Cultural Heritage Act 2021</i>. <p>Heritage owners are required to be consulted in relation to:</p>

Area	Summary
	<ul style="list-style-type: none"> • Registration recommendations • Amendments to the land description of a heritage registered entry • Making statements of cultural heritage significance • Making modification orders. <p>Engagement</p> <ul style="list-style-type: none"> • State Heritage Grants are available to subsidise the cost of physical conservation works, documentation and professional advice relating to the conservation of State Registered places. • Community Heritage Grants are available to subsidise the cost of activities that celebrate State Registered places and places in the Heritage Council's assessment program. • The WA heritage awards celebrates the achievements of heritage professionals, volunteer groups, individuals and organisations. • A range of workshops, seminars and other events are frequently organised by the Heritage Council to encourage engagement with heritage and develop conservation skills.
Protection and management of First Nations heritage	<p>The <i>Aboriginal Heritage Act 1972</i> provides for:</p> <ul style="list-style-type: none"> • Protected areas and reporting requirements in relation to Aboriginal heritage, sites, objects and remains • Specific protection of Aboriginal objects and cultural material • An Aboriginal heritage register • Wardens with inspection and enforcement powers • Various penalties and procedures available to punish offenders. <p>The <i>Aboriginal Cultural Heritage Act 2021</i> provides for:</p> <ul style="list-style-type: none"> • Aboriginal Cultural Heritage management plans to address potential difficulties and risks prior to activities that may harm Aboriginal Cultural Heritage • Reporting requirements and an Aboriginal Cultural Heritage Directory • Repatriation of Aboriginal ancestral remains and processes for repatriation of secret and sacred Aboriginal objects • The Aboriginal Cultural Heritage Council to administer and advise in relation to the <i>Aboriginal Cultural Heritage Act 2021</i> • Local Aboriginal Cultural Heritage Services to act as intermediaries between Native Title groups and knowledge holders and organise processes under the <i>Aboriginal Cultural Heritage Act 2021</i>.
Risks to heritage assets and mitigation arrangements	<ul style="list-style-type: none"> • Various offences and penalties are available to deter would-be offenders and mitigate risk posed by non-compliance with heritage legislation. • Various compliance, risk mitigation and reactionary statutory devices are available to authorities under the Act. Processes that can be used for risk identification, mitigation and management include: <ul style="list-style-type: none"> – Heritage Agreements – Heritage Surveys

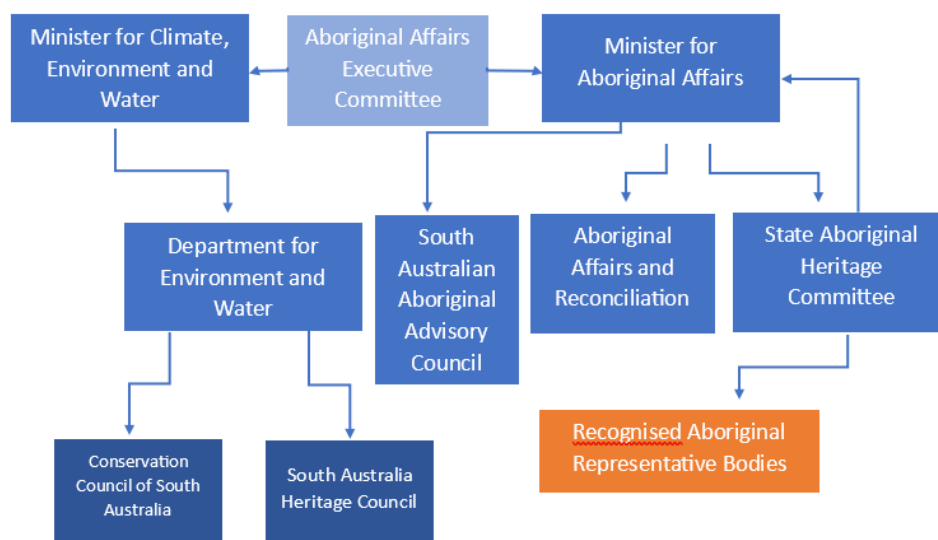
Area	Summary
	<ul style="list-style-type: none"> Guidelines Management Plans Aboriginal Cultural Heritage Protection Agreements.
Provisions and arrangements to enable adaptive re-use and balance sustainability goals and heritage conservation	<ul style="list-style-type: none"> The Heritage Council promotes heritage conservation and adaptive re-use through the Heritage Grants Program. The Heritage Works program aims to secure the best financial returns from leasing or selling heritage assets, as well as the best possible long-term adaptive reuse outcomes. It does this by providing owners of heritage assets with: <ul style="list-style-type: none"> Feasibility analyses Conservation planning and specification Conservation works Financial support where required Project management Government heritage property disposal process support Marketing sales and support.
Projects or reforms underway or recently implemented	<p>The <i>Aboriginal Cultural Heritage Act 2021</i> came into effect on 1 July 2023, after a transitional period in which relevant policies, regulations and guidelines have been developed. This legislation replaced the previous <i>Aboriginal Heritage Act 1972</i> in representing, managing, and protecting Indigenous heritage matters.</p>
Relationship between heritage management and the planning system	<p>Applications for development and works on places contained within the State Heritage Register are referred to the Heritage Council for advice. Regular applications are generally delegated to the Department of Planning, Lands and Heritage by the Heritage Council. However, major and sensitive developments are generally dealt with directly by the Heritage Council.</p> <p>After receiving the referral, the Department of Planning, Lands and Heritage or the Heritage Council, an assessment is made in accordance with the Heritage Council Development Assessment Framework. The referred body may then give a recommendation to not object, support, conditionally support or not support the development approval. The decision-making body must act consistently with this advice when determining the development application.</p>
Approximate number of Heritage Unit staff (FTE)	48
Approximate number of registered heritage places	1381

South Australia

Area	Summary
Legislative framework and regulatory settings	<p>Environmental and Historical heritage is regulated, managed and protected under the:</p> <ul style="list-style-type: none"> • <i>Heritage Places Act 1993</i> <ul style="list-style-type: none"> – <i>Heritage Places Regulations 2020</i> • <i>Historic Shipwrecks Act 1981</i> <ul style="list-style-type: none"> – <i>Historic Shipwrecks Regulations 2017</i> • <i>Native Vegetation Act 1991</i> <ul style="list-style-type: none"> – <i>Native Vegetation Regulations 2017.</i> <p>Aboriginal cultural heritage is managed and protected under the:</p> <ul style="list-style-type: none"> • <i>Aboriginal Heritage Act 1988</i> <ul style="list-style-type: none"> – <i>Aboriginal Heritage Regulations 2017.</i> <p>Planning, development and local heritage is managed under the:</p> <ul style="list-style-type: none"> • <i>Planning, Development and Infrastructure Act 2016</i> <ul style="list-style-type: none"> – <i>Planning, Development and Infrastructure (General) Regulations 2017.</i>

Governance settings

South Australia Heritage governance arrangements



The following entities are responsible for the administration and management of environmental heritage:

- Minister for Climate, Environment and Water
- Department for Environment and Water
- Conservation Council of South Australia.

The following entities are responsible for the administration and management of cultural heritage:

- Minister for Climate, Environment and Water

Area	Summary
	<ul style="list-style-type: none"> • Department for Environment and Water • South Australia Heritage Council. <p>The following entities are responsible for the management of South Australian indigenous heritage:</p> <ul style="list-style-type: none"> • Department of Premier and Cabinet • Attorney-General's Department of South Australia • Minister for Aboriginal Affairs • Aboriginal Affairs and Reconciliation • State Aboriginal Heritage Committee • Aboriginal Affairs Executive Committee • South Australian Aboriginal Advisory Council • Recognised Aboriginal Representative Bodies. <p>The following entities are responsible for decisions relating to planning and development:</p> <ul style="list-style-type: none"> • Minister for Planning • Department for Trade and Investment • Planning and Land Use Services • South Australia Planning Commission.
Strategic policy framework	<p>Provision of advice and delegations by the Heritage Council are guided by:</p> <ul style="list-style-type: none"> • 5.1 Advice to the Minister for Environment and Water on heritage protection, trends, shortcomings and opportunities • 8.1 - Delegation of South Australian Heritage Council's powers and functions • 8.2 - Delegation of South Australian Heritage Council's powers and functions <p>Policies and procedures that guide nomination, provisional entries, confirmation and removals of entries to the South Australian Heritage Register include:</p> <ul style="list-style-type: none"> • 14.1 - Description or notes for State Heritage Places • 14.7 - Designation • 17.5 - Public Nominations for Entry in the South Australian Heritage Register • 17.10 - Public Availability of Nominations for State Heritage Listing and Submissions Made under the Heritage Places Act 1993 • 17.11 - Public availability of information on provisional entries, confirmation and removal of entries in the South Australian Heritage Register • 17.6 - Provisional entry of an object • 18.1 - Confirmation or Removal of Provisional Entry in the South Australian Heritage Register <p>The procedures for Heritage Agreements are guided by 32.1 Heritage Agreements.</p> <p>The Heritage Council is generally guided by:</p> <ul style="list-style-type: none"> • General Procedure: Accountability • General Procedure: Communications

Area	Summary
	<ul style="list-style-type: none"> • General Policy - Complaints <p>The Planning and Design Code guides planning and development in South Australia.</p> <p>Planning and development applications and decisions specifically relating to State Heritage Areas are guided by the Heritage Standards, an assessment tool linked to the Planning and Design Code.</p>
Structure, obligations and responsibilities of parties within the framework	<p>Department of Premier and Cabinet:</p> <ul style="list-style-type: none"> • Provides ongoing support to Aboriginal and Torres Strait Islander initiatives • Advises decision-makers under heritage legislation. <p>Department for Environment and Water & Heritage South Australia</p> <ul style="list-style-type: none"> • Administers non-Aboriginal cultural heritage of State significance • Provides advice and information • Promotes State Heritage • Advises the Minister for the <i>Heritage Places Act 1993</i>. <p>South Australian Heritage Council</p> <ul style="list-style-type: none"> • Provides strategic advice to the Minister for Climate, Environment and Water • Administers the <i>Heritage Places Act 1993</i> • Provides strategic advice to the Minister for Planning on heritage-related matters in the administration of the <i>Planning, Development and Infrastructure Act 2016</i> • Administers the South Australian Heritage Register. <p>Attorney General's Department of South Australia & Aboriginal Affairs and Reconciliations</p> <ul style="list-style-type: none"> • Works with Aboriginal people, community and organisations • Advises and supports Aboriginal landholding authorities. <p>Minister for Aboriginal Affairs</p> <ul style="list-style-type: none"> • Administers the <i>Aboriginal Heritage Act 1988</i> & other legislation relating to indigenous communities, people and organisations • Publishes Aboriginal Heritage Guidelines • Approves local heritage agreements and authorisations • Directly protects of Aboriginal sites, objects and remains. <p>Minister for Climate, Environment and Water</p> <ul style="list-style-type: none"> • Appoints the South Australian Heritage Council • Uses money from the South Australian State Heritage Fund • Enters heritage agreements with owners of lands constituting State Heritage Places • Authorises people to enforce and investigate under heritage legislation • Issues protection orders.

Area	Summary
	<p>State Aboriginal Heritage Committee</p> <ul style="list-style-type: none"> • Advises the Minister for Aboriginal Affairs in relation to the <i>Aboriginal Heritage Act 1988</i> • Decides the appointing, suspending and revoking of bodies as Recognised Aboriginal Representative Bodies. <p>Aboriginal Affairs Executive Committee</p> <ul style="list-style-type: none"> • Provides strategic advice across government • Identifies risks and promotes collaboration between working groups • Monitors significant government high value and risk programs and projects • Proactively considers the entire government landscape and advises relevant agencies on concerns and unintended impacts of programs and projects • Supports and trains senior Aboriginal public servants. <p>South Australian Aboriginal Advisory Council</p> <ul style="list-style-type: none"> • Provides the government with advice on existing and new programs as they affect Aboriginal people • Provides advice for implementation of future policies and services, appropriate consultation processes and emerging issues that affect Aboriginal people. <p>Recognised Aboriginal Representative Bodies</p> <ul style="list-style-type: none"> • Enters into Aboriginal heritage agreements with proponents to manage impacts on Aboriginal Heritage • Provides advice to relevant parties on decisions made relating to Aboriginal Heritage • Represents views of Traditional Owners. <p>Local Governments</p> <ul style="list-style-type: none"> • Have a role in the Planning and Design Code includes local and state heritage overlays, as well as adjacency overlays for works adjacent to heritage areas.
Relationships between the parties including delegations	<p>The Heritage Council:</p> <ul style="list-style-type: none"> • Administers non-Aboriginal heritage legislation including the <i>Heritage Places Act 1993</i> • Provides advice in relation to heritage matters under the <i>Planning, Development and Infrastructure Act 2016</i>. <p>The Minister for Climate, Environment and Water:</p> <ul style="list-style-type: none"> • Appoints the Heritage Council • Enters heritage agreements • Administers the Heritage Fund. <p>The Minister for Aboriginal Affairs:</p> <ul style="list-style-type: none"> • Administers Aboriginal heritage related legislation

Area	Summary
	<ul style="list-style-type: none"> Appoints and performs functions with the support of other entities, including: <ul style="list-style-type: none"> Recognised Aboriginal Representative Bodies South Australian Aboriginal Advisory Council Aboriginal Affairs Executive Committee State Aboriginal Heritage Committee other Aboriginal advisory bodies. <p>Recognised Aboriginal Representative bodies:</p> <ul style="list-style-type: none"> Are responsible for single indigenous areas Represents views of Traditional Owners Advises the minister and other interested parties in relation to the area that they are responsible for. <p>Delegations:</p> <ul style="list-style-type: none"> The Heritage Council may establish committees, and delegate its powers to members of the Council, committees or to any other entities The Minister may delegate any functions under the <i>Heritage Places Act 1993</i> The Minister for Aboriginal Affairs may delegate any of their power under the <i>Aboriginal Heritage Act 1988</i>.
Compliance and enforcement arrangements and reporting requirements	<p>Reporting arrangements</p> <p>The Department of Environment and Water publishes various reports in relation to annual requirements, environmental and natural resource management reports.</p> <p>Compliance and enforcement arrangements</p> <ul style="list-style-type: none"> Heritage officers are appointed under heritage legislation to investigate, enforce and seize objects that are suspected to be involved in contraventions Various offences apply under the legislation, including: <ul style="list-style-type: none"> Damaging of heritage registered places Neglecting heritage registered places Damaging Aboriginal places and objects. Applications can be made to the courts to restrain a convicted offender, compel them to take appropriate actions, or make them submit a payment into the Heritage Fund The Council and Minister may make orders relating to the protection of heritage significance places Specific protections are available for Aboriginal heritage places and objects.
Heritage registration and management	<p>The South Australian Heritage Register includes State Heritage Areas, Places and related Objects of State Significance. The Heritage Council maintains the Register, while Heritage South Australia administers the Register.</p>

Heritage Registration

Any person or entity may nominate a place for entry as a place of State heritage significance, they may also be identified by the South Australian Heritage Council or through the recommendation of a heritage survey.

Local Heritage places are listed via Planning and Design codes amendments and are protected under development legislation.

An object may be registered as a State Heritage Place if it:

- Demonstrates important aspects of the evolution or pattern of the State's history
- Has rare, uncommon or endangered qualities that are of cultural significance
- May yield information that will contribute to an understanding of the State's history, including its natural history
- Is an outstanding representative of a particular class of places of cultural significance
- Demonstrates a high degree of creative, aesthetic or technical accomplishment or is an outstanding representative of particular construction techniques or design characteristics
- Has strong cultural or spiritual associations for the community or a group within it
- Has a special association with the life or work of a person or organisation or an event of historical importance.

Removal

The Council may remove places that are no longer justified to be on the State Heritage Register. This is the case only when new information has come to light, or some event has taken place that makes registration no longer justified.

The Heritage Minister has the power to direct the Heritage Council to remove provisional entries from the Heritage Register. This must only be done so on public interest grounds.

Managing and Maintaining Heritage

Development applications

- Development applications that affect State Heritage Places are referred to relevant heritage bodies for the purpose of receiving and acting on advice on potential impacts. This allows proactive management of developments that may impact heritage.

Duty of care

- People are required to take reasonable care of State heritage Places. This includes owners carrying out ongoing maintenance and repair work to protect properties.

Heritage agreements and Aboriginal heritage agreements

- Heritage agreements and Aboriginal heritage agreements may be made by owners and the relevant Minister. These agreements provide for the ongoing protection and management of heritage and Aboriginal places and objects.

Guidelines

- The Minister for Aboriginal Affairs may make guidelines in relation to the operation of the *Aboriginal heritage Act 1988*. Various guidance notes and guidelines are also available under planning and general heritage bodies.

Area	Summary
Community and stakeholder consultation and engagement	<p>Community and stakeholder consultation</p> <p>In making heritage decisions, the Heritage Council must provide the owner of the related heritage place the opportunity to make written submissions. It must also give notice to the public allowing any person to make submissions.</p> <p>In making decisions under the <i>Aboriginal Heritage Act 1988</i>, the Minister for Aboriginal Affairs must take reasonable steps to consult traditional owners and other prescribed authorities. Decisions that require consultation include:</p> <ul style="list-style-type: none"> • Determinations, authorisations and regulations under the <i>Aboriginal Heritage Act 1988</i> • Making Aboriginal heritage agreements • Granting, varying, revoking or suspending approvals in relation to Indigenous land use. <p>There are also a number of online databases which provide information relating to protected heritage places. Heritage Surveys also provide information about heritage places to the public.</p> <p>Engagement</p> <ul style="list-style-type: none"> • Funding is available to support existing and promote new Heritage Agreements. This funding can be used by landowners to maintain and enhance heritage areas. • The South Australian Museum houses and promotes to the public various specimens and material cultural heritage items.
Protection and management of First Nations heritage	<p>The <i>Aboriginal Heritage Act 1988</i> protects and manages First Nations heritage.</p> <p>Protection of Aboriginal places</p> <ul style="list-style-type: none"> • Aboriginal sites, objects and remains are specifically protected from damage, disturbance and removal without authority by the Minister. The Minister may provide such authority with consideration of relevant Aboriginal representatives. • Directions, authorisations, guidelines, inspections and other preventative procedures are available to authorities to ensure compliance and protection of Aboriginal sites, objects and remains. • Various offences are available for contraventions of directions and obligations under the <i>Aboriginal Heritage Act 1988</i>. Offences include: <ul style="list-style-type: none"> – Damaging, disturbing or interfering with Aboriginal sites, objects and remains – Failures in compliance with authorised officers and inspectors – Contraventions of authorisations • Aboriginal heritage agreements may be made by the Minister with an owner of land, after taking all reasonable steps to consider traditional owners of an Aboriginal site or object. They contain provisions for the ongoing protection and preservation of Aboriginal sites, objects and remains.
Risks to heritage assets and mitigation arrangements	<ul style="list-style-type: none"> • Offences and punishments apply to infringements on both heritage registered places and Aboriginal heritage. There are also offences relating to failures in taking reasonable care in relation to heritage places • Various management devices are available for the proactive and ongoing conservation of heritage places and Aboriginal heritage. These statutory devices include:

Area	Summary
	<ul style="list-style-type: none"> - Heritage and Aboriginal heritage agreements - Authorisations and directions under the <i>Aboriginal Heritage Act 1988</i> - Stop orders under the <i>Heritage Places Act 1993</i>. <ul style="list-style-type: none"> • Guidelines are available to assist in the safe development of heritage and effective conservation of Aboriginal and heritage places.
Provisions and arrangements to enable adaptive re-use and balance sustainability goals and heritage conservation	<ul style="list-style-type: none"> • Heritage South Australia and the Office of Design and Architecture and Planning and Land Use Services published the Adaptive Reuse Guidelines for State Heritage Places in South Australia. These guidelines establish options, processes and available support for adaptive reuse in South Australia • The Building Upgrade Finance Scheme is available for environmental and heritage works in non-residential buildings. This is available in certain areas for adaptive reuse. • SA Heritage Conservation Grants are available for the conservation of heritage areas. This extends to adaptive reuse • Other grants are available to heritage development projects, including adaptive re-use programs • Guidance sheets are available to promote interventions and innovative solutions to sustainably promote heritage places.
Projects or reforms underway or recently implemented	<p>The <i>Aboriginal Heritage (Miscellaneous) Amendment Bill 2023</i> was released on the 17th of May 2023. This piece of legislation aims to increase and enhance reporting and penalty provisions under the existing legislation. It also aims to clarify in respect to classes of persons, authorisations and Aboriginal heritage area definitions.</p> <p>The amendments to the <i>Aboriginal Heritage (Miscellaneous) Amendment Bill 2023</i> include:</p> <ul style="list-style-type: none"> • To allow the minister to delegate authorisation of commencement of offence proceedings • To increase penalties for all offences set out in the in the <i>Aboriginal Heritage Act 1988</i> • To clarify reporting obligations for those that discover sites, objects and remains • To create an additional offence for intentional and reckless interference with Aboriginal sites, remains and objects.
Relationship between heritage management and the planning system	<p>Developments in South Australia are assessed by planning authorities against processes within relevant planning zones, Local Heritage, State Heritage and Historic Heritage overlays and general codes contained within the Planning and Design Code.</p> <p>Development applications that relate to State Heritage Areas are also referred to Heritage South Australia. Heritage South Australia may then impose conditions or provide advice and support to any referred development applications.</p> <p>The Heritage South Australia assessment process is outlined in this table, while the development procedure for State Heritage areas is outlined here.</p>
Approximate number of Heritage Unit staff (FTE)	20.4

Area	Summary
Approximate number of registered heritage places	2317

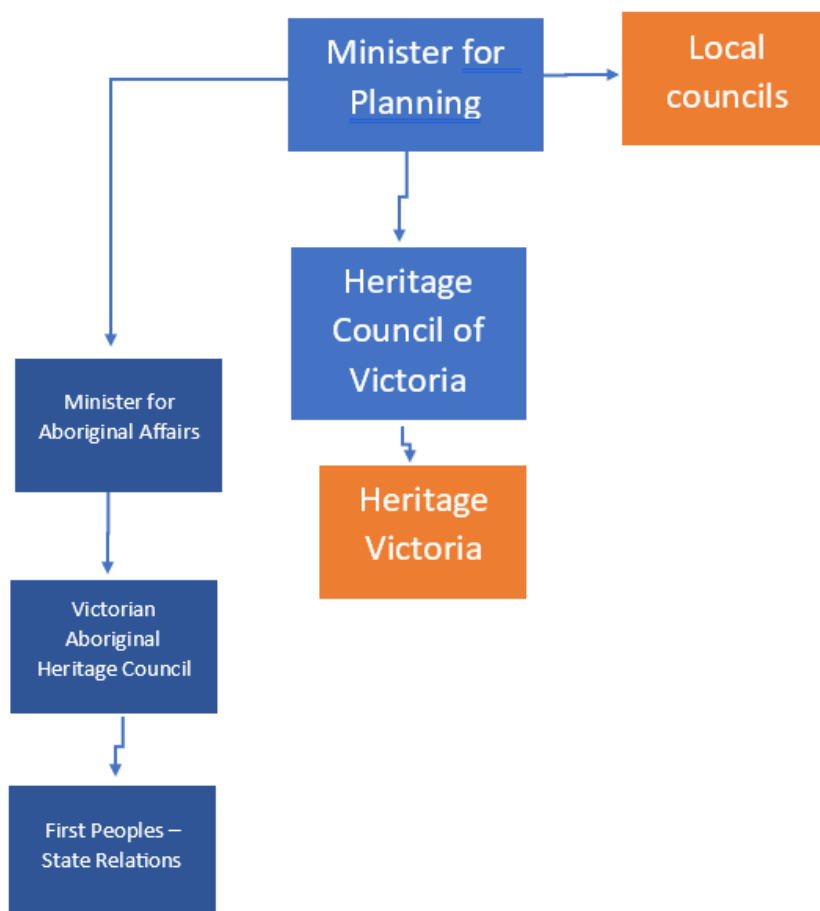
Victoria

Area	Summary
Legislative framework and regulatory settings	<p>Cultural and environmental heritage is managed, protected and regulated under the:</p> <ul style="list-style-type: none"> • <i>Heritage Act 2017</i> <ul style="list-style-type: none"> – <i>Heritage Regulations 2017</i> • <i>Heritage Rivers Act 1992</i> • <i>Tourist Heritage Railways Act 2010</i> • <i>National Parks Act 1975</i> <p>Aboriginal cultural heritage is protected and regulated under the:</p> <ul style="list-style-type: none"> • <i>Aboriginal Cultural Heritage Act 2006</i> <ul style="list-style-type: none"> – <i>Aboriginal Heritage Regulations 2018</i> <p>Planning and development is managed under the:</p> <ul style="list-style-type: none"> • <i>Planning and Environment Act 1987</i> <ul style="list-style-type: none"> – <i>Planning and Environment Regulations 2015.</i>

Area	Summary
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Governance settings

Victorian Heritage governance arrangements



The following entities are responsible for managing, protecting and regulating cultural and environmental heritage:

- Heritage Victoria
- Heritage Council of Victoria
- Minister for Planning
- Local councils.

The following entities are responsible for protecting and managing indigenous cultural heritage:

- Minister for Aboriginal Affairs
- Victorian Aboriginal Heritage Council
- First Peoples – State Relations.

Strategic policy framework

The Heritage Council of Victoria is guided generally by:

- [The Strategic Plan](#)

Heritage Victoria and related regulators are expected to abide by the strategic priorities contained within the:

- [Statement of Expectations](#)

Area	Summary
	<ul style="list-style-type: none"> • Heritage Victoria 2022-23 Business Plan • Heritage Victoria Principles (2021) <p>Heritage management by owners is guided by:</p> <ul style="list-style-type: none"> • Victoria's Framework of Historical Themes • Minimum standards for maintenance and repair of heritage places • Guide on identifying places and objects of state-level social value in Victoria <p>Permits, determinations and authorisations are guided by:</p> <ul style="list-style-type: none"> • Applying section 101(2)(d) of the Heritage Act 2017 • Reasonable or economic use: relevant matters for consideration of s 101(2)(b) of the Heritage Act 2017 • Policy for Determining Low Archaeological Value • Mining Heritage Places Assessment Manual • Policy for Determining Sites of Archaeological Value <p>Heritage Victoria compliance and enforcement activities are guided by:</p> <ul style="list-style-type: none"> • Heritage Victoria Compliance and Enforcement Strategy <p>Council and local government heritage management is supported by a toolkit for local governments:</p> <ul style="list-style-type: none"> • Municipal Heritage Strategies: A guide for Councils
Structure, obligations and responsibilities of parties within the framework	<p>Heritage Victoria</p> <ul style="list-style-type: none"> • Recommends objects and places to include on the Victorian Heritage Register • Determines changes to places on the Register • Recommends archaeological sites to include on the Victorian Heritage Registry • Decides access to underwater heritage • Determines permits and authorisation applications • Provides funding to heritage site owners • Regulates and enforces the <i>Heritage Act 2017</i>. <p>Heritage Council of Victoria</p> <ul style="list-style-type: none"> • Determines inclusion or exclusion of submissions to the Heritage Register • Reviews decisions made by Heritage Victoria. <p>Minister for Planning</p> <ul style="list-style-type: none"> • Recommends appointments to the Heritage Council of Victoria • Calls in registration applications. <p>Local Councils</p> <ul style="list-style-type: none"> • Manage locally significant heritage places.

Area	Summary
	<p>Minister for Aboriginal Affairs</p> <ul style="list-style-type: none"> • Appoints the Victorian Aboriginal Heritage Council. <p>Victorian Aboriginal Heritage Council</p> <ul style="list-style-type: none"> • Determines and oversees Registered Aboriginal Parties • Provides and enforces procedures for returning of ancestral remains • Manages reporting of secret and sacred objects and ancestral remains • Manages the Victorian Aboriginal Cultural Heritage Fund • Advises the Minister for Aboriginal Affairs and Secretary. <p>First Peoples - State Relations</p> <ul style="list-style-type: none"> • Advises and supports the Victorian Aboriginal Heritage Council.
<p>Relationships between the parties including delegations</p>	<p>Heritage Victoria:</p> <ul style="list-style-type: none"> • Primarily responsible for determinations, procedures and authorisations under the <i>Heritage Act 2017</i> • Recommends places to be registered. <p>The Victorian Heritage Council:</p> <ul style="list-style-type: none"> • Reviews authorisations and determinations made by Heritage Victoria • Administers the Victorian Heritage Register. <p>Delegation</p> <ul style="list-style-type: none"> • The Heritage Council may delegate its non-approval powers to the Executive Director of the <i>Heritage Act 2017</i> or the executive officer. The Executive Director then may delegate functions to public staff employed under the <i>Public Administration Act 2004</i>. • The Heritage Council may also appoint committees that must include at least 3 members of the Council to make recommendations on matters the Heritage Council refers to it. • The Minister for planning may call in determinations relating to entries on the Heritage Register and recommends the Heritage Council members to be appointed. • Local Councils manage and determine local heritage significance places and objects, however, are supported in this by Heritage Victoria. • The Victorian Aboriginal Heritage Council is primarily responsible for the administration of the <i>Aboriginal Heritage Act 2006</i>. It is supported in those duties by the First Peoples – State Relations body and advises the Minister for Aboriginal Affairs. • The Victorian Aboriginal Heritage Council may establish advisory committees to advise it in carrying out the <i>Aboriginal Heritage Act 2017</i>. It may delegate matters to individual members of the Council, advisory committees and the Secretary.

Area	Summary
Compliance and enforcement arrangements and reporting requirements	<p>Reporting requirements</p> <ul style="list-style-type: none"> • The Heritage Council must report annually in relation to its functions under heritage legislation. It must also report to the Minister for Planning in relation to permits and demolitions. • The Minister may direct the Executive Director to report annually on the condition of listed places. <p>Cultural heritage audits are available to determine the impact of activities on Aboriginal protected areas. Authorised officers must give reports on activities and enforcement procedures they have undertaken.</p> <p>Compliance and enforcement powers</p> <ul style="list-style-type: none"> • Inspectors are appointed under the <i>Heritage Act 2017</i> and the <i>Aboriginal Heritage Act 2006</i> • Inspectors have enforcement, seizure and examination powers for the protection of Aboriginal and heritage places and objects. • Offences are available in response to interference with registered places, failures to take reasonable care relating to Aboriginal and heritage places and objects and failures in compliance with relevant legislation • Rectification, stop work and repair orders are available to enforce compliance and repair outcomes of non-compliance • Cultural heritage audits may be undertaken to assess impacts of activities in relation to Aboriginal cultural heritage. These are available to examine potential contraventions.
Heritage registration and management	<p>The Victorian Heritage Council administers and determines listings on the Victorian Heritage Register:</p> <p>Registering Heritage</p> <ul style="list-style-type: none"> • Any person or entity may nominate a place or object to be included on the Victorian Heritage Register. • Applications for entry on the Victorian Heritage Register are received by Heritage Victoria and recommended to the Heritage Council for listing. • Applications are determined against the following criteria: <ul style="list-style-type: none"> – Importance to the course, or pattern of Victorian cultural history – Possession of uncommon, rare or endangered aspects of Victorian cultural history – Potential to yield information that will contribute to an understanding of Victoria's cultural history – Importance in demonstrating the principal characteristics of a class of cultural places and objects – Importance in exhibiting particular aesthetic characteristics – Importance in demonstrating a high degree of creative or technical achievement at a particular period – Strong or special association with a particular present-day community or cultural group for social, cultural or spiritual reasons

Area	Summary
	<ul style="list-style-type: none"> – Special association with the life or works of a person, or group of persons, of importance in Victorian history. <p>Removal</p> <ul style="list-style-type: none"> • Items on the Heritage Register may be removed if an application is made, and it is demonstrated that the place or object does not adequately satisfy the Heritage Council criteria. <p>Managing and maintaining heritage</p> <p>Maintenance of heritage places and objects is supported by guidance and supporting documentation published by Heritage Victoria. This includes:</p> <ul style="list-style-type: none"> • Inspection schedule • Minimum standards for maintenance and repair of heritage places • Preparing a maintenance plan <p>It is an offence for owners of heritage places to allow heritage places to fall into disrepair. The following statutory devices are available for the promotion of proactive maintenance by heritage bodies:</p> <ul style="list-style-type: none"> • Guidelines • Repair orders • Investigations, heritage directions and cultural heritage audits.
Community and stakeholder consultation and engagement	<p>Consultation</p> <p>In performing its duties, the Heritage Council may investigate and consult any person or body it considers appropriate.</p> <p>The <i>Heritage Act 2017</i> also stipulates:</p> <ul style="list-style-type: none"> • Provision for public submissions in relation to permit applications • Public availability of the Heritage Inventory and the Heritage Register • Invitation of public comment on some determinations, including heritage registration. <p>The Aboriginal Heritage Council and the Secretary must:</p> <ul style="list-style-type: none"> • Consult Aboriginal people or bodies with interest in Aboriginal ancestral remains in determining the appropriate course of action to be taken in relation to said remain • Consult Aboriginal people and bodies relevant in relation to cultural heritage permits. <p>Cultural Heritage management plans must be prepared alongside Registered Aboriginal plans.</p> <p>Engagement</p> <p>Heritage Victoria provides funding and grants for conservation work and activities. The Victorian Aboriginal Heritage Council also has a role in promoting public awareness and understanding of Aboriginal Cultural Heritage in Victoria. This includes:</p> <ul style="list-style-type: none"> • Indigenous Cultural Heritage Conferences • The Caring for Country initiative • Informative documents relating to Aboriginal history and ongoing challenges

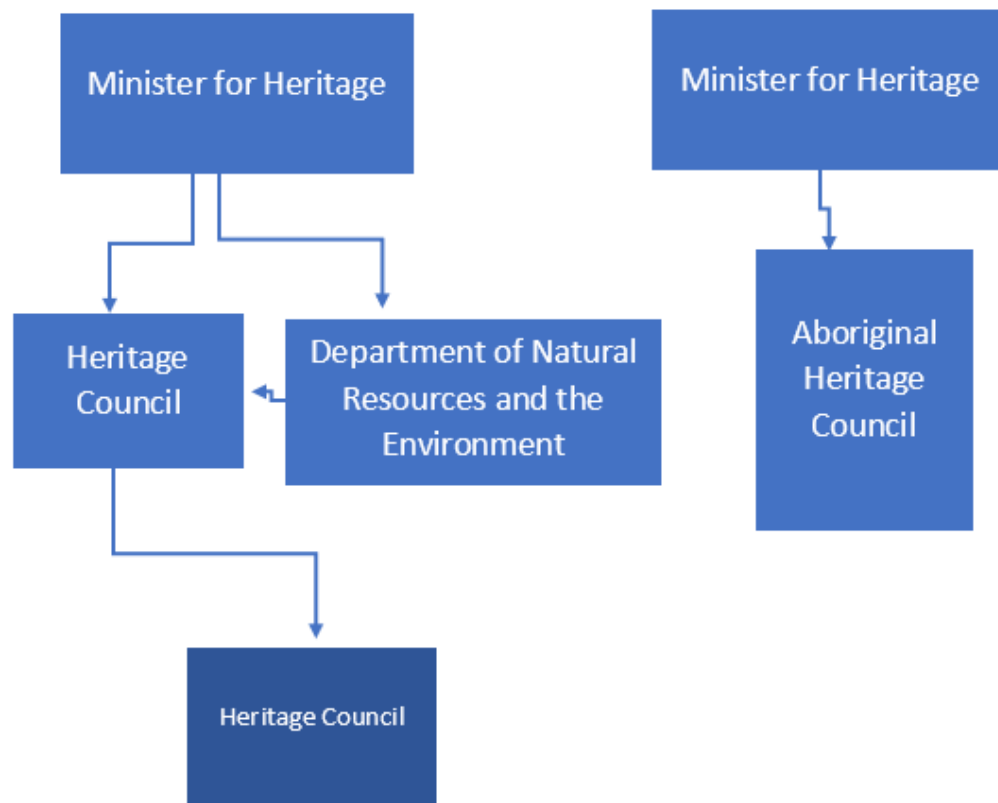
Area	Summary
	<ul style="list-style-type: none"> Naming projects that promote Traditional Names.
Protection and management of First Nations heritage	<p>Indigenous heritage is specifically protected by the <i>Aboriginal Heritage Act 2006</i>. The <i>Aboriginal Heritage Act 2006</i> provides broad protection for all Aboriginal places, objects and human remains in Victoria.</p> <p>There is provision under this legislation for:</p> <ul style="list-style-type: none"> Reporting, repatriation and transferal of Aboriginal ancestral remains Secret or sacred Aboriginal objects Protection of Aboriginal cultural heritage from unauthorised harm Cultural heritage permits and cultural heritage management plans to guide and regulate activities that may impact Aboriginal cultural heritage Possession of Aboriginal objects Cultural heritage agreements for the ongoing conservation, management and protection of Aboriginal heritage Cultural heritage audits to investigate suspected contraventions of the legislation Authorised officers to enforce and investigate contraventions. <p>Offences under the <i>Aboriginal Heritage Act 2006</i> include:</p> <ul style="list-style-type: none"> Harming Aboriginal cultural heritage Breaching stop orders and protection declarations Unlawful possession of Aboriginal objects. <p>The Victorian Aboriginal Heritage Council, Registered Aboriginal Parties and the minister for Aboriginal Affairs have roles within the legislative nexus to provide interim, ongoing and proactive protections to places and objects with Aboriginal cultural significance.</p>
Risks to heritage assets and mitigation arrangements	<p>Mitigation arrangements to protect heritage assets from risk include:</p> <ul style="list-style-type: none"> broad offences relating to heritage management and protection, as well as statutory obligations on owners developing heritage protected areas prevent risks of contraventions of the Act. Both the <i>Aboriginal Heritage Act 2006</i> and the <i>Heritage Act 2017</i> provide for the creation of guidelines by responsible entities to promote maintenance and conservation of heritage areas. Land owners may enter covenants with the Heritage Council and the National Trust. These covenants provide for development, conservation and management of registered places and objects. Cultural heritage agreements can be made between registered Aboriginal parties and other entities. These agreements provide for management and protection of Aboriginal heritage, and may provide for the: <ul style="list-style-type: none"> Protection, maintenance or use of land containing an Aboriginal place and objects Rights of access or use of Aboriginal places and objects by Aboriginal people Restoration and preservation of Aboriginal heritage. The following orders and directions are available for the management of risks to heritage: <ul style="list-style-type: none"> Interim protection orders

Area	Summary
	<ul style="list-style-type: none"> - Repair orders - Rectification orders - Stop orders - Cultural heritage audits - Improvement notices - Interim protection declarations - Ongoing protection declarations.
Provisions and arrangements to enable adaptive re-use and balance sustainability goals and heritage conservation	<ul style="list-style-type: none"> • Adaptive re-use is encouraged within the Victorian <i>Heritage Act 2017</i>. It is also promoted by the Heritage Council of Victoria, and the Office of the Victorian Government Architect. • Design guides which provide advice and promote adaptive re-use are available from state and local agencies.
Projects or reforms underway or recently implemented	<p>The <i>Heritage Amendment Bill 2023</i> has been passed by parliament and will come into effect on 1 February 2024, unless otherwise proclaimed. The <i>Heritage Amendment Bill 2023</i> provides for online provision of documents, online hearings and makes other minor amendments to the <i>Heritage Act 2017</i>.</p> <p>It also provides a process for the application of removal of places and objects from the Heritage Register.</p>
Relationship between heritage management and the planning system	<p>Works in relation to Heritage Register listed heritage places must be undertaken on accordance with a heritage permit. A heritage permit provides for adequate steps that must be undertaken when developing heritage places.</p> <p><i>The Planning and Environment Act 1987</i> establishes the 'Victorian Planning Provision's Heritage Overlay', which provides for the protection of heritage places that are made under local planning schemes and for general protection of heritage places.</p> <p>The Victorian Planning Provision's Heritage Overlay provides for planning permits, which may be required for various activities on sites covered by the Heritage Overlay. Such activities include:</p> <ul style="list-style-type: none"> • Subdivisions of land • Demolishing and removing buildings • Construction or works • External altering via structural work, sandblasting, rendering or in other ways • Internally altering buildings • Carrying out appearance changing works • Removing specified trees.
Approximate number of Heritage Unit staff (FTE)	29

Area	Summary
Approximate number of registered heritage places	2381

Tasmania

Area	Summary
Legislative framework and regulatory settings	<p>Cultural heritage is regulated, managed, and protected under the:</p> <ul style="list-style-type: none"> • <i>Historic Cultural Heritage Act 1995</i> <ul style="list-style-type: none"> – <i>Historic Cultural Heritage Regulations 2016</i> <p>Indigenous cultural heritage is managed and protected under the:</p> <ul style="list-style-type: none"> • <i>Aboriginal Heritage Act 1975</i> <p>Development and Planning is regulated and managed under:</p> <ul style="list-style-type: none"> • <i>Land Use Planning and Approvals Act 1993</i> <ul style="list-style-type: none"> – <i>Land Use Planning and Approvals Act 1993</i>
Governance settings	Tasmania Heritage governance arrangements



The following entities are responsible for advising on, managing, and protecting historic and cultural heritage in Tasmania:

- Department of Natural Resources and Environment Tasmania
- Minister for Heritage
- Tasmanian Heritage Council.

Area	Summary
	<p>The following entities are responsible for advising on and protecting Aboriginal cultural heritage in Tasmania:</p> <ul style="list-style-type: none"> • Department of Premier and Cabinet • Minister for Aboriginal Affairs • Aboriginal Heritage Council. <p>The following entities are responsible for managing heritage affecting development applications:</p> <ul style="list-style-type: none"> • Local planning authorities.
Strategic policy framework	<p>Works guidelines are available for works on Historic Heritage Places:</p> <ul style="list-style-type: none"> • Pre-Development Assessment Guidelines: Proactively Managing Historic Heritage Places • Heritage Tasmania Works Guidelines for Historic Heritage Places <p>Assessing the heritage significance of Historic Heritage Places is guided by:</p> <ul style="list-style-type: none"> • Assessing Historic Heritage Significance <p>The procedure for heritage conservation is guided by the following policies:</p> <ul style="list-style-type: none"> • Procedure for Recording a Heritage Place • Conserving Moveable Cultural Heritage • Conserving Steam Locomotives • Managing Historic Places of Worship • Managing the Heritage Values of Cemeteries <p>Historical Archaeological Research is guided by:</p> <ul style="list-style-type: none"> • Guidelines for Historical Archaeological Research • Managing Historical Archaeological Significance in the Works Process <p>Indigenous cultural heritage is managed and guided by:</p> <ul style="list-style-type: none"> • Aboriginal Heritage Standards and Procedures • Flowchart of Aboriginal Heritage Assessment Procedure • Unanticipated Discovery Plan <p>Site specific guidelines are available for development in heritage areas.</p>
Structure, obligations and responsibilities of parties within the framework	<p>Department of Natural Resources and Environment Tasmania</p> <ul style="list-style-type: none"> • Administers nature conservation and environmental biosecurity. <p>Minister for Heritage</p> <ul style="list-style-type: none"> • Appoints the Heritage Council • Gives the Heritage Council statements of expectation every 3 years • Declares heritage areas containing places of historic cultural heritage significance • May exempt works from heritage orders • Enters, varies and cancels heritage agreements

Area	Summary
	<ul style="list-style-type: none"> • Makes stopwork, prohibition and repair orders. <p>Tasmanian Heritage Council</p> <ul style="list-style-type: none"> • Must give a statement of intent in response to statement of expectations • Administers the Heritage Fund • Advises the Minister on heritage matters and necessary measures that should be undertaken, including heritage area declarations, orders and exemptions. • Administers and maintains the Heritage Register • Determines provisional entry, entry and removal of items from the Heritage Register • Considers permit applications to relevant planning authorities. <p>Department of Premier and Cabinet</p> <ul style="list-style-type: none"> • Works with Aboriginal organisations and people through the Office of Aboriginal Affairs • Oversees governmental approach to broad policy issues affecting Tasmanian Aboriginal people. <p>Minister for Aboriginal Affairs</p> <ul style="list-style-type: none"> • Recommends the Governor the members to appoint for the Aboriginal Heritage Council • Acquires relics for the Crown, on the recommendation of the Director • Issues guidelines in relation to actions to be taken for protection of sites. <p>Aboriginal Heritage Council</p> <ul style="list-style-type: none"> • Recommends and advises the Minister for Aboriginal Affairs and Director in relation to: <ul style="list-style-type: none"> – Relics and alleged relics – Administration of the <i>Aboriginal Heritage Act 1975</i> – Any other functions under the <i>Aboriginal Heritage Act 1975</i>. <p>Local Governments</p> <ul style="list-style-type: none"> • Work under the Local Historic Heritage Code in the Tasmanian Planning Scheme to identify and manage local heritage places and significant heritage items.
Relationships between the parties including delegations	<p>Minister for Heritage</p> <ul style="list-style-type: none"> • The Minister for Heritage appoints and directs the Heritage Council. The Minister also holds most of the functions available under relevant heritage legislation. <p>Heritage Council</p> <ul style="list-style-type: none"> • There are advisory functions for the Heritage Council under the <i>Historic Cultural Heritage Act 1995</i>. It also administers the Heritage Fund and the Heritage Register. • The Heritage Council also has the function of assessing and determining the outcome of development applications that the Heritage Council has an interest in.

Area	Summary
	<p>Aboriginal Heritage Council</p> <ul style="list-style-type: none"> The Aboriginal Heritage Council has an advisory role in advising the Minister for Aboriginal Affairs on decisions in relation to acquiring relics, administering the <i>Aboriginal Heritage Act 1975</i> and making guidelines. <p>Minister for Aboriginal Affairs</p> <ul style="list-style-type: none"> The Minister for Aboriginal Affairs has the primary deciding role in relation to administration of the <i>Aboriginal Heritage Act 1975</i>.
Compliance and enforcement arrangements and reporting requirements	<p>Reporting requirements</p> <p>The Heritage Council must submit an annual report to the Minister on all its activities. It must also provide statements of intent to show how it intends to meet ministerial aims set out in statement of expectations submitted by the Minister.</p> <p>Compliance and enforcement powers</p> <ul style="list-style-type: none"> Various heritage offences exist to deter conduct which harms or damages Aboriginal heritage and registered heritage. The Heritage Council and Minister may make stop work orders or require owners to take specified actions to protect a place and its historic cultural significance. Declarations can be made by the Minister for Aboriginal Affairs may declare protected sites to protect Aboriginal relics. Protected sites are managed and protected in order to reduce risk. Authorised officers and wardens are entities that may be appointed to protect and inspect contraventions in relation to registered heritage and Aboriginal relics.
Heritage registration and management	<p>Registration</p> <ul style="list-style-type: none"> Any person may apply to have a place entered on the Heritage Register. The Heritage Council may also enter any place of its own accord A place may be provisionally registered prior to determination where the Heritage Council is of the opinion that the place meets the heritage criteria The Heritage Council then determines the historic cultural heritage significance of the place according to the following set of criteria: <ul style="list-style-type: none"> the place is important to the course or pattern of Tasmania's history the place possesses uncommon or rare aspects of Tasmania's history the place has the potential to yield information that will contribute to an understanding of Tasmania's history the place is important in demonstrating the principal characteristics of a class of place in Tasmania's history the place is important in demonstrating a high degree of creative or technical achievement the place has a strong or special association with a particular community or cultural group for social or spiritual reasons the place has a special association with the life or works of a person, or group of persons, of importance in Tasmania's history the place is important in exhibiting particular aesthetic characteristics.

Area	Summary
	<p>Removal</p> <ul style="list-style-type: none"> Any person, including the Heritage Council, may submit an application to remove a place from the Heritage Register. The Heritage Council may make a decision to cancel the registration in the following circumstances: <ul style="list-style-type: none"> the place has been destroyed because of new information or for some other reason, the place does not meet, or no longer meets, any of the registration criteria the entry duplicates or substantially duplicates an existing entry. <p>Managing and maintaining heritage</p> <p><i>Heritage Works Approvals</i></p> <ul style="list-style-type: none"> Works on heritage listed places require approval prior to being carried out. Exemptions and approvals are determined by the Heritage Council with consideration of proposed impacts. The Heritage Council may approve permits subject to conditions. <p><i>Heritage Agreements</i></p> <ul style="list-style-type: none"> The Minister for Heritage may enter agreements with the owner of a place of historical cultural heritage significance. These agreements provide for the ongoing conservation and maintenance of heritage agreements. <p><i>Repair Notices</i></p> <p>The Heritage Council may serve notices to owners of registered places requiring them to:</p> <ul style="list-style-type: none"> take specified action to repair any damage cease any specified action commence or complete any specified works.
Community and stakeholder consultation and engagement	<p>Community and stakeholder consultation</p> <p>Prior to granting of provisional entry to the Heritage Register, the Heritage Council may invite the public to comment. After provisionally registering a place, the Council must publish a notice that invites public comment on its intention to register the place and describes the place.</p> <p>Prior to removal of entry to the Heritage Register, the Heritage Council must publish a notice that invites public comment on its intention to remove the place.</p> <p>The public must also be notified of:</p> <ul style="list-style-type: none"> making and revocation of guidelines creation of certificates showing a place is not registered the declaration of heritage areas. <p>In making determinations under the <i>Aboriginal Heritage Act 1975</i>, the Minister for Aboriginal Affairs is required to consider traditional owners and Aboriginal parties.</p> <p>Engagement</p> <ul style="list-style-type: none"> Funding is available at a local level to promote, preserve and restore historic buildings and places of heritage in Hobart.

Area	Summary
	<ul style="list-style-type: none"> • The Office of Aboriginal Affairs and Aboriginal Heritage Tasmania work in partnership with Aboriginal organisations to promote and encourage interaction with Aboriginal heritage. • The Parks and Wildlife Service (PWS) have designed various education and engagement programs relating to parks and reserves, cultural and historic heritage. • The Tasmanian Museum and Art Gallery collects, promotes and protects cultural and natural heritage. Various programs and involvement opportunities are available to encourage engagement by the public.
Protection and management of First Nations heritage	<p>The <i>Aboriginal Heritage Act 1975</i> is the primary legislation protecting First Nations heritage. Protection and management of first nations heritage consists of:</p> <ul style="list-style-type: none"> • Various offences prohibiting: <ul style="list-style-type: none"> – Destruction, damaging, disfigurement and interference with protected objects and relics – Carrying out acts likely to endanger a protected object – Removing relics from where they were found or abandoned – Selling or disposal of relics – Destruction or interference with fencing and notices erected in relation to protected sites – Removal of protected objects from protected sites. • The state government agency Aboriginal Heritage Tasmania that protects Aboriginal heritage places, items and values from natural and human actions and administers the <i>Aboriginal Heritage Act 1975</i> • Various guidelines, standards, procedures and codes of practice to promote pro-active approaches to interaction with Aboriginal cultural heritage • Declaration and management of protected sites for the purpose of conserving Aboriginal relics • Duties of care relating to owning and caring for Aboriginal relics • Wardens and honorary wardens assigned to protected sites with investigatory enforcement powers for the purpose of protecting Aboriginal relics.
Risks to heritage assets and mitigation arrangements	<ul style="list-style-type: none"> • A range of offences apply for unauthorised actions that damage Heritage places • Heritage agreements can be entered between the owner of a Heritage place and the Minister. Agreements contain procedures, resourcing allowances and requirements for the protection of heritage assets • The Heritage Council may proactively require owners of areas to undertake or refrain from undertaking actions for the protection of Heritage places • Guidelines may be published for the purpose of mitigating risk and managing heritage areas.
Provisions and arrangements to enable adaptive re-use and balance sustainability goals and	<ul style="list-style-type: none"> • Adaptive reuse is encouraged through Tasmanian heritage and planning legislation, including through land use agreements, development approval procedures and guidelines for the management of heritage areas. • Biennial Heritage Grants are available for heritage projects in Hobart. This funding extends to adaptive reuse projects.

Area	Summary
heritage conservation	
Projects or reforms underway or recently implemented	<p>The <i>Historic Cultural Heritage Act Amendment Bill 2023</i> is in the public consultation stage. This bill aims to afford greater protection to historic heritage places, address anomalies and improve administrative processes.</p> <p>Key changes include:</p> <ul style="list-style-type: none"> • Enabling retrospective assessment of development applications in certain circumstances (consistent with current local government practices) • Creating a new moveable object approval process for items that contribute to the heritage significance of a place • Enabling consideration of works adjacent to registered places • Removing notice time requirements for statutory orders • Renaming certificates of exemption to minor works approvals • Reducing the period in which submissions can be made to permanent heritage register inclusions • Extending the determination period time for permanent entries into the Tasmanian Heritage Register.
Relationship between heritage management and the planning system	<p>Applications for development on properties that are on the Tasmanian Heritage Register are referred directly to the Tasmanian Heritage Council. The Tasmanian Heritage Council has a determinative role in all heritage works. It may impose requirements or refuse granting of permits in relation to State heritage works on the Tasmanian Heritage Register.</p> <p>The Local Historic Heritage Code in the Tasmanian Planning Scheme (TPS) provides for statewide regulation of heritage significance. This code interacts with local planning authorities to approach heritage projects that may impact Tasmanian local heritage. This code provides assessment procedures for development relating to local government heritage. In considering said applications, three key considerations under the code are:</p> <ul style="list-style-type: none"> • The degree of conservation, restoration and future maintenance of heritage significance • The Likely impacts of proposed developments • The purpose and provisions of the applicable zone and any other codes.
Approximate number of Heritage Unit staff (FTE)	9
Approximate number of registered heritage places	5000

Commonwealth

Area	Summary
Legislative framework and regulatory settings	<p>Commonwealth heritage places and moveable cultural heritage are recognised, managed and protected by the:</p> <ul style="list-style-type: none"> • <i>Environmental Protection and Biodiversity Conservation Act 1999</i> <ul style="list-style-type: none"> – <i>Environment Protection and Biodiversity Conservation Regulations 2000</i> • <i>Australian Heritage Council Act 2003</i> <ul style="list-style-type: none"> – <i>Australian Heritage Council Regulations 2003</i> • <i>Protection of Moveable Cultural Heritage Act 1986</i> <ul style="list-style-type: none"> – <i>Protection of Moveable Cultural Heritage Regulations 2018.</i> <p>Native title and is regulated and protected by:</p> <ul style="list-style-type: none"> • <i>Native Title Act 1993</i> <ul style="list-style-type: none"> – <i>National Native Title Tribunal Regulations</i> – <i>Native Title (Federal Court) Regulations 1998</i> – <i>Native Title (Indigenous Land Use Agreements) Regulations 1999</i> – <i>Native Title (Prescribed Bodies Corporate) Regulations 1999</i> • <i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i> <ul style="list-style-type: none"> – <i>Aboriginal and Torres Strait Islander Heritage Protection Regulations 2017.</i> <p>Underwater cultural heritage, including shipwrecks, sunken aircraft and associated artefacts are managed and protected by:</p> <ul style="list-style-type: none"> • <i>Underwater Cultural Heritage Act 2018</i> <ul style="list-style-type: none"> – <i>Underwater Cultural Heritage Rules 2018</i> – <i>Underwater Cultural Heritage Act 2018 (Protected Zones) Declaration Instrument 2019.</i>
Governance settings	<p>The Department of Climate Change, Energy, the Environment and Water is responsible for the administration of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (EPBC Act). This department advises the Minister for Environment on related matters.</p> <p>The Australian Heritage Council is an independent expert advisory body established by the EPBC Act. The Australian Heritage Council has the role of advising the government on heritage matters within the Commonwealth heritage system. The main responsibilities of the Australian Heritage Council include:</p> <ul style="list-style-type: none"> • Assessing places for the National Heritage List and the Commonwealth Heritage List • Nominating places for inclusion in the National Heritage List or Commonwealth Heritage List • Promoting the identification, assessment, conservation and monitoring of heritage • Advising the Minister for Environment on various heritage matters. <p>The EPBC Act protects nationally significant animals, plants, habitats and places. This protection and administration is specifically related to:</p> <ul style="list-style-type: none"> • World heritage areas

Area	Summary
	<ul style="list-style-type: none"> • National heritage places • Wetlands of international importance • Threatened species and ecological communities • Migratory species protected by international agreement • Commonwealth marine areas • The Great Barrier Reef Marine Park • Nuclear actions • Water resources • Commonwealth land • International heritage and overseas Commonwealth Heritage. <p>The <i>Australian Heritage Council Act 2003</i> provides for the Australian Heritage Council and the management of the National Heritage List, as well as the management of places still on the previous Register of National Estate. Places that are sufficiently important or significant to heritage are included on the National Heritage List.</p> <p>Moveable Heritage</p> <p>The <i>Protection of Movable Cultural Heritage Act 1986</i> is administered by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts. This legislation protects items of cultural heritage items by regulating their import and export.</p> <p>Underwater Heritage</p> <p>Underwater heritage is administered by both individual states and territories and the Department of Climate Change, Energy, the Environment and Water. The <i>Underwater Cultural Heritage Act 2018</i> provides for the ongoing protection and management of shipwrecks, aircraft and underwater cultural heritage sites.</p> <p>Native Title Heritage</p> <p>The <i>Native Title Act 1993</i> is administered by the Attorney-General and the Attorney-General's Department. This legislation provides regulation and procedures for native title claims and indigenous heritage and land protection.</p> <p>The <i>Aboriginal and Torres Strait Islanders Heritage Protection Act 1984</i> provides for the protection of areas and objects with heritage significance to Aboriginal and Torres Strait Islander people. This is administered by the Minister for the Environment and Water and the Department of Climate Change, Energy, the Environment and Water.</p>
Strategic policy framework	<p>The decision making policies that guide referrals, processes and assessments under the EPBC Act:</p> <ul style="list-style-type: none"> • Strategic Assessment: Policy Statement for EPVC Act referrals. <p>Guidance on the impact of actions under the EPBC Act is found in:</p> <ul style="list-style-type: none"> • Significant Impact Guidelines 1.1 - Matters of national environmental significance • Significant Impact Guidelines 1.2 - Actions on, or impacting upon, Commonwealth land and actions by Commonwealth agencies

Area	Summary
	<ul style="list-style-type: none"> • Significant Impact Guidelines 1.3 - Coal seam gas and large coal mining developments - impacts on water resources. <p>Guidance on first nations and community engagement is found within:</p> <ul style="list-style-type: none"> • The Interim Engaging with First Nations People and Communities on Assessments and Approvals under Environment Protection and Biodiversity Conservation Act 1999 (interim guidance). <p>Various policy statements are available to guide processes and definitions under the relevant legislation:</p> <ul style="list-style-type: none"> • Listing events • Expiry dates for approvals • Definition of 'action' • Reconsideration • Indirect consequences of an action • Change of person proposing to take an action • Definition of 'environment' • EPBC Act delegations • Consideration of a person's environmental history • Staged developments • Translocation of listed threatened species • Statements of reasons • EPBC Act Policy Statement 2.2 - Offshore aquaculture • Strategic Assessments • Advanced environmental offsets under the EPBC Act. <p>The approach to achieving compliance objectives in relation to underwater cultural heritage is guided in:</p> <ul style="list-style-type: none"> • Underwater Cultural Heritage Compliance Strategy.
Structure, obligations and responsibilities of parties within the framework	<ul style="list-style-type: none"> • State governments are broadly responsible for general heritage matters. However, Australia-wide protection is available for some First Nations, underwater or otherwise protected matters. • The Department of Climate Change, Energy, the Environment and Water protects nationally significant animals, plants, habitats or places. These are also referred to as 'protected matters' The Australian Heritage Council has a primary role within this system of protection. • Underwater heritage is generally protected by the <i>Underwater Cultural Heritage Act 2018</i>. This legislation relies on day-to-day management delegated to state and territory governments. It also provides for protection, compliance and investigatory procedures at a federal level. • The <i>Protection of Movable Cultural Heritage Act 1986</i> provides protection for ethnological, archaeological, historical, literary, artistic, scientific or technological heritage. It does so by prescribing a list of objects that cannot be exported or must be exported in accordance with a certificate or permit.

Area	Summary
	<ul style="list-style-type: none"> The <i>Native Title Act 1993</i> provides for the repatriation and use of native title. This legislation provides for corporations to be established by native title holders, for rights and claims to land and for the National Native Title Tribunal to determine related matters.
Relationships between the parties including delegations	<p>The relationship between State authorities and Commonwealth heritage protection is heavily intertwined. Lots of heritage protection is left to State authorities; however, broad protections are available for nation-wide protected matters, underwater heritage and native title.</p> <p>Procedures at a Commonwealth level rely on co-ordination and delegation between the Minister, relevant authorities and relevant departments.</p>
Compliance and enforcement arrangements and reporting requirements	<p>Compliance</p> <ul style="list-style-type: none"> Large penalties are available to deter would be offenders. Investigatory powers are available to authorised officers to investigate potential breaches of legislative obligations by related parties. <p>Enforcement</p> <p>Various enforcement procedures are available, including:</p> <ul style="list-style-type: none"> Wardens and rangers with nation-wide and international authorisation to protect and enforce Commonwealth heritage legislation Conservation orders, injunctions, and remediation determinations Seizures of protected objects under certain circumstances.
Heritage registration and management	<ul style="list-style-type: none"> The EPBC Act uses a registration system to provide protection to 'protected matters, including nationally significant animals, plants, habitats or places. The Species Profiles and Threats Database and Protected Matters Search Tool are both available for the identification and management of protected matters. The EPBC act outlines the criteria for listing as having national heritage value. This includes those places that have aesthetic, historic, scientific or social significance, or other significance for current and future generations of Australians. The specific criteria are as follows: <ul style="list-style-type: none"> the place has outstanding heritage value to the nation because of the place's importance in the course, or pattern, of Australia's natural or cultural history. the place has outstanding heritage value to the nation because of the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history. the place has outstanding heritage value to the nation because of the place's potential to yield information that will contribute to an understanding of Australia's natural or cultural history. the place has outstanding heritage value to the nation because of the place's importance in demonstrating the principal characteristics of a class of Australia's natural or cultural places, or a class of Australia's natural or cultural environments. the place has outstanding heritage value to the nation because of the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group.

Area	Summary
	<ul style="list-style-type: none"> – the place has outstanding heritage value to the nation because of the place's importance in demonstrating a high degree of creative or technical achievement at a particular period. – the place has outstanding heritage value to the nation because of the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons. – the place has outstanding heritage value to the nation because of the place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history. – the place has outstanding heritage value to the nation because of the place's importance as part of Indigenous tradition. <ul style="list-style-type: none"> • The EPBC Act also provides a 'significance threshold' test that is applied by the Australian Heritage Council. This determines the levels of significance the place has as compared to other, similar places. • Transferrable permits are available for the possession of protected artefacts under the <i>Underwater Cultural Heritage Act 2018</i>. • The <i>Protection of Movable Cultural Heritage Act 1986</i> provides a National Cultural Heritage Control list. Objects on the list are subject to various restrictions depending on their status.
Community and stakeholder consultation and engagement	N/A
Protection and management of First Nations heritage	<p><i>Environmental Protection and Biodiversity Conservation Act 1999</i></p> <ul style="list-style-type: none"> • The EPBC Act establishes an Indigenous Advisory Committee, with a broad advisory function in relation to indigenous matters. • There are also functions within the legislation that provide for the joint management of Commonwealth reserves on land owned by Indigenous Australians. • It also includes consideration of Aboriginal and Torres Strait Islander parties who have rights or interests in places which the Australian Heritage Council is considering. <p><i>The Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i></p> <ul style="list-style-type: none"> • Aboriginal and Torres Strait Islander people may make applications to protect places and objects that have particular significance to Aboriginal tradition. • After receiving such an application, the Minister for the Environment and Water may make a declaration to protect the area or object in question. • The states and territories are consulted to determine the extent to which they provide protection, and the Minister may determine to use the <i>Aboriginal and Torres Strait Islander Heritage Protection Act</i> if the state level protection is not sufficient. <p><i>Native Titles Act 1993</i></p> <ul style="list-style-type: none"> • The <i>Native Titles Act 1993</i> provides for the repatriation and recognition of lands sufficiently connected to Indigenous Australians. This provides protection of areas determined to have Native Title connected to them, including heritage places.

Area	Summary
	<p><i>Heritage List and Register of National Estate</i></p> <ul style="list-style-type: none"> Heritage lists and the Register of National Estate contain places and areas of national heritage value and are managed and protected at a federal level. The Register of National Estate is no longer added to, however, items that are already on it are still protected. Heritage lists are available for the ongoing addition of protected places. Both of these registers include Indigenous Australian Heritage places.
Risks to heritage assets and mitigation arrangements	<p>The mitigation of risks at a Commonwealth level to heritage assets comes in various forms:</p> <ul style="list-style-type: none"> Prohibitions and penalties on actions that harm entries on Heritage Lists and the Register of National Estate Prohibition and penalties on actions that harm items protected under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> Various enforcement and inspection powers to authorised officers under relevant legislation
Provisions and arrangements to enable adaptive re-use and balance sustainability goals and heritage conservation	N/A
Projects or reforms underway or recently implemented	<p>The <i>Independent Review of the Environment Protection and Biodiversity Conservation Act 1999</i> was undertaken between October 2019 and October 2020. The final report gave 38 recommendations for reform, in the form of immediate reforms, reforms to be enacted within 12 months and those to be completed in two years.</p> <p>In essence, the report suggests comprehensive changes to the EPBC Act so as to achieve good outcomes for the environment, including heritage. Key recommendations of the report include:</p> <ul style="list-style-type: none"> Further integration between jurisdictions Creation of legally enforceable National Environmental Standards A refined focus of the EPBC Act into primarily Commonwealth responsibilities Greater integration of Commonwealth, State and Territory environmental responsibilities Greater acknowledgement of indigenous knowledge and views Reductions of legislative complexity Reforms that promote transparency Further oversight procedures utilising a proposed 'Environment Assurance Commissioner' The adoption of national and landscape scale plans, as well as investment strategies Stronger data monitoring, reporting and compliance systems.

Area	Summary
	<p>The legislative response to this review was released in December 2022 in the form of the Nature Positive Plan. The Nature Positive Plan includes the following initiatives that will attempt to address key issues raised by the review:</p> <ul style="list-style-type: none"> • Introduction of National Environmental Standards • Creation of Environment Protection Australia to enforce compliance • Creation of Environment Information Australia as an information agency within the Department of Climate Change, Energy, the Environment and Water • Various reform and regional planning strategies and standards • Expansion of the Partnership Agreement with the First Nations Heritage Protection Alliance

New Zealand

Area	Summary
Legislative framework and regulatory settings	<p>Cultural and historic heritage in New Zealand is protected under the:</p> <ul style="list-style-type: none"> • <i>Heritage New Zealand Pouhere Taonga Act 2014</i> (HNZPT Act). <p>It is also protected through the New Zealand land management and planning system under the:</p> <ul style="list-style-type: none"> • <i>Resource Management Act 1991</i>. <p>The import and export of protected New Zealand objects, and the sale, trade and ownership of objects relating to Māori culture are regulated by the:</p> <ul style="list-style-type: none"> • <i>Protected Objects Act 1975</i>. <p>The conservation of New Zealand's natural and historic resources is promoted by the:</p> <ul style="list-style-type: none"> • <i>Conservation Act 1987</i> • <i>Reserves Act 1977</i>. <p>Heritage protection is enforced in relation to the building industry under the:</p> <ul style="list-style-type: none"> • <i>Building Act 2004</i>. <p>Conservation practice in New Zealand is guided by the:</p> <ul style="list-style-type: none"> • <i>ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value</i>.
Governance settings	<p>The following entities are responsible for advising on, managing, and protecting heritage in New Zealand:</p> <ul style="list-style-type: none"> • Minister for Arts, Culture and Heritage • Department of Conservation • Heritage New Zealand Pouhere Taonga • Maori Heritage Council • Local Councils.
Strategic policy framework	<p>State sector agencies in New Zealand are guided in the management of cultural heritage places by the:</p> <ul style="list-style-type: none"> • Policy for Government Management of Cultural Heritage Places (2022) • Guidance for Implementing the Policy <p>Heritage New Zealand's management of heritage arrangements is guided by the:</p> <ul style="list-style-type: none"> • Heritage New Zealand Statement of Intent 2020-2024 • Heritage New Zealand Statement of Performance Expectations <p>The strategic vision of the Maori Heritage Council is guided by the:</p> <ul style="list-style-type: none"> • Tapuwae: Te Kōrero a te Kaunihera Māori o te Pouhere Taonga <p>Management of the heritage arrangements are supported by sustainable management guides that assist local authorities, owners of heritage places, iwi and hapū and other stakeholders in the protection and conservation of historic heritage under the <i>Resource Management Act 1992</i> (RMA) and related legislation.</p> <p>The Ministry for Culture and Heritage administers and enforces cultural and heritage legislation under guidance from the:</p>

Area	Summary
	<ul style="list-style-type: none"> Enforcement Policy
Structure, obligations and responsibilities of parties within the framework	<p>Functions of Heritage New Zealand Pouhere Taonga</p> <ul style="list-style-type: none"> To identify, record, investigate, assess, list, protect, and conserve historic places, historic areas, wāhi tūpuna, wāhi tapu, and wāhi tapu areas or enter such places and areas on the New Zealand Heritage List/Rārangi Kōrero, or to assist in doing those things, keeping permanent records of that work, and providing support for persons with a legal or equitable interest in such places and areas To continue and maintain the New Zealand Heritage List/Rārangi Kōrero To advocate the conservation and protection of historic places, historic areas, wāhi tūpuna, wāhi tapu, and wāhi tapu areas To foster public interest and involvement in historic places and historic areas and in identifying, recording, investigating, assessing, protecting, and conserving them, maintaining the New Zealand Heritage List/Rārangi Kōrero, and entering such places on that list To issue authorities in accordance with the HNZPT Act To manage, administer, and control historic places, buildings, and other property owned or controlled by Heritage New Zealand Pouhere Taonga or vested in it to ensure their protection, preservation, and conservation In the event of a national or local emergency or a national or local transition period (under the Civil Defence Emergency Management Act 2002), to provide advice on heritage matters To establish and maintain a list of places of outstanding national heritage value, to be called the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu - <ul style="list-style-type: none"> to act as a heritage protection authority under Part 8 of the Resource Management Act 1991 for the purposes of protecting— the whole or part of a historic place, historic area, wāhi tūpuna, wāhi tapu, or wāhi tapu area; and land surrounding the historic place, historic area, wāhi tūpuna, wāhi tapu, or wāhi tapu area that is reasonably necessary to ensure the protection and reasonable enjoyment of the historic place, historic area, wāhi tūpuna, wāhi tapu, or wāhi tapu area. In performing its function under subsection (1)(c) of the HNZPT Act, Heritage New Zealand Pouhere Taonga must recognise the interests of an owner, as far as those interests are known, in a particular historic place, historic area, wāhi tūpuna, wāhi tapu, or wāhi tapu area The Minister must not give directions to Heritage New Zealand Pouhere Taonga that concern heritage matters relating to particular historic places, historic areas, wāhi tūpuna, wāhi tapu, or wāhi tapu areas However, subsection (3) of the HNZPT Act does not apply to the powers of the Minister under subpart 2 of Part 4 (which provides for the creation and maintenance of the Landmarks list) <p>Powers of Heritage New Zealand Pouhere Taonga</p> <p>Heritage New Zealand Pouhere Taonga has the powers necessary to:</p>

Area	Summary
	<ul style="list-style-type: none"> • Advocate its interests at any public forum or in any planning process in which it has standing under an Act • identify, record, investigate, assess, protect, enter on the New Zealand Heritage List/Rārangi Kōrero, and conserve historic places, historic areas, wāhi tūpuna, wāhi tapu, or wāhi tapu areas, or assist any person or organisation to do 1 or more of those things • Acquire, restore, conserve, and manage historic places and historic areas, or assist any person or organisation to do 1 or more of those things • Assist any person or organisation to acquire, restore, conserve, or manage any wāhi tūpuna, wāhi tapu, or wāhi tapu area • Erect suitable signs and notices on historic places and historic areas, subject to the consent of the owner first being obtained, in the case of any historic place or historic area not owned or controlled by Heritage New Zealand Pouhere Taonga or vested in it • Enter into agreements with local authorities, corporations, societies, individuals, or other controlling bodies for the management, maintenance, and preservation of any historic place or historic area or, where appropriate, wāhi tūpuna, wāhi tapu, or wāhi tapu area • In relation to any land or buildings owned or controlled by Heritage New Zealand Pouhere Taonga or vested in it, make them accessible to the public, charge fees for admission, lease or let them, or use them for any suitable purpose • Promote or supervise the investigation of a historic place or historic area or, where appropriate, of a wāhi tūpuna, wāhi tapu, or wāhi tapu area • Provide information relating to a historic place or historic area or, where appropriate, to a wāhi tūpuna, wāhi tapu, or wāhi tapu area • Charge for services provided by Heritage New Zealand Pouhere Taonga under this Act, including— <ul style="list-style-type: none"> – processing applications received by Heritage New Zealand Pouhere Taonga – carrying out investigations – producing, acquiring, and marketing products – providing information • Take appropriate enforcement or restraining action • Carry out the functions and perform the duties conferred or imposed on it by the HNZPT Act or under any other enactment. <p>Functions of Māori Heritage Council</p> <ul style="list-style-type: none"> • To ensure that, in the protection of wāhi tūpuna, wāhi tapu, wāhi tapu areas, and other historic places and historic areas of interest to Māori, Heritage New Zealand Pouhere Taonga meets the needs of Māori in a culturally sensitive manner • To develop Māori programmes for the identification and conservation of wāhi tūpuna, wāhi tapu, wāhi tapu areas, and historic places and historic areas of interest to Māori, and to inform the Board of all activities, needs, and developments relating to Māori interests in such areas and places • To assist Heritage New Zealand Pouhere Taonga to develop and reflect a bicultural view in the exercise of its powers and functions

Area	Summary
	<ul style="list-style-type: none"> • To develop its own iwi and other consultative and reporting processes and to recommend such processes for adoption by the Board and staff of Heritage New Zealand Pouhere Taonga when dealing with matters of interest to Māori • To make recommendations to Heritage New Zealand Pouhere Taonga on applications referred by Heritage New Zealand Pouhere Taonga under section 49(1)(a) of the HNZPT Act that relate to sites of interest to Māori • To consider and determine suitable applications to enter wāhi tūpuna, wāhi tapu, and wāhi tapu areas on the New Zealand Heritage List/Rārangī Kōrero • to propose historic places and historic areas of interest to Māori to be entered on the New Zealand Heritage List/Rārangī Kōrero • to make recommendations to Heritage New Zealand Pouhere Taonga on applications for resource consents referred by Heritage New Zealand Pouhere Taonga under section 75 of the HNZPT Act • to advocate the interests of Heritage New Zealand Pouhere Taonga and the Council so far as they relate to matters of Māori heritage at any public or Māori forum • to perform the functions delegated to the Council by the Board • to perform the other functions imposed on the Council by the Act or any other Act • in performing its functions under subsection (1)(i) of the HNZPT Act, the Council must recognise the interests of an owner, as far as those interests are known, in a particular historic place, historic area, wāhi tūpuna, wāhi tapu, or wāhi tapu area. <p>Powers of Māori Heritage Council</p> <ul style="list-style-type: none"> • The Council has the powers that are reasonably necessary or expedient to enable it to carry out its functions under the HNZPT Act • as the Council considers appropriate, appoint committees with members who may be, but are not necessarily, members of the Council • delegate any functions of the Council under the HNZPT Act to the chairperson, deputy chairperson, or to any committee of the Council, or the chief executive of Heritage New Zealand Pouhere Taonga. <p>Function of Local Authorities</p> <ul style="list-style-type: none"> • New Zealand's Local authorities are responsible for managing environmental, resource and transport planning issues – including decisions relating to and oversight of the planning scheme. Heritage assets are managed and protected under such schemes • Some local authorities also incentives for heritage protection and adaptive reuse through administering funds and grants.
Compliance and enforcement arrangements and reporting requirements	<p>The Department of Conservation is responsible for enforcing laws that protect historic heritage. To achieve this, it has a number of tools including:</p> <ul style="list-style-type: none"> • Warning letters • Infringement fines • Prosecution. <p>Enforcement decision making responsibilities are allocated to specific positions within the Department with the necessary expertise and seniority.</p>

Area	Summary
	<p>The Ministry of Culture and Heritage is responsible for administering cultural heritage legislation. This includes:</p> <ul style="list-style-type: none"> • Investigation of alleged suspected breaches of heritage legislation • Prosecution or other formal legal proceedings for breaches of heritage legislation • Issuing formal warnings for minor breaches or potential breaches of heritage legislation • Education to avoid and mitigate damage caused by breaches of heritage legislation.
Heritage registration and management	<p>The New Zealand Heritage List is a national record of historical place-based heritage, including Maori heritage. Anyone can nominate a place for registration, and inclusion on the list is determined by Heritage New Zealand according to a national standard. Registration recognizes heritage significance of a place provides funding opportunities and support from heritage authorities.</p> <p>Inclusion on the list does not protect a place from demolition or alteration unless it is also included in a relevant district plan.</p> <p>Local authorities can include a heritage schedule in their planning instruments. Heritage schedules are a list of places that are recognised as having significant heritage value and can impose protection measures to preserve them.</p>
Community and stakeholder consultation and engagement	<p>Government agencies will invite public participation, where appropriate, in the management of cultural heritage through various initiatives, including:</p> <ul style="list-style-type: none"> • Seeking public comment on conservation plans or disposal of cultural heritage • Establishing partnerships with communities of interest • Voluntary notification of resource consent applications.
Risks to heritage assets and mitigation arrangements	<p>Heritage New Zealand Pouhere Taonga has prepared the following documents to assist people in mitigating risks to heritage assets:</p> <ul style="list-style-type: none"> • Risk Management of Heritage Places: Guidance for owners • Risk Management: Guidance for Preparing Heritage Risk Management Plans
Provisions and arrangements enabling adaptive re-use	<p>There are a number of grants and funds that promote the preservation and adaptive re-use of heritage places, including the:</p> <ul style="list-style-type: none"> • National Heritage Preservation Incentive Fund • Lottery Grants Board Environmental and Heritage Fund • Local Authority Heritage Grants.
Provisions and arrangements to deal with conflicts between sustainability goals and heritage conservation	<p>Heritage New Zealand Pouhere Taonga, in so far as it carries out its functions under section 13(1)(i) of the Heritage New Zealand Pouhere Taonga Act 2014 is a heritage protection authority under the RMA. A heritage protection authority has the authority to require heritage orders be included in proposed district plans. Heritage orders cannot be breached without the consent of the relevant heritage protection authority. This includes subdividing land and changing the character, intensity or scale of use of the land.⁵</p> <p>The RMA provides directions for heritage protection.</p>

Area	Summary
	<p>'In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:</p> <p>...</p> <p>(e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:</p> <p>(f) the protection of historic heritage from inappropriate subdivision, use, and development: ... '6</p>
Projects or reforms underway or recently implemented	<p>The RMA governs New Zealand's planning system. It mandates Regional, City and District Councils in New Zealand. Much of the legislation is not heritage specific and ranges geographically and environmentally. Heritage protection is afforded through the current RMA and managed by Councils. The RMA is currently being reformed. As of 31 May 2023, it is uncertain as to how the reformed Act will deal with heritage.</p>
Relationship between heritage management and the planning system	<p>New Zealand's local authorities are responsible for managing environmental, resource and transport planning – including oversight of the local planning scheme.</p> <p>In executing this function, authorities are required by the RMA to protect Maori heritage and historic heritage from inappropriate subdivision, use and development.</p> <p>Local authorities protect heritage through their plans and policy statements, including through the inclusion of heritage schedules in plans. Heritage schedules are lists of places recognised as having significant heritage value and provide for measures to protect such places.</p>

England

[National Heritage Act 1983](#) establishes the Historic Buildings and Monuments Commission for England, known as Historic England. Historic England is an executive non-departmental public body sponsored by the [Department for Culture, Media and Sport \(DCMS\)](#) and it reports to Parliament through the Secretary of State for Culture, Media and Sport. Its powers and responsibilities are principally set out in the National Heritage Act 1983 and are as follows:

- to maintain the List of Buildings, Schedule of Monuments, the Register of Parks and Gardens and the Register of Battlefields
- to administer applications for the protection of heritage and advise the Secretary of State for DCMS on their designation
- to advise local planning authorities on certain planning and listed building consent applications, as well as on general heritage related issues
- to compile and maintain the Heritage at Risk Register annually
- to administer heritage grant schemes to promote and protect historic heritage
- to provide public advice and information on heritage issues.

Historic England works with a range of government departments, notably DCMS, [DLUHC](#) and [DEFRA](#), to help realise the potential of the historic environment. Historic England is funded in part by the government and in part from revenue earned from other services it provides.

The work of Historic England is overseen by a Chair and a board of up to 16 Commissioners selected by the government for the breadth of their expertise. The Commission is, in turn, advised by advisory committees and panels made up of experts drawn from the Commission and outside the organisation. ([Public and Heritage Bodies: Historic England's Role | Historic England](#)).

Local governments are responsible for making most of the decisions in relation to changes to heritage assets through the planning system. They often maintain a local list of heritage assets and are responsible for designation of assets to the list. They also have a central role in taking enforcement steps for breaches of heritage protections through prosecutions, enforcement notices and injunctions.

Scotland

The [Historic Environment Scotland Act 2014](#) establishes Historic Environment Scotland, the body responsible for historic heritage in Scotland. Historic Environment Scotland has a general function of investigating, caring for and promoting historic heritage in Scotland. It also has the following specific functions:

- Identifying and recording the historic environment
- Understanding and interpreting the historic environment
- Learning about, and educating others about, the historic environment
- Protecting and managing the historic environment
- Conserving and enhancing the historic environment.

Historic Environment Scotland is responsible for listing buildings of special architectural or historic interest under the [Planning \(Listed Buildings and Conservation Areas\) \(Scotland\) Act 1997](#). Historic Environment Scotland is also responsible for maintaining a schedule of monuments of national importance under the [Ancient Monuments and Archaeological Areas Act 1979](#). Decisions about building listing and monument scheduling are made in accordance with the [Designation Policy and Selection Guidance \(2019\)](#).

Historic Environment Scotland also provides grants and funding for projects that aim to protect and promote Scotland's historic environment. The allocation of grants and funding is determined via a competitive application process that involves assessment against a set of criteria including heritage significance, grant outcomes, and the risk to the heritage in question.

Planning authorities consult with Historic Environment Scotland when preparing development plans and making relevant planning decisions. They also take listed buildings and scheduled monuments into consideration in their decision making. People intending to demolish, alter, or extend a listed building, or make any change to a scheduled monument, require prior consent from their planning authority in consultation with Historic Environment Scotland.

Historic Environment Scotland published the [Historic Environment Policy for Scotland](#) in 2019, which is aimed at guiding decision making which affects the historic environment, including in relation to planning, construction, agriculture, energy, funding decisions, and estate management. [Our Place In Time](#) is a ten-year Historic Environment strategy which provides a framework for organisations to work within to achieve positive outcomes for the Scottish historic environment.

Germany

In Germany, the states (Länder) are primarily responsible for the conservation of historic and cultural heritage (monuments) as they are in control of enacting and enforcing their own heritage protection laws.⁷

Generally, the state ministry that deals with heritage will be the top-level authority for cultural heritage conservation within a state. Under the ministry, there is a central authority/office for heritage conservation, which is responsible for providing advice to and oversight of lower-level authorities and owners of monuments. The central authority also creates reports on heritage issues and often has the power to declare a place to be 'heritage'. Under the central authority, authorities at the administrative district or municipality level are generally responsible for the everyday functions of heritage conservation, including dealing with land use applications, building approvals and permits for heritage sites and buildings, etc.

The approach taken to protect heritage items varies between states, and there are two different processes that can be used to place a monument under legal protection. The first protects all buildings that fulfil the definition of a cultural monument. The second process additionally requires monuments to be listed in a register. Where buildings are designated as monuments, the owner has obligations to preserve and maintain it and is required to obtain permits for any demolition, modification, repairs of the building. The Federal government, along with the states, also encourages the preservation of heritage through special grants, subsidies and tax benefits.

Endnotes

- ¹ This Bill was not proceeded with by the NSW Government.
- ² 2nd Reading Debate, Heritage Legislation Amendment Bill 2013, ACT Legislative Assembly, Mr Corbell, Minister for the Environment and Sustainable Development, 16 May 2013
- ³ Mr S Rattenbury, MLA (25 September, 2014), *Second Reading Debate, Heritage Legislation Amendment Bill 2013*, ACT Legislative Assembly Hansard
- ⁴ Email from Mr A Veld, Senior Project Manager, Infill Development, Strategic Planning, EPSDD, April 2023
- ⁵ [Heritage orders](#)
- ⁶ *Resource Management Act (1991)* (Part 2, S6)
- ⁷ National Policy Report, European Heritage Network