

Western Australia

Aboriginal Heritage Act 1972

Incorporating the amendments proposed by
the *Aboriginal Heritage Amendment Bill 2014*
(Bill No. 81-1)

Aboriginal Heritage Act 1972

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Defined terms

Western Australia

Aboriginal Heritage Act 1972

An Act to make provision for the preservation on behalf of the community of places and objects customarily used by or traditional to the original inhabitants of Australia or their descendants, or associated therewith, and for other purposes incidental thereto.

Part I — Preliminary

1. Short title

This Act may be cited as the *Aboriginal Heritage Act 1972*¹.

2. Commencement

This Act shall come into operation on a date to be fixed by proclamation¹.

[3. Deleted by No. 24 of 1995 s. 4.]

4. Terms used in this Act

In this Act, unless the context requires otherwise, —

Aboriginal means pertaining to the original inhabitants of Australia and to their descendants;

Aboriginal cultural material means an object of Aboriginal origin that has been declared to be so classified under section 40;

Aboriginal site means a place to which this Act applies by the operation of section 5;

ASO register means the register of Aboriginal sites and objects kept under section 50A;

CEO means the chief executive officer of the Department;

Committee means the Aboriginal Cultural Material Committee established under section 28;

declaration means a declaration issued under section 18C;

Department means the department of the Public Service principally assisting the Minister in the administration of this Act;

Director means the person appointed Director of the Museum under the *Museum Act 1969*;

DP register means the register of declarations and permits kept under section 50C;

Museum means the body corporate constituted by that name under the *Museum Act 1969*;

permit means a permit given under section 18;

person of Aboriginal descent means any person wholly or partly descended from the original inhabitants of Australia;

prescribed means prescribed by the regulations;

proceedings under this Act includes a proceeding commenced under this Act before the State Administrative Tribunal;

protected area means an area that has been declared to be such under section 19, and includes a temporarily protected area;

register means —

(a) [the register of Aboriginal sites and objects kept under section 50A; or](#)

(b) [the register of declarations and permits kept under section 50C;](#)

Registrar means the Registrar of Aboriginal Sites, designated under section 12(1);

~~***Registrar*** means the person appointed Registrar of Aboriginal Sites under section 37(1);~~

temporarily protected area means an area that has been declared to be such under section 20 and in respect of which the Order continues to have effect;

the Trustees means the Trustees of the Museum appointed under the *Museum Act 1969*;

traditional custodian in relation to any place or object means a person named by the Minister in consultation with the Committee in relation thereto under section 9.

[Section 4 amended by No. 24 of 1995 s. 5; No. 55 of 2004 s. 4; [Aboriginal Heritage Amendment Bill 2014 cl. 4.](#)]

Part II — Application and traditional use

5. Application to places

This Act applies to —

- (a) any place of importance and significance where persons of Aboriginal descent have, or appear to have, left any object, natural or artificial, used for, or made or adapted for use for, any purpose connected with the traditional cultural life of the Aboriginal people, past or present;
- (b) any sacred, ritual or ceremonial site, which is of importance and special significance to persons of Aboriginal descent;
- (c) any place which, in the opinion of the [CEO, Committee](#), is or was associated with the Aboriginal people and which is of historical, anthropological, archaeological or ethnographical interest and should be preserved because of its importance and significance to the cultural heritage of the State;
- (d) any place where objects to which this Act applies are traditionally stored, or to which, under the provisions of this Act, such objects have been taken or removed.

[Section 5 inserted by No. 8 of 1980 s. 2; amended by No. 24 of 1995 s. 6; [Aboriginal Heritage Amendment Bill 2014 cl. 5.](#)]

6. Application to objects

- (1) Subject to subsection (2a), this Act applies to all objects, whether natural or artificial and irrespective of where found or situated in the State, which are or have been of sacred, ritual or ceremonial significance to persons of Aboriginal descent, or which are or were used for, or made or adapted for use for, any purpose connected with the traditional cultural life of the Aboriginal people past or present.
- (2) Subject to subsection (2a), this Act applies to objects so nearly resembling an object of sacred significance to persons of Aboriginal descent as to be likely to deceive or be capable of being mistaken for such an object.
- (2a) This Act does not apply to a collection, held by the Museum under section 9 of the *Museum Act 1969*, which is under the management and control of the Trustees under that Act.

- (3) The provisions of Part VI do not apply to an object made for the purpose of sale and which —
- (a) is not an object that is or has been of sacred significance to persons of Aboriginal descent, or an object so nearly resembling such an object as to be likely to deceive or be capable of being mistaken for the same; or
 - (b) is an object of the kind referred to in paragraph (a) that is disposed of or dealt with by or with the consent of the Minister.

[Section 6 amended by No. 24 of 1995 s. 7.]

7A. Evaluating place or object

- (1) A person, court or tribunal evaluating the importance or significance of a place or object to persons of Aboriginal descent or the community for the purposes of this Act must consider these matters —

- (a) any existing use or significance attributed under relevant Aboriginal custom;
- (b) any former or reputed use or significance which may be attributed upon the basis of tradition, historical association or Aboriginal sentiment;
- (c) anthropological, archaeological or ethnographical interest;
- (d) aesthetic values;
- (e) any prescribed matter.

- (2) Associated sacred beliefs, and ritual or ceremonial usage, in so far as those matters can be ascertained, must be regarded as the primary considerations to be taken into account in the evaluation of any place or object for the purposes of this Act.

[Section 7A inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 6.]

7. Traditional use

- (1) Subject to subsection (2), in relation to a person of Aboriginal descent who usually lives subject to Aboriginal customary law, or in relation to any group of such persons, this Act shall not be construed —
- (a) so as to take away or restrict any right or interest held or enjoyed in respect to any place or object to which this Act applies, in so far as that right or interest is exercised

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in a manner that has been approved by the Aboriginal possessor or custodian of that place or object and is not contrary to the usage sanctioned by the Aboriginal tradition relevant to that place or object; or

- (b) so as to require any such person to disclose information or otherwise to act contrary to any prohibition of the relevant Aboriginal customary law or tradition.
- (2) Nothing in subsection (1) authorises any person, or group of persons, to dispose of or exercise any right or interest, or any purported right or interest, in a manner which is, in the opinion of the Minister, detrimental to the purposes of this Act.

[Section 7 amended by No. 24 of 1995 s. 8.]

8. Availability for traditional use

Where the Committee is satisfied that a representative body of persons of Aboriginal descent who usually live subject to Aboriginal customary law has an interest in a place or object to which this Act applies that is of traditional and current importance to it, and which is in the custody or control of the Minister, the Minister after consultation with the Committee shall make that place or object available to that body as and whenever required for purposes sanctioned by the Aboriginal tradition relevant to that place or object.

[Section 8 amended by No. 24 of 1995 s. 9.]

9. Traditional custodians

- (1) Where the Committee is satisfied that a representative body of persons of Aboriginal descent has an interest in a place or object to which this Act applies that is of traditional and current importance to it the Minister may, by notice in the *Gazette*, authorise a person or persons nominated by that body and named in the notice to exercise such of the powers of the Minister and to perform such of the Minister's duties in relation to that place or object as are set out in that notice, and any such authorisation may in the like manner be varied or revoked.
- (2) For the purposes of Part VII, and in any proceedings, a reference to the Minister shall be deemed to include a reference to a person or persons lawfully acting under the authority of the Minister pursuant to subsection (1).

[Section 9 amended by No. 24 of 1995 s. 10.]

Part III — Administration

10. Duty of the Minister

- (1) It is the duty of the Minister to ensure that so far as is reasonably practicable all places in Western Australia that are of traditional or current sacred, ritual or ceremonial significance to persons of Aboriginal descent should be recorded on behalf of the community, and their relative importance evaluated so that the resources available from time to time for the preservation and protection of such places may be coordinated and made effective.
- (2) The duty of the Minister extends to Aboriginal cultural material of traditional or current sacred, ritual or ceremonial significance whether such material is now located at or associated with any particular place, or otherwise.

[Section 10 amended by No. 24 of 1995 s. 11.]

11. Minister a body corporate

- (1) The Minister —
 - (a) shall for the purposes of this Act be a body corporate, and shall have as the Minister's corporate name such designation as applies from time to time to the Minister while charged by the Governor with the administration of this Act;
 - (b) shall have a seal incorporating that designation;
 - (c) is capable of holding real and personal property as provided by this Act; and
 - (d) is capable of suing and being sued in the corporate name of the Minister.
- (2) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Minister affixed to any document and shall presume that it was duly affixed.

[Section 11 inserted by No. 24 of 1995 s. 12.]

[\[11A. Deleted by the Aboriginal Heritage Amendment Bill 2014 cl. 7.\]](#)

[12A. Functions of CEO](#)

[The CEO's functions include the following —](#)

- [\(a\) to evaluate on behalf of the community the importance and significance of places and objects alleged to be associated with Aboriginal persons;](#)

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- (b) where appropriate, to record and preserve the traditional Aboriginal lore related to places and objects alleged to be associated with Aboriginal persons;
- (c) to recommend to the Minister places and objects that, in the opinion of the CEO, are, or have been, of special significance to persons of Aboriginal descent and should be preserved, acquired and managed by the Minister;
- (d) to decide, in accordance with section 50B, what information relating to places or objects should be entered into or deleted from the ASO register, and what information in that register should be amended;
- (e) to perform the other functions allocated to the CEO by this Act.

[Section 12A inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 7.]

12. Designation and functions of Registrar of Aboriginal Sites

- (1) The CEO must designate an officer of the Department to be the Registrar of Aboriginal Sites.
- (2) The Registrar's functions include administering the day-to-day operations of the Committee.
- (3) The Registrar may delegate to another officer of the Department the performance of any of the Registrar's functions, other than this power of delegation.
- (4) A delegation made under subsection (3) must be in writing and have the prior approval of the CEO.
- (5) All communications required by this Act to be made to or by the Minister, the CEO or the Committee may be made through the Registrar.

[Section 12 inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 7.]

13. Powers of delegation

- (1) The Minister may delegate to an officer of the Department all or any of the functions that the Minister has under this Act, other than this power of delegation.
- (2) The CEO may delegate to an officer of the Department all or any of the functions that the CEO has under this Act, other than this power of delegation.

(3) A delegation made under subsection (1) or (2) must be in writing.

[Section 13 inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 7.]

~~11A. Administration~~

~~The responsibility for the administration of this Act is vested in the Minister who is required to have regard to the recommendations of —~~

~~(a) the Committee; and~~

~~(b) the Registrar;~~

~~but, unless otherwise stated in this Act, is not bound to give effect to any such recommendation.~~

~~*[Section 11A inserted by No. 24 of 1995 s. 12.]*~~

~~*[12. Deleted by No. 24 of 1995 s. 13.]*~~

~~13. Powers of delegation~~

~~The Minister may delegate to an officer of the Department all or any of the powers and duties that the Minister has under this Act.~~

~~*[Section 13 inserted by No. 24 of 1995 s. 14.]*~~

14. Compensation on statutory vesting

Except as is required by the provisions of this Act compensation is not payable to any person by reason that the property in and the right to possession, occupation or use of any place or object is vested in the Minister on behalf of the Crown by the operation of this Act.

[Section 14 amended by No. 24 of 1995 s. 15.]

Part IV — Protection of Aboriginal sites

15. Report of findings

Any person who has knowledge of the existence of any thing in the nature of Aboriginal burial grounds, symbols or objects of sacred, ritual or ceremonial significance, cave or rock paintings or engravings, stone structures or arranged stones, carved trees, or of any other place or thing to which this Act applies or to which this Act might reasonably be suspected to apply shall report its existence to the Registrar, or to a police officer, unless [the person](#) ~~he~~ has reasonable cause to believe the existence of the thing or place in question to be already known to the Registrar.

[Section 15 amended by No. 24 of 1995 s. 16; [Aboriginal Heritage Amendment Bill 2014 cl. 8.](#)]

16. Excavation of Aboriginal sites

- (1) Subject to section 18, the right to excavate or to remove any thing from an Aboriginal site is reserved to the Registrar.
- (2) The Registrar, on the advice of the Committee, may authorise the entry upon and excavation of an Aboriginal site and the examination or removal of any thing on or under the site in such manner and subject to such conditions as the Committee may advise.

[Section 16 amended by No. 8 of 1980 s. 5; No. 24 of 1995 s. 17.]

17. Offences relating to Aboriginal sites

- (1) A person must not —
 - (a) excavate, destroy, damage, conceal or in any way alter any Aboriginal site; or
 - (b) in any way alter, damage, remove, destroy or conceal any object on or under an Aboriginal site; or
 - (c) deal with in a manner not sanctioned by relevant custom any object on or under an Aboriginal site; or
 - (d) assume the possession, custody or control of any object on or under an Aboriginal site.
- (2) A person who contravenes subsection (1) commits an offence and is to be sentenced under section 57.

(3) It is a defence to a charge of an offence under subsection (2) for the accused person to prove on the balance of probabilities —

(a) the accused was acting in accordance with an authorisation given under section 16; or

(b) the accused was acting in accordance with a permit; or

(c) the place where the alleged offence occurred was the subject of a declaration.

[Section 17 inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 9.]

18A. Application for permit to do act that might contravene s. 17

(1) A person who, on land on which there might be an Aboriginal site or an object to which this Act applies, proposes to do an act that might contravene section 17 may apply for a permit to do the act on the land.

(2) An application must —

(a) be in writing in a form approved by the CEO; and

(b) describe the land to which it relates; and

(c) describe the proposed act that might contravene section 17; and

(d) contain any other information the form requires or that is prescribed; and

(e) be made to the CEO; and

(f) be accompanied by the prescribed fee, if any.

(3) On an application made in accordance with subsection (2), the CEO must deal with the application in accordance with the regulations and do one of the following —

(a) if the CEO is of the opinion that there is no Aboriginal site on the land, the CEO may —

(i) issue a declaration under section 18C; or

(ii) decide not to issue a declaration under section 18C, and in that case the CEO must notify the applicant of that decision;

(b) whether the CEO is of the opinion that there is an Aboriginal site on the land or that there is no Aboriginal site on the land, the CEO may give the applicant a permit under section 18 if the CEO is satisfied that —

(i) the proposed act would not destroy or significantly damage or alter any Aboriginal site

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on the land or any object to which this Act applies on or under any Aboriginal site on the land; and

(ii) there is no significant risk that the proposed act would adversely affect the importance and significance of any Aboriginal site on the land;

(c) if the CEO is of the opinion that there is an Aboriginal site on the land, the CEO may refer the application to the Committee, and, if he or she does so, the CEO must provide the Committee with —

(i) a copy of all information that relates to the land and that was made available to the CEO for the purpose of deciding what to do under this subsection; and

(ii) any other prescribed information;

(d) refuse the application for a permit.

(4) The CEO may refer the application to the Committee even though the CEO considers that subsection (3)(b) applies, but only if the CEO is of the opinion that there is an Aboriginal site on the land.

(5) The CEO may exercise different powers under subsection (3) in respect of different parts of the land.

[Section 18A inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 9.]

18B. Committee to consider application and make report to Minister

(1) If under section 18A(3)(c) an application is referred to the Committee, it must give the Minister a written report that includes its recommendations on the following —

(a) whether the Minister should give the applicant a permit under section 18 for all or a part of the land;

(b) if it recommends a permit be given, the terms and any conditions the Minister should include in the permit;

(c) whether the Minister should refuse the application for all or a part of the land.

(2) If the Committee does not give the Minister a report in accordance with subsection (1), the Minister may direct the Committee —

(a) to do so within a specified time; or

(b) to take any other action the Minister considers necessary in order to expedite the matter.

(3) The Committee must obey a direction given to it under subsection (2).

(4) On receiving a report under subsection (1), the Minister, after considering it and the general interest of the community, may do one or more of the following —

(a) give the applicant a permit under section 18 for all or a part of the land;

(b) refuse the application for all or a part of the land;

(c) ask the Committee to give him or her a further report on the application or any aspect of it.

[Section 18B inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 9.]

18C. Declaration that no Aboriginal site on land

(1) The CEO may issue a declaration under this section in respect of any land if the CEO is of the opinion that there is no Aboriginal site on the land.

(2) The CEO may issue a declaration —

(a) in the circumstances set out in section 18A(3)(a); or

(b) on the CEO's own initiative.

(3) A declaration must —

(a) specify the land to which it applies, which in the case of an application made under section 18A must be either all of the land described in the application or a part of that land; and

(b) state there does not appear to be an Aboriginal site on the land specified.

(4) If the CEO issues a declaration, the CEO must —

(a) if the declaration resulted from an application made under section 18A, give notice of it to the applicant; and

(b) publish it in the *Gazette*.

[Section 18C inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 9.]

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18. Permit to do act on land

(1) A permit to do an act that might contravene section 17 on land on which there might be an Aboriginal site or an object to which this Act applies may be given, on an application made under section 18A —

(a) by the CEO in accordance with section 18A(3)(b); or

(b) by the Minister in accordance with section 18B(4)(a).

(2) A permit given under this section —

(a) if given by the CEO, may have effect for an indefinite period or for a period specified in the permit;

(b) if given by the Minister, has effect for an indefinite period.

(3) A permit given under this section —

(a) must specify the land to which it applies, being either all of the land described in the application or a part of that land; and

(b) must specify the act or acts it permits on the land specified, being any or a combination of these —

(i) the act proposed in the application;

(ii) another act (instead of the act proposed) that might contravene section 17;

(iii) an act (in addition to the act proposed) that might contravene section 17;

and

(c) in the case of a permit given by the CEO, must specify either —

(i) that the permit is to have effect for an indefinite period; or

(ii) the period for which the permit is to have effect;

and

(d) may include conditions that apply to, and in relation to, doing the act permitted.

[Section 18 inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 9.]

19A. Further provisions about permits and declarations

(1) A declaration or permit does not confer any right to enter the land to which it relates.

(2) A declaration and a permit cannot both relate to the same area of land.

(3) A permit cannot be transferred to another person except by the CEO.

(4) The CEO, on the application of a person, may transfer a permit from one person to another.

[Section 19A inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 9.]

19B. Expiry and cancellation of declarations

(1) A declaration expires if any or all of the land to which it applies is registered in the ASO register as an Aboriginal site.

(2) The Minister or the CEO may, at any time, cancel a declaration.

(3) If a declaration expires under subsection (1) or is cancelled under subsection (2), the CEO must —

(a) if an application under section 18A gave rise to the declaration, notify the applicant of the expiry or cancellation of the declaration; and

(b) publish notice of the expiry or cancellation in the *Gazette*.

[Section 19B inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 9.]

19C. Expiry, amendment and cancellation of permits

(1) A permit given by the CEO for a period specified in the permit expires at the end of that period, unless subsection (4) applies.

(2) Subsection (1) does not prevent a person from making an application for a new permit —

(a) before or after a permit expires; and

(b) with the same terms as an expiring or expired permit or different terms.

(3) Subsection (4) applies if —

(a) before a permit expires, the holder of the permit (the *expiring permit*) applies for a new permit (the *new permit*) with the same terms as the expiring permit; and

(b) the application for the new permit is not determined before the expiring permit would otherwise expire and is not withdrawn before then.

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(4) If this subsection applies, the expiring permit continues to have effect until one of the following occurs —

- (a) the application for the new permit is withdrawn;
- (b) the application for the new permit is determined.

(5) On his or her own initiative, or on the application of a person who holds it —

- (a) the CEO may amend a permit given by the CEO; and
- (b) the Minister may amend or cancel a permit given by the Minister or the CEO.

[Section 19C inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 9.]

19D. State Administrative Tribunal may review certain decisions about declarations and permits

(1) A person specified in subsection (2) may apply to the State Administrative Tribunal for a review of any of the following decisions —

- (a) a decision to cancel a declaration;
- (b) a decision to refuse an application for a permit;
- (c) a decision to give a permit subject to conditions;
- (d) a decision to cancel or amend a permit, other than on an application made by a person who holds it;
- (e) a decision to refuse an application for the amendment or transfer of a permit.

(2) These are the persons who may apply under subsection (1) for a review of a decision —

- (a) in the case of the cancellation of a declaration, the person who made the application under section 18A that gave rise to the declaration;
- (b) the person who made the relevant application;
- (c) the person who holds the permit.

[Section 19D inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 9.]

~~**17. Offences relating to Aboriginal sites**~~

~~A person who —~~

- ~~(a) excavates, destroys, damages, conceals or in any way alters any Aboriginal site; or~~

~~(b) in any way alters, damages, removes, destroys, conceals, or who deals with in a manner not sanctioned by relevant custom, or assumes the possession, custody or control of, any object on or under an Aboriginal site,~~
~~commits an offence unless he is acting with the authorisation of the Registrar under section 16 or the consent of the Minister under section 18.~~

~~[Section 17 inserted by No. 8 of 1980 s. 6; amended by No. 24 of 1995 s. 18.]~~

18. Consent to certain uses

~~(1) For the purposes of this section, the expression *the owner of any land* includes a lessee from the Crown, and the holder of any mining tenement or mining privilege, or of any right or privilege under the *Petroleum and Geothermal Energy Resources Act 1967*, in relation to the land.~~

~~(1a) A person is also included as an owner of land for the purposes of this section if—~~

~~(a) the person—~~

~~(i) is the holder of rights conferred under section 34 of the *Dampier to Bunbury Pipeline Act 1997* in respect of the land or is the holder's nominee approved under section 34(3) of that Act; or~~

~~(ii) has authority under section 7 of the *Petroleum Pipelines Act 1969* to enter upon the land;~~

~~or~~

~~(b) the person is the holder of a distribution licence under Part 2A of the *Energy Coordination Act 1994* as a result of which the person has rights or powers in respect of the land; or~~

~~(c) the person is the holder of a licence under the *Water Services Act 2012* as a result of which the person has rights or powers in respect of the land.~~

~~(2) Where the owner of any land gives to the Committee notice in writing that he requires to use the land for a purpose which, unless the Minister gives his consent under this section, would be likely to result in a breach of section 17 in respect of any Aboriginal site that might be on the land, the Committee shall, as soon as it is reasonably able, form an opinion as to whether there is any Aboriginal site on the land, evaluate the importance~~

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~~and significance of any such site, and submit the notice to the Minister together with its recommendation in writing as to whether or not the Minister should consent to the use of the land for that purpose, and, where applicable, the extent to which and the conditions upon which his consent should be given.~~

~~(3) Where the Committee submits a notice to the Minister under subsection (2) he shall consider its recommendation and having regard to the general interest of the community shall either—~~

~~(a) consent to the use of the land the subject of the notice, or a specified part of the land, for the purpose required, subject to such conditions, if any, as he may specify; or~~

~~(b) wholly decline to consent to the use of the land the subject of the notice for the purpose required;~~

~~and shall forthwith inform the owner in writing of his decision.~~

~~(4) Where the owner of any land has given to the Committee notice pursuant to subsection (2) and the Committee has not submitted it with its recommendation to the Minister in accordance with that subsection the Minister may require the Committee to do so within a specified time, or may require the Committee to take such other action as the Minister considers necessary in order to expedite the matter, and the Committee shall comply with any such requirement.~~

~~(5) Where the owner of any land is aggrieved by a decision of the Minister made under subsection (3) he may apply to the State Administrative Tribunal for a review of the decision.~~

~~[(6) deleted]~~

~~(7) Where the owner of any land gives notice to the Committee under subsection (2), the Committee may, if it is satisfied that it is practicable to do so, direct the removal of any object to which this Act applies from the land to a place of safe custody.~~

~~(8) Where consent has been given under this section to a person to use any land for a particular purpose nothing done by or on behalf of that person pursuant to, and in accordance with any conditions attached to, the consent constitutes an offence against this Act.~~

~~[Section 18 inserted by No. 8 of 1980 s. 6; amended by No. 24 of 1995 s. 19; No. 58 of 1999 s. 39; No. 55 of 2004 s. 5; No. 35 of 2007 s. 89; No. 25 of 2012 s. 203.]~~

19. Protected areas

(1) Where the CEO recommends to the Minister that an Aboriginal site is of outstanding importance and that it appears to the CEO that the Aboriginal site should be declared a protected area, the Minister must give notice of the recommendation in accordance with subsection (2A).

(2A) The notice must —

- (a) identify the Aboriginal site; and
- (b) contain a summary of the recommendation; and
- (c) invite people to make written representations to the Minister about the recommendation; and
- (d) state by when those representations must be made; and
- (e) be published in —

(i) the *Gazette*; and

(ii) a newspaper circulating in the area where the site is situated; and

(iii) a newspaper catering mainly or exclusively for the interests of persons of Aboriginal descent;

and

(f) be given to —

(i) each person who, in respect of the land on which the site is situated, holds an interest that is registered under the *Transfer of Land Act 1893* or the *Registration of Deeds Act 1856*; and

(ii) each registered native title claimant (as defined in the *Native Title Act 1993* (Commonwealth) section 253) in relation to the land on which the site is situated; and

(iii) if under the *Native Title Act 1993* (Commonwealth) native title rights and interests (as defined in section 223 of that Act) exist in relation to the land on which the site is situated, the registered native title body corporate (as defined in section 253 of that Act) in respect of those native title rights and interests; and

(iv) any other person whom the Minister considers has an interest in the land on which the site is situated that might be specially affected if the recommended declaration were made.

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~~(1) Where the Committee recommends to the Minister that an Aboriginal site is of outstanding importance and that it appears to the Committee that the Aboriginal site should be declared a protected area the Minister shall give notice in writing of the recommendation —~~

~~(a) to every person entitled to give notice under section 18(2); and~~

~~(b) to any other person the Minister has reason to believe has an interest that might be specially affected if the declaration were made;~~

~~specifying in each notice a time within which representations must be made if they are to be considered in accordance with this section.~~

(2) A person aggrieved by a recommendation for the declaration of a protected area may make representations in writing to the Minister setting out the grounds upon which he or she is aggrieved and the Minister may, if he or she is satisfied that the complainant has shown reasonable cause why his or her interest in the matter should be taken into consideration, direct the CEO to consider the representations and report to him or her on them. ~~Committee to consider the representations and report to him on them.~~

(3) If upon considering the representations, the report of the CEO, ~~Committee,~~ and any further information that the Minister may require the complainant or the CEO Committee to provide, it appears to the Minister that it is in the general interest of the community to do so, the Minister may recommend to the Governor that the Aboriginal site be declared a protected area.

(4) The Governor, on the recommendation of the Minister, may by Order in Council declare an Aboriginal site to be a protected area.

(5) The declaration of a protected area shall specify the boundaries of that area in sufficient detail to enable them to be established but it shall not be necessary that the boundaries are surveyed or demarcated.

(6) An Aboriginal site may be declared to be a protected area whether or not it is on land that is in the ownership or possession of any person or is reserved for any public purpose.

[Section 19 inserted by No. 8 of 1980 s. 6; amended by No. 24 of 1995 s. 20; Aboriginal Heritage Amendment Bill 2014 cl. 10.]

20. Temporarily protected areas

- (1) Where the [Minister, after receiving advice from the CEO, ~~Committee~~](#) recommends to the Governor that it may become expedient to declare any locality to be a protected area, or that an archaeological or other investigation should be conducted in any locality by, or with the authorisation of, the Registrar and that it is necessary in the meantime, for the preservation or protection of the locality and of any objects that may be found therein, to prevent or control the entry of persons into that locality the Governor may, by Order in Council, declare that locality to be a temporarily protected area.
- (2) Subject to the provisions of subsection (3), an Order made under subsection (1) has effect for a period of 6 months, and no longer, and may be revoked or varied at any time.
- (3) The Governor, on the recommendation of the [Minister \(after the Minister has received advice from the CEO\) ~~Committee~~](#) and on being satisfied that having regard to the circumstances of the case it has not been practicable to complete the evaluation of the locality but that it is expedient that the locality should continue to be preserved and protected, may by Order in Council declare that an Order made under subsection (1) shall continue to have effect for such period as is therein specified.

[Section 20 amended by No. 24 of 1995 s. 21; [Aboriginal Heritage Amendment Bill 2014 cl. 11.](#)]

21. Objection to declaration

Where any person is aggrieved by the declaration of an Aboriginal site as a protected area he [or she](#) may make representations in writing to the Minister setting out the grounds upon which he [or she](#) is aggrieved and the Minister may, if he [or she](#) is satisfied that the complainant has shown reasonable cause why his [or her](#) interest in the matter should be taken into consideration, direct the [CEO, ~~Committee~~](#) to consider the representations and report to him [or her](#) on them, and, if upon considering the representations, the report of the [CEO, ~~Committee~~](#), and any further information that the Minister may require the complainant or the [CEO, ~~Committee~~](#) to provide, it appears to the Minister that it is in the general interest of the community to do so, he [or she](#) may recommend to the Governor that the declaration of the protected area be varied or revoked.

[Section 21 inserted by No. 8 of 1980 s. 7; amended by No. 24 of 1995 s. 22; [Aboriginal Heritage Amendment Bill 2014 cl. 12.](#)]

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22. Compensation and compulsory acquisition

- (1) Subject to subsection (2), the exclusive right to the occupation and use of every place that is declared to be a protected area is vested in the Minister on behalf of the Crown for so long as the Order remains in force.
- (2) A person, who immediately prior to the vesting of any right in the Minister under subsection (1), was the holder of any interest in or relating to that land is entitled to be paid by the Minister reasonable compensation for the extent to which such interest is prejudicially affected by the operation of this Act.
- (3) For the purposes of this Act, in default of agreement as to the assessment of reasonable compensation for the occupation and use of the land under subsection (1), or where no person is able, or being able does not agree, to give a sufficient discharge and receipt in respect of that compensation, the Minister administering the *Land Administration Act 1997* may instead take the land comprised in a protected area or terminate any interest in or relating to that land, as though it was an acquisition made under Part 9 of that Act for the purposes of the protection and preservation of a place of scientific or historical interest under the *Public Works Act 1902*.
- (4) Notwithstanding the provisions of this section relating to the payment of compensation in relation to affected interests, the declaration of any place as a protected area has effect as at the date of the Order in Council.

[Section 22 amended by No. 24 of 1995 s. 23; No. 31 of 1997 s. 5.]

23. Marking of protected areas

- (1) Upon any area of land becoming a protected area the Registrar —
 - (a) may cause the boundaries of the area to be delineated by the erection of suitable notices or boundary marks;
 - (b) may enclose or fence the area, or any part of the area, and may erect such other structures as in the opinion of the Registrar are necessary to protect the area or any object therein.
- (2) A person who destroys, damages, alters, moves or interferes with any notice, boundary mark, fence or other structure erected pursuant to subsection (1) commits an offence.

Penalty: a fine of \$4 000.

- (3) The fact that a notice, boundary mark or fence is not or was not at the relevant time erected or in a reasonable state of repair is immaterial to the liability of any person for an offence against this Act and the reasonableness of a belief as to the existence or non-existence of an Aboriginal site.

[Section 23 amended by No. 24 of 1995 s. 24; [Aboriginal Heritage Amendment Bill 2014 cl. 13.](#)]

24. Notification of changes etc.

Where any place is declared to be a protected area, the person who, immediately prior thereto, was the owner or the person apparently exercising control over the locality, and any other person into whose possession or under whose control the locality subsequently comes shall —

- (a) immediately notify the Registrar from time to time of any change in the use or condition of the protected area of which he or she is aware; and
- (b) at all reasonable times permit the protected area to be examined by the Registrar or a person authorised by the Registrar.

Penalty: a fine of \$3 000.

[Section 24 amended by No. 24 of 1995 s. 25; [Aboriginal Heritage Amendment Bill 2014 cl. 14.](#)]

25. Variation of Orders in Council

- (1) An Order in Council declaring an area to be a protected area may subsequently be varied or revoked if the Governor, on the recommendation of the Minister under section 21 or otherwise (in every case after the Minister has received advice from the CEO), is satisfied that it is in the general interest of the community to do so, but not otherwise.

~~(1) An Order in Council declaring an area to be a protected area may subsequently be varied or revoked if the Governor, after consultation with the Committee, or after considering a recommendation of the Minister under section 21 is satisfied that it is in the general interest of the community so to do, but not otherwise.~~

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- (2) An Order in Council under subsection (1) varying or revoking the declaration of a protected area shall be published in the *Gazette* and section 42 of the *Interpretation Act 1984* shall apply to and in relation to the Order in Council as if it were a regulation.

[Section 25 amended by No. 8 of 1980 s. 8; No. 24 of 1995 s. 26; [Aboriginal Heritage Amendment Bill 2014 cl. 15.](#)]

26. Regulations as to protected areas

- (1) In relation to a protected area the Governor may make regulations prohibiting, or imposing conditions or restrictions upon —
- (a) persons entering or remaining within the area;
 - (b) the use of vehicles, explosives, instruments, tools, and equipment of any kind specified, or generally;
 - (c) damage or destruction to vegetation, the working of the land, or the disturbance of the surface or the subsoil within the area;
 - (d) livestock entering or remaining within an area where the Registrar has taken reasonable measures to protect the area from damage by livestock,

and may make all such other regulations as ~~are~~ **may in his opinion be** required or permitted by this Act for ensuring that the places and objects to which this Act applies, and the immediate environment necessary to maintain the nature and substance of the significance attached thereto, are protected from damage, disturbance or adverse influence.

- (2) Regulations made under subsection (1) may create offences with a maximum penalty not exceeding —

- (a) for an individual, a fine of \$7 000;
- (b) for a body corporate, a fine of \$35 000.

- ~~(2) A person who contravenes any provision of a regulation made pursuant to subsection (1) commits an offence against this Act, and where a person enters or remains within a protected area in the course of his employment in contravention of any such regulation the employer and that person are each guilty of an offence against this Act.~~

[Section 26 amended by No. 24 of 1995 s. 27; [Aboriginal Heritage Amendment Bill 2014 cl. 16.](#)]

27. Covenants

- (1) A person who holds an interest in any land on which an Aboriginal site is located may, so far as [that interest enables him or her](#) ~~his interest enables him~~ to bind the land, agree with the Minister that the land, or any part of that land, shall thereafter either permanently or for a specified period, be held subject to a covenant in favour of the Minister prohibiting or imposing conditions on any development or use of that land in a manner that would have a deleterious effect on the preservation of that site, and any such agreement may include a provision that the Minister in consideration thereof shall do, or shall refrain from doing, any specified thing under this Act.
- (2) Where the Minister is satisfied that it is in the general interest of the community so to do the Minister may agree to a proposal made under subsection (1), and any such covenant shall thereupon have effect as if the Minister were possessed of or entitled to or interested in adjacent land and as if the covenant had been and had been expressed to be entered into for the benefit of that adjacent land.
- (3) Where the land to which the covenant relates is held under the operation of the *Transfer of Land Act 1893*, the provisions of Division 3A of Part IV of that Act apply to and in relation to the registration, discharge, modification and dealing with that covenant and any restriction arising therefrom.
- (4) Where the land to which the covenant relates is not land held under the operation of the *Transfer of Land Act 1893* —
 - (a) the provisions of sections 129B and 129C of that Act apply, so far as they are capable of being applied, to and in relation to the discharge, modification and dealing with that covenant and any restriction arising therefrom as if the land were land under that Act; and
 - (b) the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*, shall, upon the production of the memorial required under that Act, give due effect to any agreement duly made under section 129B of the *Transfer of Land Act 1893*, as so applied, and any order of a judge made under section 129C of that Act as so applied.
- (5) A covenant to which any land is subject pursuant to this section shall, unless a contrary intention is expressed, be deemed to be made by the covenantor on behalf of [the covenantor, the](#)

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covenantor's ~~himself, his~~ successors in title (including the owners and occupiers for the time being of the land) and the persons deriving title under the covenantor ~~him~~ or them and unless a contrary intention is expressed, shall have effect as if such successors and other persons were expressed.

[Section 27 amended by No. 24 of 1995 s. 28; [Aboriginal Heritage Amendment Bill 2014 cl. 17.](#)]

Part V — Aboriginal Cultural Material Committee

28. Aboriginal Cultural Material Committee

- (1) For the purposes of this Act there is hereby established an advisory body by the name of the Aboriginal Cultural Material Committee.
- (2) The membership of the Committee consists of —
 - (a) appointed members, each of whom shall hold and vacate office in accordance with the terms of the instrument under which he or she is appointed; and
 - (b) ex-officio members.

~~[(3) deleted]~~

~~(3) Of the appointed members, one shall be a person recognised as having specialised experience in the field of anthropology as related to the Aboriginal inhabitants of Australia and shall be appointed by the Minister after consultation with the persons responsible for the study of anthropology at such of the establishments of tertiary education situate in the State as the Minister thinks fit.~~

- (4) ~~The~~ Subject to subsection (3), the appointed members shall be selected from amongst persons, whether or not of Aboriginal descent, having special knowledge, experience or responsibility which in the opinion of the Minister will assist the Committee in relation to the recognition and evaluation of the cultural significance of matters coming before the Committee, and shall be appointed by the Minister from a panel of names submitted for the purposes of this Act by the Registrar.
- (5) The Minister shall appoint the Chairman of the Committee from amongst the members of the Committee, but where the Chairman is absent from or unable or unwilling to preside at any meeting of the Committee the members present may elect one of their number to preside thereat and while so presiding that member has all the powers and duties of the Chairman.

[Section 28 amended by No. 8 of 1980 s. 9; No. 24 of 1995 s. 29; [Aboriginal Heritage Amendment Bill 2014 cl. 18.](#)]

29. Ex-officio members

The following persons, namely —

- (a) the person appointed Director of the Museum;

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(b) the person immediately responsible to a Minister of the Crown for the administration of Aboriginal affairs and the support of traditional Aboriginal culture;

(c) a person who is a public service officer of the agency principally assisting the Minister administering the *Land Administration Act 1997* in that Act's administration and who is for the time being nominated for the purposes of this section by that Minister.

~~(e) an authorised land officer within the meaning of the *Land Administration Act 1997* for the time being nominated for the purposes of this section by the Minister to whom the administration of that Act is for the time being committed by the Governor;~~

are members of the Committee by virtue of their office referred to in paragraph (a) or (b) or nomination referred to in paragraph (c), as the case requires, and while either of those offices is vacant the person acting in that office is thereby constituted a member while so acting.

[Section 29 amended by No. 126 of 1987 s. 120; No. 31 of 1997 s. 141; Aboriginal Heritage Amendment Bill 2014 cl. 19.]

30. Resignation, disqualification and co-option

(1) Despite anything in the instrument under which he or she is appointed, an appointed member of the Committee may resign his or her office by a written notice signed by him or her and given to, and accepted by, the Minister.

(2A) A member of the Committee who ceases to hold office, unless otherwise disqualified, is eligible for reappointment.

(2) The office of an appointed member of the Committee becomes vacant, and the person is not eligible for reappointment, if the person —

(a) absents himself or herself from 3 consecutive ordinary meetings of the Committee without having obtained leave of absence from the Minister; or

(b) has his or her appointment terminated by the Minister on the grounds of inability, inefficiency or misbehaviour; or

(c) is a person in respect of whom an administration order is in force under the *Guardianship and Administration Act 1990* Part 6.

- ~~(1) Notwithstanding anything in the instrument under which he is appointed, an appointed member of the Committee may resign his office by a written notice given under his hand to, and accepted by, the Minister, and a member of the Committee who ceases to hold office shall, unless otherwise disqualified, be eligible for reappointment.~~
- ~~(2) If an appointed member of the Committee —~~
- ~~(a) absents himself from 3 consecutive ordinary meetings of the Committee without having obtained leave of absence from the Minister;~~
 - ~~(b) has his appointment terminated by the Minister with the approval of the Governor, on the grounds of inability, inefficiency or misbehaviour; or~~
 - ~~(c) is a person in respect of whom an administration order is in force under Part 6 of the *Guardianship and Administration Act 1990*;~~
- ~~his office becomes vacant and he shall not be eligible for reappointment.~~
- (3) The Committee has power, subject to the approval of the Minister and on such terms and conditions as the Minister may determine, to invite any person to act in an advisory capacity to the Committee in relation to any or all aspects of the functions of the Committee, but any such person shall not be entitled to a vote in the Committee.
- (4) Subsection (5) applies if —
- (a) the Committee is required to consider any matter that will or may affect native title rights and interests (as defined in the *Native Title Act 1993* (Commonwealth) section 223); and
 - (b) a registered native title body corporate (as defined in section 253 of that Act) is the native title holder (as defined in section 224 of that Act) in respect of those native title rights and interests.
- (5) If this subsection applies, the Committee may seek the advice of the registered native title body corporate under subsection (3) without getting the approval of the Minister.

[Section 30 amended by No. 24 of 1990 s. 123; Aboriginal Heritage Amendment Bill 2014 cl. 20.]

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31. Deputies

- (1) The Minister may, in respect of each member of the Committee, appoint a person representative of the same interests as that member to be ~~the member's his~~ deputy.
- (2) While taking the place of a member a deputy has all the powers and entitlements of and all the protection given to, the member under this Act.
- (3) Any reference in this Act to a member shall be construed as including a reference to a deputy taking the place of that member.

[Section 31 amended by the Aboriginal Heritage Amendment Bill 2014 cl. 21.]

32. Quorum and meetings

- (1) The quorum to constitute a meeting of the Committee shall be such as the Committee may from time to time determine but shall not be less than 5 persons of whom 2 shall be ex-officio members.
- (2) The Minister or the Chairman may at any time convene a meeting of the Committee, and a meeting shall be convened by the Chairman within 7 days of the receipt by ~~the Chairman him~~ of a written request signed by 2 or more members of the Committee specifying the business in respect of which the meeting is to be convened.
- (3) The Committee shall hold such meetings as are necessary for the performance of the functions of the Committee, or to give effect to any special or general direction of the Minister.

[Section 32 amended by the Aboriginal Heritage Amendment Bill 2014 cl. 22.]

33. Records and validity of proceedings

- (1) Minutes shall be kept of the proceedings of the Committee in such manner as the Minister may direct or approve, and any such minutes shall, if signed by a person purporting to have acted as chairman of the meeting to which the minutes relate, or of a meeting at which they were read, be evidence of the proceedings at the ~~meeting to which the minutes relate, firstmentioned meeting,~~ and the meeting to which such minutes relate shall, unless the contrary is proved, be deemed to have been regularly convened and constituted.

- (2) All acts done at any meeting of the Committee shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment or qualification of a person purporting to be a member, be as valid as if that defect had not existed.
- (3) The performance of the functions of the Committee is not affected by reason only of there being a vacancy in the office of a member.
- (4) Subject to the Minister, the decision of the Chairman shall be final and conclusive in all cases of dispute, doubt or difficulty respecting or arising out of matters of procedure or order.

[\[Section 33 amended by the Aboriginal Heritage Amendment Bill 2014 cl. 23.\]](#)

34. Procedure

Subject to the provisions of this Act, the Committee shall conduct the proceedings in such manner as may be prescribed, and, until prescribed, the convening of meetings and the procedures to be adopted shall be matters for the Committee to determine.

35. Public Sector Management Act provisions

Acceptance of or acting in the office of member of the Committee by any person does not of itself render the provisions of Part 3 of the *Public Sector Management Act 1994*, or any other Act applying to persons as officers of the Public Service of the State, applicable to that member, or affect or prejudice the application to that member ~~him~~ of those provisions if they applied to that member ~~him~~ at the time of the acceptance of or acting in that office.

[\[Section 35 amended by No. 32 of 1994 s. 3\(1\); Aboriginal Heritage Amendment Bill 2014 cl. 24.\]](#)

36. Remuneration etc.

The appointed members of the Committee for the time being shall be entitled to such remuneration, leave of absence, travelling and other allowances as the Minister determines.

[\[37, 38. Deleted by the Aboriginal Heritage Amendment Bill 2014 cl. 25.\]](#)

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39. Functions of the Committee

The functions of the Committee are —

- (a) to advise the Minister on any question referred to the Committee, and generally on any matter related to the objects and purposes of this Act; and
- (b) to perform the functions allocated to the Committee by this Act.

[Section 39 inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 25.]

~~**37. Registrar of Aboriginal Sites**~~

- ~~(1) An officer of the Department shall be appointed to be the Registrar of Aboriginal Sites by the chief executive officer.~~
- ~~(2) The function of the Registrar is to administer the day to day operations of the Committee, and also to perform such other functions as are allocated to the Registrar by this Act.~~
- ~~(3) The Registrar may, with the approval of the chief executive officer and by instrument in writing, delegate to another officer of the Department the performance of any of the powers or duties of the Registrar, other than this power of delegation.~~
- ~~(4) All communications required by this Act to be made to or by the Minister or the Committee may be made through the Registrar.~~

~~[Section 37 inserted by No. 24 of 1995 s. 30.]~~

~~**38. Register of places and objects**~~

~~The Registrar shall, so far as practicable, maintain, in such manner and form as the Minister may determine, a register of —~~

- ~~(a) all protected areas;~~
- ~~(b) all Aboriginal cultural material; and~~
- ~~(c) all other places and objects to which this Act applies, whether within the State or elsewhere.~~

~~[Section 38 amended by No. 24 of 1995 s. 31.]~~

~~**39. Functions of the Committee**~~

- ~~(1) The functions of the Committee are —~~
 - ~~(a) to evaluate on behalf of the community the importance of places and objects alleged to be associated with Aboriginal persons;~~

-
- ~~— (b) — where appropriate, to record and preserve the traditional Aboriginal lore related to such places and objects;~~
 - ~~— (c) — to recommend to the Minister places and objects which, in the opinion of the Committee, are, or have been, of special significance to persons of Aboriginal descent and should be preserved, acquired and managed by the Minister;~~
 - ~~— [(d) — deleted]~~
 - ~~— (e) — to advise the Minister on any question referred to the Committee, and generally on any matter related to the objects and purposes of this Act;~~
 - ~~— (ea) — to perform the functions allocated to the Committee by this Act; and~~
 - ~~— (f) — to advise the Minister when requested to do so as to the apportionment and application of moneys available for the administration of this Act.~~
- ~~— (2) — In evaluating the importance of places and objects the Committee shall have regard to —~~
- ~~— (a) — any existing use or significance attributed under relevant Aboriginal custom;~~
 - ~~— (b) — any former or reputed use or significance which may be attributed upon the basis of tradition, historical association, or Aboriginal sentiment;~~
 - ~~— (c) — any potential anthropological, archaeological or ethnographical interest; and~~
 - ~~— (d) — aesthetic values.~~
- ~~— (3) — Associated sacred beliefs, and ritual or ceremonial usage, in so far as such matters can be ascertained, shall be regarded as the primary considerations to be taken into account in the evaluation of any place or object for the purposes of this Act.~~
- ~~— [Section 39 amended by No. 8 of 1980 s. 10; No. 24 of 1995 s. 32.]~~

Part VI — Protection for Aboriginal objects

39A. Consultation between Minister and Trustees concerning administration of Part VI

The Minister shall from time to time consult with the Trustees in relation to the administration of this Part, and to any other provision of this Act relating to the protection of objects to which this Act applies, in order to ensure that there is consistency between that administration and that of the *Museum Act 1969* insofar as the administration of that Act relates to matters of particular concern to persons of Aboriginal descent.

[Section 39A inserted by No. 24 of 1995 s. 33.]

39B. Minister may delegate to Trustees under Part VI

The Minister may delegate any or all of his [or her](#) powers and duties under this Part to the Trustees.

[Section 39B inserted by No. 24 of 1995 s. 33; [amended by the Aboriginal Heritage Amendment Bill 2014 cl. 26.](#)]

39C. Registrar may act on Minister's behalf

Subject to section 39B, the functions of the Minister under Part VI in relation to the protection of Aboriginal objects may be carried out by the Registrar on behalf of the Minister.

[Section 39C inserted by No. 24 of 1995 s. 33.]

[\[39D. Deleted by the Aboriginal Heritage Amendment Bill 2014 cl. 27.\]](#)

~~39D. Minister to consult with Committee~~

~~The functions of the Minister under Part VI may only be exercised after consultation with the Committee, and after consideration of any advice by the Committee.~~

~~*[Section 39D inserted by No. 24 of 1995 s. 33.]*~~

40. Aboriginal cultural material

Where the [Minister \(after receiving advice from the CEO\) Committee](#) recommends to the Governor that an object or class of objects in the State is of Aboriginal origin and is —

- (a) of sacred, ritual or ceremonial importance;
- (b) of anthropological, archaeological, ethnographical or other special national or local interest; or

(c) of outstanding aesthetic value,

the Governor may, by Order in Council, declare that object or class of objects to be classified as Aboriginal cultural material.

[Section 40 amended by No. 24 of 1995 s. 34; [Aboriginal Heritage Amendment Bill 2014 cl. 28.](#)]

41. Notification and production of objects

- (1) A person who has in his [or her](#) custody or under his [or her](#) control any object of a kind classified as Aboriginal cultural material shall forthwith send notice in writing to the Minister giving a description of that object and of the manner in which it came to be in his [or her](#) custody or under his [or her](#) control, unless he [or she](#) has reasonable cause to believe that information to be already known to the Minister.

Penalty: a fine of \$5 000.

~~Penalty: \$100.~~

- (2) A person who has in his [or her](#) custody or under his [or her](#) control any object to which this Act applies shall, if required by the Minister, produce the object to the Minister at such reasonable time as is specified by the Minister for inspection and possession by the Minister for the purposes of subsection (3).

Penalty: a fine of \$5 000.

- (3) Where after inspecting any object produced to the Minister the Minister is of the opinion that it is an object to which this Act applies the Minister may continue in possession of the object for a period of 30 days, or for such longer period as the person producing the object and the Minister may agree, for the purpose of photographing, copying, or otherwise obtaining a record of, the object and of investigating the extent or nature of any interest that the object may have.

[Section 41 amended by No. 24 of 1995 s. 35; [Aboriginal Heritage Amendment Bill 2014 cl. 29.](#)]

42. Retention by Minister

- (1) The Minister may retain any object produced to the Minister pursuant to the provisions of section 41 —
- (a) if the object is classified as Aboriginal cultural material, by agreement or acquisition;

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- (b) if the object, in the opinion of the CEO, Committee ought to be classified as Aboriginal cultural material, by agreement or in default of agreement for such time as may be reasonably necessary to enable the CEO ~~it~~ to institute and complete the procedure required to have the object so classified,

but where the object is not so classified, or recommended for classification, the Minister shall return the object to the person by whom it was produced or, where that is not practicable or required, dispose of it in such other manner as the Minister thinks fit.

- (2) The Minister may permit a person to have possession of an object that is retained by the Minister for such time, for such purposes, and subject to such conditions as the Minister may approve or impose.

[Section 42 amended by No. 24 of 1995 s. 36; Aboriginal Heritage Amendment Bill 2014 cl. 30.]

43. Restrictions on dealing with Aboriginal cultural material

- (1) A person shall not —
- (a) sell, exchange or otherwise dispose of;
 - (b) take, or cause or permit to be taken, out of the State; or
 - (c) wilfully damage, destroy, or conceal,

any object that is classified as Aboriginal cultural material unless —

- (d) he or she is a person of Aboriginal descent acting in a manner sanctioned by relevant Aboriginal custom; or
- (e) he or she has first, in writing, offered that object for sale to the Minister, and has been advised, in writing, by the Minister that the Minister does not wish to purchase it; or
- ~~(e) he has first, in writing, offered that object for sale to the Minister, and has been advised, in writing, by the Minister that he does not wish to purchase it; or~~
- (f) the object has previously been offered for sale to the Minister pursuant to this subsection, and when it was so offered the Minister advised that the Minister ~~he~~ did not wish to purchase it; or
- (g) he or she is expressly authorised by the Minister so to do.

(2A) A person who contravenes subsection (1) commits an offence and is to be sentenced under section 57.

- (2) Where an object that is classified as Aboriginal cultural material is offered for sale to the Minister, the Minister may accept the offer and so purchase the object or may, subject to subsection (3), decline the offer, in which event the Minister must ~~he shall~~ as soon as practicable, in writing, advise the person by whom it was offered to the Minister that the Minister ~~he~~ does not wish to purchase it.
- (3) Where the Minister is of the opinion that the price at which an object of Aboriginal cultural material has been offered to the Minister ~~him~~ for the purposes of subsection (1) is excessive, the Minister may apply to the State Administrative Tribunal which may determine a reasonable price for the object.
- (4) Where the State Administrative Tribunal, in determining a reasonable price for an object pursuant to subsection (3), determines a price which is greater than the price at which it was offered for sale to the Minister, the person by whom the object was offered for sale to the Minister shall be deemed for all purposes to have offered the object for sale to the Minister at the price so determined, and within 14 days of the determination by the State Administrative Tribunal the Minister shall —
 - (a) accept the offer so deemed to have been made by the person and so purchase the object; or
 - (b) decline to purchase the object, in which event the Minister shall as soon as practicable, in writing, advise the person that the Minister does not wish to purchase it.
- (5) Where the State Administrative Tribunal, in determining the reasonable price for an object pursuant to subsection (3), determines a price which is less than the price at which it was offered for sale to the Minister, the person by whom the object was offered for sale to the Minister shall not, for the purpose of subsection (1), be deemed to have offered the object for sale to the Minister until the person ~~he~~ offers the object for sale to the Minister at the price determined by the State Administrative Tribunal.

~~[(6), (7) deleted]~~

~~(7) A person who contravenes the provisions of this section commits an offence.~~

[Section 43 amended by No. 24 of 1995 s. 37; No. 55 of 2004 s. 6 and 9; Aboriginal Heritage Amendment Bill 2014 cl. 31.]

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44. Prices to be at local rates

For the purpose of determining what is a reasonable price at which an object shall be offered for sale to the Minister under the provisions of section 43 the State Administrative Tribunal shall have regard only to the amount that might reasonably be expected to be offered by a willing purchaser in the State and shall not take into account any price that might be obtained elsewhere.

[Section 44 amended by No. 24 of 1995 s. 38; No. 55 of 2004 s. 9.]

45. Minister may purchase as agent

- (1) Where an object that is classified as Aboriginal cultural material is offered for sale to the Minister but the Minister is unable to accept the offer, the Minister may, before advising the person by whom it was offered to the Minister that [the Minister](#) ~~he~~ does not wish to purchase it, cause to be published in the *Gazette* a notice containing particulars of the object and of its significance and a statement to the effect that offers for the purchase of the object with a view to its preservation in the State, on conditions prescribed in the notice, are invited.
- (2) Where pursuant to a notice published under the provisions of subsection (1) the Minister is satisfied that an offer to purchase would be in the general interest of the community the Minister may accept the offer made by the person who offered the object for sale as agents for, and conditional upon the completion of the sale by, the prospective purchaser.

[Section 45 amended by No. 24 of 1995 s. 39; [Aboriginal Heritage Amendment Bill 2014 cl. 32.](#)]

46. Vesting of objects and inquiries into origin

- (1) Where an object has been classified as Aboriginal cultural material and it is an object to which this Act applies which in the opinion of the Minister has been obtained in a manner contrary to this Act, the property in and the right to possession of that object, irrespective of where the object is or may be found or situated, shall be vested in the Minister on behalf of the Crown in any case where the Registrar serves notice in writing to that effect on the person then having the apparent custody of that object and on any person known to the Registrar as claiming possession.

(2) Where a notice vesting the property in and right to possession of an object in the Minister on behalf of the Crown has been served on any person having the custody of the object that person shall forthwith deliver up the object to which the notice relates to the Registrar, and no action lies against any person in respect of a delivery effected in good faith under this section pursuant to the exercise, or purported exercise, by the Registrar of the powers hereby conferred.

(3) A person on whom a notice has been served under this section or any person aggrieved by that notice may apply to the State Administrative Tribunal for a review of the decision of the Minister.

[(4) deleted]

(5) A person who fails to comply with [subsection \(2\) having received](#) ~~the terms of~~ a notice served by the Registrar under this section, in any case where no application was made for a review of the decision of the Minister or where such an application was made but the notice was not set aside at the hearing of the application, commits an offence.

[Penalty: a fine of \\$5 000.](#)

[(6) deleted]

(7) For the purposes of any proceedings under this Act it is hereby declared —

- (a) that an object shall be deemed to have been lawfully in the possession of a person prior to the day of the coming into operation of this Act if, before that day, he [or she](#) had reduced the object to his possession and was on that day exercising complete control of the use and physical location of the object; and
- (b) that an object shall not be regarded as having been lawfully in the possession of a person prior to the day of the coming into operation of this Act by reason only of the fact that, on that day, it was in or on land or premises owned or occupied by [him or her](#). ~~him.~~

[Section 46 amended by No. 24 of 1995 s. 40; No. 55 of 2004 s. 7; [Aboriginal Heritage Amendment Bill 2014 cl. 33.](#)]

47. Compulsory acquisition of objects

(1) Where the Minister is of the opinion that it would be in the general interest of the community to acquire any object to which

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this Act applies the Minister may give notice to the person owning, or apparently having the custody and control of, that object of [the Minister's](#) ~~his~~ desire to acquire that object at a price therein specified.

- (2) A notice given by the Minister under the provisions of subsection (1) has effect as though it were the reply to an offer for sale made to the Minister by the person to whom the notice was given in relation to an object classified as Aboriginal cultural material pursuant to section 43 and any dispute as to what constitutes a reasonable price shall be determined by the State Administrative Tribunal in accordance with the provisions of that section.

[Section 47 amended by No. 24 of 1995 s. 41; No. 55 of 2004 s. 9; [Aboriginal Heritage Amendment Bill 2014 cl. 34.](#)]

48. Restriction on exhibition of objects

Where an object which is or has been of sacred, ritual or ceremonial significance to persons of Aboriginal descent is in the possession, custody or control of the Minister, the Minister shall not exhibit the object, or cause or permit it to be exhibited, in a manner or to persons not sanctioned by relevant Aboriginal custom.

[Section 48 amended by No. 24 of 1995 s. 42.]

49. Prohibition on publication

- (1) Where an object has been classified as Aboriginal cultural material the Governor may, by Order in Council, prohibit the photographing, copying or other reproduction of that object, or the publication of any such reproduction, either —
- (a) absolutely; or
 - (b) except for such purposes and subject to such conditions as the Minister may approve or impose,

and any such prohibition extends to any object so nearly resembling the object to which the prohibition relates as to be likely to deceive or be capable of being mistaken for the same.

- (2) A person who contravenes the provisions of an Order made under subsection (1) commits an offence.

[Penalty: a fine of \\$5 000.](#)

[Section 49 amended by No. 24 of 1995 s. 43; [Aboriginal Heritage Amendment Bill 2014 cl. 35.](#)]

Part VIIA — Registers

*[Heading inserted by the Aboriginal Heritage Amendment
Bill 2014 cl. 36.]*

Division 1 — Register of Aboriginal sites and objects

*[Heading inserted by the Aboriginal Heritage Amendment
Bill 2014 cl. 36.]*

50A. Register of Aboriginal sites and objects

(1) The Registrar must, so far as practicable, keep a register of the following —

- (a) all protected areas;
- (b) all other Aboriginal sites;
- (c) all Aboriginal cultural material;
- (d) all objects to which this Act applies.

(2) The register kept under this section is called the register of Aboriginal sites and objects (the *ASO register*).

(3) The register kept under this section is a continuation of the register provided for by section 38 before it was deleted by the *Aboriginal Heritage Amendment Act 2014* section 25.

*[Section 50A inserted by the Aboriginal Heritage Amendment
Bill 2014 cl. 36.]*

50B. CEO decides what goes on or is removed from ASO register

(1) The CEO decides whether or not —

- (a) information relating to a place or object (other than a protected area or Aboriginal cultural material) should be entered in or deleted from the ASO register; and
- (b) information in the ASO register relating to a place or object (other than a protected area or Aboriginal cultural material) should be amended.

(2) For the purpose of making those decisions, the CEO determines all matters relating to or connected with the following —

- (a) whether or not a place is an Aboriginal site;
- (b) whether or not an object is an object to which this Act applies.

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Part VIIA Registers

Division 2 Register of declarations and permits

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(3) In order to make those decisions, the CEO may make any inquiries, obtain whatever information and consult whoever the CEO considers necessary.

(4) The CEO is not prevented from deciding that information should be entered in or deleted from the ASO register, or that information in the ASO register should be amended, just because that information was or was not recorded in the ASO register on the basis of any previous advice given by any person or body (including the Committee).

[Section 50B inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 36.]

Division 2 — Register of declarations and permits

[Heading inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 36.]

50C. Register of declarations and permits

(1) The Registrar must, so far as practicable, keep a register of the following —

- (a) all current declarations;
- (b) the expiry of a declaration under section 19B(1);
- (c) the cancellation of a declaration under section 19B(2);
- (d) all current permits, including the term of a permit and any conditions to which a permit is subject;
- (e) all decisions to refuse an application for a permit;
- (f) all decisions to amend a permit;
- (g) all decisions to cancel a permit;
- (h) all decisions to transfer a permit;
- (i) all current consents given under the old section 18 (as defined in section 72(1)), including any conditions attached to the consent.

(2) The register kept under this section is called the register of declarations and permits (the **DP register**).

(3) If a decision that is required to be recorded in the DP register is the subject of an application to the State Administrative Tribunal under section 19D, the register must record both the original decision and the outcome of the application.

[Section 50C inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 36.]

Division 3 — General provisions relating to registers

*[Heading inserted by the Aboriginal Heritage Amendment
Bill 2014 cl. 36.]*

50D. Publication of information on registers

- (1) The Registrar must make the information in the registers publicly available free of charge.
- (2) The Registrar may comply with subsection (1) in any way the Registrar considers appropriate.
- (3) Subsection (1) is subject to any regulations authorised by section 50F.

*[Section 50D inserted by the Aboriginal Heritage Amendment
Bill 2014 cl. 36.]*

50E. Further provisions relating to registers

- (1) The registers must be in the form and include whatever information is prescribed.
- (2) The CEO may direct the Registrar to enter or amend information in, or delete information from, a register, and the Registrar must comply with the direction as soon as practicable.
- (3) Entering and amending information in, and deleting information from, a register must be done in accordance with prescribed procedures (if any).
- (4) The Registrar must keep information that has been deleted from a register so there is an historical record of the information that was on the register.

*[Section 50E inserted by the Aboriginal Heritage Amendment
Bill 2014 cl. 36.]*

50F. Protecting information in register from disclosure

The regulations may prohibit or restrict disclosure of some or all information in a register.

*[Section 50F inserted by the Aboriginal Heritage Amendment
Bill 2014 cl. 36.]*

Part VII — Enforcement

50. Honorary wardens

- (1) The Minister may appoint honorary wardens for the purposes of this Act who may exercise such powers as are prescribed, either throughout the State or in a specified area or specified areas only, according to the terms of their appointments.
- (2) Every person appointed to be an honorary warden under this Act shall be furnished with a certificate in the prescribed form evidencing his [or her](#) appointment and shall produce such certificate whenever required so to do by any person in respect of whom he [or she](#) has exercised or is about to exercise any of his [or her](#) powers under this Act.
- (3) In any proceedings under this Act production of a certificate in the prescribed form is conclusive evidence in any court or tribunal of the appointment of the honorary warden to whom the certificate relates and of his [or her](#) authority to exercise the powers specified in that certificate.

[Section 50 amended by No. 24 of 1995 s. 44; No. 55 of 2004 s. 8; [Aboriginal Heritage Amendment Bill 2014 cl. 37.](#)]

51. Powers of inspection

- (1) Any officer of the [Department](#) ~~Department, or any honorary warden,~~ may, together with any person he [or she](#) may think competent to assist [him or her](#), ~~him,~~ enter any premises, other than premises used exclusively as a private dwelling, and may therein or thereon —
 - (a) examine any Aboriginal site or any place or object that he [or she](#) has reasonable grounds for believing to have been traditionally or currently of sacred, ritual or ceremonial significance to persons of Aboriginal descent; and
 - (b) make such examination and inquiry and tests, and ask such questions, and request such information as he [or she](#) considers necessary or desirable,to the extent required for the purposes of this Act.
- (2) In the exercise of his [or her](#) powers under subsection (1) an officer of the [Department](#) ~~must Department, or an honorary warden, shall~~ conform so far as is practicable to such reasonable requirements of the person owning or using the premises in

question as are necessary to prevent the working of the business or the conduct of operations on the premises being obstructed.

~~[(3) deleted]~~

~~(3) The occupier of any premises and any person in charge or apparently in charge of any premises or operations shall furnish to any officer of the Department, or any honorary warden duly authorised, all reasonable assistance and all such information that he is capable of furnishing or as required by that officer or honorary warden with respect to the exercise of his powers and the discharge of his duties under this Act.~~

[Section 51 amended by No. 24 of 1995 s. 45; [Aboriginal Heritage Amendment Bill 2014 cl. 38.](#)]

52. Power of officers to represent the Minister

In any proceedings a traditional [custodian](#) ~~custodian, an honorary warden,~~ or an officer of the Department appointed for the purpose generally or in a particular case in writing signed by the Registrar may represent the Minister in all respects as if he [or she](#) were the party concerned.

[Section 52 amended by No. 24 of 1995 s. 46; [Aboriginal Heritage Amendment Bill 2014 cl. 39.](#)]

53. Proceedings by the Minister

In any charge against a person under this Act, and in any proceedings instituted in relation to any property vested in the Minister or in the possession, or under the care and control of, the Minister, it is sufficient to state generally that the property in respect of which the proceedings are instituted is the property of the Minister.

[Section 53 inserted by No. 24 of 1995 s. 47; No. 84 of 2004 s. 80 and 82.]

54. Persons obstructing execution of this Act

~~(1) A person who wilfully obstructs any person acting in the execution of this Act commits an offence.~~

~~Penalty:~~

~~(a) for an individual, a fine of \$10 000;~~

~~(b) for a body corporate, a fine of \$50 000.~~

~~(1) A person who wilfully obstructs any person acting in the execution of this Act commits an offence against this Act.~~

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- (2) A person who fails to give to any person acting in the execution of this Act any assistance which that person may reasonably request him or her to give, or any information which that person is expressly authorised by this Act to call for or may reasonably require, or who, when required to give any such information, knowingly makes any false or misleading statement in relation thereto, shall be treated as having wilfully obstructed that person.

[Section 54 amended by the Aboriginal Heritage Amendment Bill 2014 cl. 40.]

55. Breach of conditions

A person who, having a permit, consent or authorisation to do anything which would otherwise constitute an offence against this Act, is in breach of any condition to which the giving of the permit, consent or authorisation was made subject, commits an offence.

Penalty:

(a) for an individual, a fine of \$50 000;

(b) for a body corporate, a fine of \$250 000.

[Section 55 amended by No. 8 of 1980 s. 11; Aboriginal Heritage Amendment Bill 2014 cl. 41.]

56. Secrecy

A person who discloses any information that results, or may result, in the disclosure of a trade secret, or with regard to any mining or prospecting operations, that has been furnished to the person~~him~~ or obtained by the person~~him~~ under this Act, or in connection with the execution of this Act, commits an offence unless such information is necessary for, and is disclosed in the course of, the conduct of any legal proceedings arising out of this Act.

Penalty: a fine of \$3 000.

~~Penalty: \$1 000.~~

[Section 56 amended by the Aboriginal Heritage Amendment Bill 2014 cl. 42.]

57A. Commencing prosecutions

- (1) The Minister or the CEO may commence a prosecution of a person for an offence under this Act.

(2) Subject to the *Director of Public Prosecutions Act 1991*, a person other than the Minister, a delegate of the Minister, the CEO or a delegate of the CEO cannot commence a prosecution of a person for an offence under this Act.

(3) A prosecution of a person for an offence under this Act cannot be commenced after 5 years after the day on which it was allegedly committed.

[Section 57A inserted by the *Aboriginal Heritage Amendment Bill 2014 cl. 43.*]

57. Penalties

(1) A person who commits an offence under section 17 or 43 is liable —

(a) in the case of an individual —

(i) for a first offence, to a fine of \$100 000 or imprisonment for 12 months;

(ii) for a second or subsequent offence, to a fine of \$200 000 or imprisonment for 2 years;

(b) in the case of a body corporate —

(i) for a first offence, to a fine of \$500 000;

(ii) for a second or subsequent offence, to a fine of \$1 000 000.

~~(1) A person who commits an offence against this Act for which no penalty is specifically provided is liable, on summary conviction —~~

~~(a) in the case of an individual, to —~~

~~(i) for a first offence, \$20 000 and imprisonment for 9 months; and~~

~~(ii) for a second or subsequent offence, \$40 000 and imprisonment for 2 years,~~

~~and in any case, to a daily penalty of \$400; and~~

~~(b) in the case of a body corporate, to —~~

~~(i) for a first offence, \$50 000; and~~

~~(ii) for a second or subsequent offence, \$100 000,~~

~~and in any case, to a daily penalty of \$1 000.~~

(2) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on

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the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he or she as well as the body corporate shall be deemed to have committed that offence and is liable to be proceeded against and punished accordingly.

(3) If a person is convicted of an offence against this Act in relation to any object, place or thing, the object, place or thing is to be taken as being the property of the Minister for the purposes of making a reparation order under Part 16 of the *Sentencing Act 1995*.

(4) If under Part 16 of the *Sentencing Act 1995* a compensation order is made in favour of the Minister, any money received by the Minister under the order is to be credited to the Consolidated Account².

(5) A court that convicts a person of an offence under this Act that involves destroying, damaging or altering an Aboriginal site or an object to which this Act applies may order the person —

(a) to take remedial action to restore the place or object to the same state as it was in before the offence or to a state specified in the order; or

(b) to pay another person to take remedial action to restore the place or object to the same state as it was in before the offence or to a state specified in the order.

(6) An order made under subsection (5) —

(a) must specify —

(i) the remedial action to be taken; and

(ii) the time for complying with the order;

and

(b) if it is made under subsection (5)(b), must also specify —

(i) the person who is to be paid; and

(ii) the amount to be paid;

and

(c) may include conditions subject to which the remedial action must be taken.

(7) If a person does not obey an order made under subsection (5)(a), the CEO —

(a) may take the remedial action specified in the order; and

(b) may recover the costs of doing so from the person as a debt due to the State in a court of competent jurisdiction.

[Section 57 amended by No. 78 of 1995 s. 4 and 147; No. 50 of 2003 s. 35(2); Aboriginal Heritage Amendment Bill 2014 cl. 44.]

[58. Deleted by No. 8 of 1980 s. 12.]

59A. Application of Sentencing Act 1995

(1) The Sentencing Act 1995 Part 16 Division 1 applies to an order referred to in section 57(5) as if it were a reparation order as defined in that Part.

(2) The Sentencing Act 1995 section 122 applies to a person who does not obey an order made under section 57(5)(a) as if the order were a restitution order made under Part 16 of that Act.

(3) The Sentencing Act 1995 sections 119 and 119A apply as if an order made under section 57(5)(b) were a compensation order made under Part 16 of that Act.

[Section 59A inserted by Aboriginal Heritage Amendment Bill 2014 cl. 45.]

59. Forfeiture

A court convicting a person of an offence against this Act may, in addition to any other penalty, order that any object to which the offence relates be forfeited to the Crown for the use of the Minister ~~Minister, in consultation with the Committee~~, for the purpose of the protection of Aboriginal heritage, and any order so made has effect according to its tenor.

[Section 59 amended by No. 24 of 1995 s. 48; Aboriginal Heritage Amendment Bill 2014 cl. 46.]

60. Evidence

(1) Where —

(a) notice of intention to adduce evidence by certificate is given not less than 3 days before the day of the trial or hearing, and that notice is served and the service proved in the same manner as notices to admit and produce may now be served and proved in civil proceedings;

(b) objection is not taken before or at the trial or hearing; and

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- (c) the Registrar has not been required to attend as a witness,

unless the court otherwise orders, in any proceedings production of a certificate purporting to be signed by the Registrar, without proof of the signature of the person appearing to have signed the certificate or that he or she is the Registrar, that he or she is satisfied that an object is classified as Aboriginal cultural material is sufficient evidence of that fact.

(2A) Subsection (2) applies in any proceedings under this Act that relate to —

(a) a place registered in the ASO register as an Aboriginal site; or

(b) an object registered in the ASO register as Aboriginal cultural material or as an object to which this Act applies.

(2) In any proceedings to which this subsection applies, a person seeking to prove the place or object is not one to which this Act applies has the onus of proving the matter.

~~(2) In any proceedings under this Act the onus of proof that the provisions of this Act do not apply to any place or object lies upon the accused.~~

(3) If a charge of an offence under this Act alleges an act occurred within a place registered in the ASO register as an Aboriginal site, then, if the act is proved, it is to be presumed, in the absence of evidence to the contrary, that it occurred within the place.

~~(3) Where in a charge of an offence against this Act there is an averment that an act occurred within an Aboriginal site, courts and persons acting judicially shall, on the act being proved, presume in the absence of proof to the contrary that it occurred within the Aboriginal site as averred.~~

(4) In any proceedings under this Act, a document purporting to be a declaration issued, or consent or permit given, under this Act signed by the CEO or, as the case requires, the Minister is evidence of its contents without —

(a) proof of the signature of the person purporting to have signed the document; or

(b) proof that the purported signatory was the CEO or the Minister, as the case may be.

~~(4) In any proceedings under this Act a document purporting to be consent pursuant to section 18 signed by the Minister is evidence that such consent had been given subject to such conditions as may be therein specified and had effect from the date of the notice, without proof of the signature of the person purporting to have signed the document or proof that the purported signatory was the Minister.~~

*[Section 60 amended by No. 84 of 2004 s. 80 and 82;
Aboriginal Heritage Amendment Bill 2014 cl. 47.]*

61. Presumption as to notices

In any proceedings for an offence against this Act the fact that —

- (a) no notice had been given to the Committee;
- (b) no permission or authorisation had been given by the Registrar;
- ~~(c) no authorisation, consent or permit had been given or issued by the Minister;~~
- ~~(d) no declaration or permit had been issued or given by the CEO,~~
- ~~(e) no authorisation or consent had been given by the Minister;~~

in relation to any place or object to which this Act applies shall be deemed to be proved in the absence of proof to the contrary.

[Section 61 amended by No. 8 of 1980 s. 14; No. 24 of 1995 s. 49; Aboriginal Heritage Amendment Bill 2014 cl. 48.]

62. Special defence of lack of knowledge

In proceedings for an offence against this Act it is a defence for the person charged to prove that he or she did not know and could not reasonably be expected to have known, that the place or object to which the charge relates was a place or object to which this Act applies.

[Section 62 amended by the Aboriginal Heritage Amendment Bill 2014 cl. 49.]

Part VIII — General

[Heading amended by No. 24 of 1995 s. 50.]

63. Review of Act

(1) The Minister must carry out a review of the operation of this Act as soon as practicable after every 5th anniversary of the day on which the *Aboriginal Heritage Amendment Act 2014* section 4 comes into operation.

(2) The Minister must —

(a) prepare a report based on the review; and

(b) as soon as practicable after the report is prepared and in any event not more than 18 months after the relevant anniversary, cause it to be laid before each House of Parliament.

[Section 63 inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 50.]

~~[634-65. Deleted by No. 24 of 1995 s. 51.]~~

66. Authority to perform certain functions in relation to Crown land for purposes of this Act

(1) The functions under section 24 of the owner of Crown land, or of the owner of freehold land held in the name of the State, may be performed by —

(a) the Minister as defined in the *Land Administration Act 1997* section 3(1) (the *Minister for Lands*); or

(b) a person authorised in writing by the Minister for Lands to do so.

~~(1) If, under section 18(2) or 24, the owner of Crown land or freehold land in the name of the State may give, or is required to give, notice that notice may be given by —~~

~~(a) the Minister as defined in the *Land Administration Act 1997* section 3(1) (the *Minister for Lands*); or~~

~~(b) a person who is authorised in writing by the Minister for Lands to do so.~~

(2) Nothing in this section limits the ability of the Minister for Lands to otherwise perform a function through an officer or agent.

~~[(3) deleted]~~

- ~~(3) Nothing in this section affects —~~
- ~~(a) a right that any other person has under section 18(2) or (5) in relation to land mentioned in subsection (1) if the person is an owner of that land because of section 18(1) or (1a); or~~
- ~~(b) how that right may be exercised.~~

[Section 66 inserted by No. 8 of 2010 s. 7; amended by the [Aboriginal Heritage Amendment Bill 2014 cl. 51.](#)]

67. Indemnity

- (1) A person who is, or has been —
- (a) the Minister, a Trustee, a member of the Committee, [the CEO](#), the Registrar, or an honorary warden; or
 - (b) acting under the direction or authority of the Minister, a Trustee, a member of the Committee, [the CEO](#), the Registrar, or an honorary warden,

is not personally liable for anything done, or omitted to be done, in good faith, in, or in connection with, the exercise or purported exercise of any function under this Act.

- (2) An action in tort does not lie against a person acting under an authority mentioned in section 66(1) for anything that the person has done, in good faith, in the performance or purported performance of a function to which the authority applies.
- (3) The protection given by this section applies even though the thing done as described in subsection (1) or (2) may have been capable of being done whether or not this Act had been enacted.
- (4) Despite subsections (1) and (2), the State is not relieved of any liability that it might have for another person having done anything as described in those subsections.
- (5) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

[Section 67 inserted by No. 24 of 1995 s. 52; amended by No. 8 of 2010 s. 8; [Aboriginal Heritage Amendment Bill 2014 cl. 52.](#)]

68. Regulations

- ~~(1) The Governor~~ [The Governor](#) may make regulations prescribing all matters and things that, by this Act, are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for giving effect to this Act.

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(2) Without limiting subsection (1), regulations may do any or all of the following —

(a) prescribe forms to be used for the purposes of this Act;

(b) prescribe the practice and procedure for —

(i) dealing with applications made under section 18A, 19A(4) or 19C(5);

(ii) making decisions under section 18A, 18B, 18C, 18, 19A(4), 19B(2) or 19C(5);

(c) prescribe the powers that may be exercised by honorary wardens, including (without limitation) —

(i) the power to require a person to provide their personal details (for example, full name and residential address) in the circumstances set out in the regulations;

(ii) the power to remove people, vehicles, animals and other things from protected areas, other Aboriginal sites and land held subject to a covenant in favour of the Minister under section 27, in the circumstances set out in the regulations;

(iii) the power to give directions to people in the circumstances set out in the regulations;

(iv) any other power that is reasonably necessary to enforce the provisions of this Act or the regulations;

(d) prescribe the fees and charges to be paid for services provided under this Act by the Department;

(e) create offences with, unless section 26(2) applies, a maximum penalty not exceeding —

(i) for an individual, a fine of \$5 000;

(ii) for a body corporate, a fine of \$25 000.

(3) Despite the *Interpretation Act 1984* sections 3(3) and 45(3), section 45(1) and (2) of that Act apply in respect of fees and charges prescribed under this section.

[Section 68 inserted by No. 24 of 1995 s. 52; amended by the Aboriginal Heritage Amendment Bill 2014 cl. 53.]

Part IX — Transitional and validation provisions

[Heading inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 54]

69. Provisions for Aboriginal Heritage Amendment Act 2014

This Part contains transitional and validation provisions for the *Aboriginal Heritage Amendment Act 2014*.

[Section 69 inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 54.]

70. Term used: amending Act

In this Part —

amending Act means the *Aboriginal Heritage Amendment Act 2014*.

[Section 70 inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 54.]

71. Transitional provision for Registrar

On the commencement of the amending Act section 25, the person who, immediately before that commencement, was appointed as the Registrar is to be taken to have been designated as the Registrar under section 12.

[Section 71 inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 54.]

72. Transitional provision for section 18

(1) In this section —

old section 18 means section 18 as in force immediately before the amending Act section 9 comes into operation.

(2) If immediately before the amending Act section 9 comes into operation the Minister has not made a decision about a notice given under the old section 18, the old section 18 continues in force in relation to the notice.

(3) A consent given under the old section 18 has effect as if —

(a) the consent were a permit —

(i) given by the Minister under section 18 (as inserted by the amending Act section 9); and

s. 73

(ii) that is subject to any conditions to which the consent was subject;

and

(b) the use specified in the consent were an act specified in a permit.

[Section 72 inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 54.]

73. Transitional provision for section 19

If immediately before the amending Act section 10 comes into operation the Committee has made a recommendation to the Minister under section 19, that section continues to apply to and in relation to that recommendation as if the references in subsections (2) and (3) of that section to the CEO were references to the Committee.

[Section 73 inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 54.]

74. Transitional provision for section 20

If immediately before the amending Act section 11 comes into operation the Committee has made a recommendation to the Governor under section 20(1) or (3), that recommendation is to be taken to be a recommendation made by the Minister on the advice of the CEO.

[Section 74 inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 54.]

75. Transitional provision for section 21

If immediately before the amending Act section 12 comes into operation the Minister has received representations under section 21 and has directed the Committee to make a report under that section, that section continues to apply to and in relation to the consideration of those representations as if the references in that section to the CEO were references to the Committee.

[Section 75 inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 54.]

76. Transitional provision for section 25

If immediately before the amending Act section 15 comes into operation the Governor has under section 25 consulted with the

Committee in relation to the variation or revocation of an Order in Council, that section continues to apply to and in relation to the variation or revocation of that Order in Council on the basis of that consultation as if that section had not been amended by the amending Act.

[Section 76 inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 54.]

77. Validation (section 28(3))

(1) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

(2) Nothing done by the Committee before, on or after the amending Act section 18(2) comes into operation, and nothing done before, on or after the amending Act section 18(2) comes into operation in reliance on or as a result of anything done by the Committee, is invalid or ineffective, or was ever invalid or ineffective, just because the membership of the Committee did not at any material time include a person appointed by the Minister in accordance with section 28(3) (as deleted by the amending Act section 18(2)).

[Section 77 inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 54.]

78. Transitional provision for section 40

If immediately before the amending Act section 28 comes into operation the Committee has made a recommendation to the Governor under section 40, that recommendation is to be taken to be a recommendation made by the Minister on the advice of the CEO.

[Section 78 inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 54.]

79. Transitional provision for section 42

If immediately before the amending Act section 30 comes into operation the Committee has provided its opinion to the Minister for the purposes of section 42(1)(b), that opinion is to be taken to be the opinion of the CEO.

[Section 79 inserted by the Aboriginal Heritage Amendment Bill 2014 cl. 54.]

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Notes

- ¹ This is a compilation of the *Aboriginal Heritage Act 1972* and includes the amendments made by the other written laws referred to in the following table ⁶. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Aboriginal Heritage Act 1972</i>	53 of 1972	2 Oct 1972	15 Dec 1972 (see s. 2 and <i>Gazette</i> 15 Dec 1972 p. 4681)
<i>Aboriginal Heritage Amendment Act (No. 2) 1980</i>	8 of 1980	23 Sep 1980	23 Sep 1980
Reprint of the <i>Aboriginal Heritage Act 1972</i> as at 24 Jun 1981 (includes amendments listed above)			
<i>Acts Amendment (Financial Administration and Audit) Act 1985 s. 3</i>	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Acts Amendment (Land Administration) Act 1987 Pt. XIV</i>	126 of 1987	31 Dec 1987	16 Sep 1988 (see s. 2 and <i>Gazette</i> 16 Sep 1988 p. 3637)
<i>Guardianship and Administration Act 1990 s. 123</i>	24 of 1990	7 Sep 1990	20 Oct 1992 (see s. 2 and <i>Gazette</i> 2 Oct 1992 p. 4811)
<i>Acts Amendment (Public Sector Management) Act 1994 s. 3(1)</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Aboriginal Heritage Amendment Act 1995</i> ^{3,4}	24 of 1995	30 Jun 1995	s. 1 and 2: 30 Jun 1995; Act other than s. 1 and 2: 1 Jul 1995 (see s. 2 and <i>Gazette</i> 30 Jun 1995 p. 2781)
Reprint of the <i>Aboriginal Heritage Act 1972</i> as at 4 Oct 1995 (includes amendments listed above)			
<i>Sentencing (Consequential Provisions) Act 1995 Pt. 3 and s. 147</i>	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Acts Amendment (Land Administration) Act 1997 Pt. 3 and s. 141</i>	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Gas Corporation (Business Disposal) Act 1999 s. 39</i>	58 of 1999	24 Dec 1999	24 Dec 1999 (see s. 2(1))
Reprint of the <i>Aboriginal Heritage Act 1972</i> as at 16 Feb 2001 (includes amendments listed above)			
<i>Sentencing Legislation Amendment and Repeal Act 2003 s. 35</i>	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)

Short title	Number and year	Assent	Commencement
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 1 ⁵	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Petroleum Amendment Act 2007</i> s. 89	35 of 2007	21 Dec 2007	19 Jan 2008 (see s. 2(b) and <i>Gazette</i> 18 Jan 2008 p. 147)
Reprint 4: The Aboriginal Heritage Act 1972 as at 7 Mar 2008 (includes amendments listed above)			
<i>Approvals and Related Reforms (No. 3) (Crown Land) Act 2010</i> Pt. 3	8 of 2010	3 Jun 2010	18 Sep 2010 (see s. 2(b) and <i>Gazette</i> 17 Sep 2010 p. 4757)
<i>Water Services Legislation Amendment and Repeal Act 2012</i> s. 203	25 of 2012	3 Sep 2012	18 Nov 2013 (see s. 2(b) and <i>Gazette</i> 14 Nov 2013 p. 5028)
<u>Aboriginal Heritage Amendment Bill 2014</u>	<u>Current Bill</u>		

² Under the *Financial Legislation Amendment and Repeal Act 2006* Sch. 2 cl. 13 a reference to the Consolidated Fund may, where the context so requires, be read as if it had been amended to be a reference to the Consolidated Account. This reference was changed under the *Reprints Act 1984* s. 7(5)(a).

³ The *Aboriginal Heritage Amendment Act 1995* s. 19(2), (3) and (4) read as follows:

“

- (2) Subject to subsection (3), the performance or purported performance and exercise or purported exercise, during the period beginning on the commencement of the principal Act and ending on the day before the day that this Act comes into operation, by the Committee of the duties imposed and powers conferred by section 18 of the principal Act on the Trustees shall be deemed to have been lawful and valid.
- (3) Subsection (2) does not apply to or in relation to legal proceedings instituted before 1 July 1990 in respect to the performance or purported performance of duties, or the exercise or purported exercise of powers, referred to in that subsection.
- (4) In this section, “Trustees” has the meaning given to it by the principal Act before its amendment by this Act.

”.

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⁴ The *Aboriginal Heritage Amendment Act 1995* s. 51(2) and (3) read as follows:

“

- (2) After the commencement of the *Aboriginal Heritage Amendment Act 1995*, moneys standing to the credit of the Aboriginal Material Preservation Fund shall be transferred to an account forming part of the Trust Fund referred to in section 9 of the *Financial Administration and Audit Act 1985* established by the Treasurer and to be administered by the Department for the purposes of the protection of Aboriginal heritage.
- (3) On the commencement of the *Aboriginal Heritage Amendment Act 1995* the Trustees (as the accountable authority within the meaning in the *Financial Administration and Audit Act 1985*) are to report in respect of the Aboriginal Material Preservation Fund, as opened and kept under Part VIII of the principal Act prior to its amendment by this Act, as required by section 66 of that Act, for the period from the preceding 1 July to the time of the commencement, and Division 14 of Part II of the *Financial Administration and Audit Act 1985* applies as if that period were a full financial year.

”.

⁵ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

⁶ The *Courts Legislation Amendment and Repeal Act 2004* Sch. 2 cl. 1 was repealed by the *Criminal Law and Evidence Amendment Act 2008* s. 77(13).

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
Aboriginal	4
Aboriginal cultural material	4
Aboriginal site.....	4
amending Act.....	70
ASO register	4, 50A(2)
CEO	4
Committee.....	4
declaration.....	4
Department.....	4
Director	4
DP register	4, 50C(2)
expiring permit.....	19C(3)
Minister for Lands.....	66(1), 66(1)
Museum	4
new permit	19C(3)
old section 18.....	72(1)
permit.....	4
person of Aboriginal descent	4
prescribed.....	4
proceedings under this Act.....	4
protected area.....	4
register	4
Registrar.....	4, 4
temporarily protected area	4
the owner of any land.....	18(1)
the Trustees	4
traditional custodian.....	4