



Western Australia

## **Aboriginal Heritage Act 1972**

Compare between:

[03 Jun 2010, 04-d0-02] and [18 Sep 2010, 04-e0-02]



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*<sup>1</sup>.

**2. Commencement**

This Act shall come into operation on a date to be fixed by proclamation<sup>1</sup>.

[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;

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

**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*;

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

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

**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;

***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.]*

## **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 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.]*

### **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.]*

## **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 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

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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.]*



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## 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.]*

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**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 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.]*

### **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**

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,

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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.
- (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

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

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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.]*

**19. Protected areas**

- (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 is aggrieved and the Minister may, if he is satisfied that the complainant has shown reasonable cause why his interest in the matter should be taken into consideration, direct the Committee to consider the representations and report to him on them.
- (3) If upon considering the representations, the report of the Committee, and any further information that the Minister may require the complainant or the 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.]*

**20. Temporarily protected areas**

- (1) Where the 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 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.]*

**21. Objection to declaration**

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

**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.
- (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.]*

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**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 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.

*[Section 24 amended by No. 24 of 1995 s. 25.]*

**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, 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.
- (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.]*

**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 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) 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.]*

## **27. Covenants**

- (1) A person who holds an interest in any land on which an Aboriginal site is located may, so far as 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.

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- (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 himself, his successors in title (including the owners and occupiers for the time being of the land) and the persons deriving title under 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.]*

## **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 is appointed; and
  - (b) ex-officio members.
- (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) 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.]*

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**29. Ex-officio members**

The following persons, namely —

- (a) the person appointed Director of the Museum;
- (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) 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.]*

**30. Resignation, disqualification and co-option**

- (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*<sup>1</sup>;

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.

*[Section 30 amended by No. 24 of 1990 s. 123.]*

### **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 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.

### **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 him of a written request

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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.

**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 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.

**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 him of those provisions if they applied to him at the time of the acceptance of or acting in that office.

*[Section 35 amended by No. 32 of 1994 s. 3(1).]*

**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. 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.]*

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**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 powers and duties under this Part to the Trustees.

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

### **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. 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 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.]*

**41. Notification and production of objects**

- (1) A person who has in his custody or under his 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 custody or under his control, unless he has reasonable cause to believe that information to be already known to the Minister.

Penalty: \$100.

- (2) A person who has in his custody or under his 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).
- (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.]*

**s. 42**

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**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;
  - (b) if the object, in the opinion of the 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 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.]*

**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 is a person of Aboriginal descent acting in a manner sanctioned by relevant Aboriginal custom; 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 he did not wish to purchase it; or
  - (g) he is expressly authorised by the Minister so to do.
- (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 he shall as soon as practicable, in writing, advise the person by whom it was offered to the Minister that 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 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.

**s. 44**

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- (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 he offers the object for sale to the Minister at the price determined by the State Administrative Tribunal.

*[(6) 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.]*

**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 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.]*

**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]*

**s. 47**

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- (5) A person who fails to comply with 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.

*[(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 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.

*[Section 46 amended by No. 24 of 1995 s. 40; No. 55 of 2004 s. 7.]*

**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 this Act applies the Minister may give notice to the person owning, or apparently having the custody and control of, that object of 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.]*

**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.

*[Section 49 amended by No. 24 of 1995 s. 43.]*

## **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 appointment and shall produce such certificate whenever required so to do by any person in respect of whom he has exercised or is about to exercise any of his 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 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.]*

### **51. Powers of inspection**

- (1) Any officer of the Department, or any honorary warden, may, together with any person he may think competent to assist 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 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 considers necessary or desirable,

to the extent required for the purposes of this Act.

- (2) In the exercise of his powers under subsection (1) an officer of the 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) 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.]*

**52. Power of officers to represent the Minister**

In any proceedings a traditional 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 were the party concerned.

*[Section 52 amended by No. 24 of 1995 s. 46.]*

**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 against this Act.
- (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 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.

**55. Breach of conditions**

A person who, having 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 consent or authorisation was made subject, commits an offence.

*[Section 55 amended by No. 8 of 1980 s. 11.]*

**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 him or obtained by 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: \$1 000.

**57. Penalties**

- (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 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 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 Account<sup>2</sup>.

[Section 57 amended by No. 78 of 1995 s. 4 and 147; No. 50 of 2003 s. 35(2).]

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

**s. 59**

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**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, 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.]*

**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
- (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 is the Registrar, that he is satisfied that an object is classified as Aboriginal cultural material is sufficient evidence of that fact.

- (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) 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 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.]*

**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 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.]*

**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 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.

## Part VIII — General

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

[~~63-66~~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) 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) 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.]

### **67. Indemnity**

(1) A person who is, or has been —

(a) the Minister, a Trustee, a member of the Committee, 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 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~~52; amended by No. 8 of 2010 s. 8.]*

#### **68. Regulations**

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.

*[Section 68 inserted by No. 24 of 1995 s. 52.]*

### Notes

<sup>1</sup> 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 <sup>1a-6</sup>. 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
<b>Reprint of the <i>Aboriginal Heritage Act 1972</i> as at 24 Jun 1981</b> (includes amendments listed above)			
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i> s. 3	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</i> Pt. XIV	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</i> s. 123	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</i> s. 3(1)	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> <sup>3,4</sup>	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)
<b>Reprint of the <i>Aboriginal Heritage Act 1972</i> as at 4 Oct 1995</b> (includes amendments listed above)			
<i>Sentencing (Consequential Provisions) Act 1995</i> Pt. 3 and s. 147	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Land Administration) Act 1997</i> Pt. 3 and s. 141	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</i> s. 39	58 of 1999	24 Dec 1999	24 Dec 1999 (see s. 2(1))
<b>Reprint of the Aboriginal Heritage Act 1972 as at 16 Feb 2001</b> (includes amendments listed above)			
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 35	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 1 <sup>5</sup>	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)
<b>Reprint 4: The Aboriginal Heritage Act 1972 as at 7 Mar 2008</b> (includes amendments listed above)			

~~<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.~~

### ~~Provisions that have not come into operation~~

<del>Short title</del>	<del>Number and year</del>	<del>Assent</del>	<del>Commencement</del>
<del><i>Approvals and Related Reforms (No.-3) (Crown Land) Act 2010</i> Pt. 3<sup>2</sup></del>	<del>8 of 2010</del>	<del>3 Jun 2010</del>	<del>To be proclaimed</del> <a href="#">18 Sep 2010</a> (see s. 2(b)) and <i>Gazette</i> <a href="#">17 Sep 2010 p. 4757</a>

<sup>2</sup> 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).

<sup>3</sup> 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.

”

<sup>4</sup> 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.

”

<sup>5</sup> 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.

<sup>6</sup> 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).

<sup>7</sup> ~~On the date as at which this compilation was prepared, the *Approvals and Related Reforms (No. 3) (Crown Land) Act 2010* Pt. 3 had not come into operation. It reads as follows:~~

### ~~Part 3 — Aboriginal Heritage Act 1972 amended~~

#### ~~6. — Act amended~~

~~— This Part amends the *Aboriginal Heritage Act 1972*.~~

#### ~~7. — Section 66 inserted~~

~~— At the beginning of Part VIII insert:~~

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

~~— (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) 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.~~

#### ~~8. — Section 67 amended~~

~~— (1) In section 67 delete “A person” and insert:~~

~~— (1) A person~~

- ~~(2) At the end of section 67 insert:~~
- ~~(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.~~