Western Australia

Aboriginal Heritage Act 1972

As at 28 May 2026 Official Version
[PCO 04-n0-00] Published on www.legislation.wa.gov.au

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Defined terms

Western Australia

Aboriginal Heritage Act 1972

An Act to make provision for the preservation 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.

[Long title inserted: No. 27 of 2021 s. 341; amended: No. 23 of 2023 s. 10.]

Part I — Preliminary

1. Short title

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

2. Commencement

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

*[**3.** Deleted: 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 Heritage Committee established under section 28(1);

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

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: No. 24 of 1995 s. 5; No. 55 of 2004 s. 4; No. 27 of 2021 s. 339; No. 23 of 2023 s. 11.]

Part II — Application and traditional use

*[**4A-4C.** Deleted: No. 23 of 2023 s. 12.]*

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: No. 8 of 1980 s. 2; amended: 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: 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 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: 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: 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: 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: 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: No. 24 of 1995 s. 12.]

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: No. 24 of 1995 s. 12.]

*[**12.** Deleted: 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: 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: 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: 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: 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,

commits an offence unless he is acting with the authorisation of the Registrar under section 16 or under a consent given under section 18(3)(a).

[Section 17 inserted: No. 8 of 1980 s. 6; amended: No. 24 of 1995 s. 18; No. 23 of 2023 s. 13.]

18. Consent to certain uses

(1AA) In this section and section 18A —

approved determination of native title has the meaning given in the Native Title Act section 253;

claim area, in relation to a registered native title claim, means the area registered on the Register of Native Title Claims under the Native Title Act section 186(1)(e) as covered by the registered native title claim;

determination area, in relation to an approved determination of native title, means the area registered on the National Native Title Register under the Native Title Act section 193(2)(c) as covered by the approved determination of native title;

ILUA means an indigenous land use agreement registered on the Register of Indigenous Land Use Agreements established and maintained under the Native Title Act Part 8A;

National Native Title Register has the meaning given in the Native Title Act section 253;

native title has the meaning given in the Native Title Act section 223;

Native Title Act means the *Native Title Act 1993* (Commonwealth);

native title party, in relation to land, means the following —

(a) if the land is the subject of a settlement ILUA — a regional corporation in relation to that land;

(b) if the land is not the subject of a settlement ILUA and is within the external boundary of the determination area of an approved determination of native title (the ***relevant determination***), regardless of whether native title in relation to the land has been extinguished or surrendered — a registered native title body corporate in relation to the relevant determination;

(c) if the land is not the subject of a settlement ILUA and is within the external boundary of the claim area of a registered native title claim (the ***registered claim***), regardless of whether native title in relation to the land has been extinguished or surrendered — a registered native title claimant in relation to the registered claim;

(d) a prescribed person or a person of a prescribed class;

native title rights and interests has the meaning given in the Native Title Act section 223;

new information about an Aboriginal site, in relation to land the subject of a consent given under subsection (3)(a), means information about an Aboriginal site on the land, other than information that a person who made a decision to give, amend or confirm the consent was made aware of for the purposes of making the decision;

regional corporation means —

(a) in relation to land the subject of a settlement ILUA referred to in paragraph (a) of the definition of ***settlement ILUA*** — a Regional Corporation, as defined in the *Land Administration (South West Native Title Settlement) Act 2016* section 3, appointed in respect of the land; or

(b) in relation to the land the subject of the settlement ILUA referred to in paragraph (b) of the definition of ***settlement ILUA*** — the Regional Entity, as defined in that ILUA; or

(c) in relation to land the subject of a settlement ILUA referred to in paragraph (c) of the definition of ***settlement ILUA*** — a prescribed corporation that has functions in respect of the land under, or for the purposes of, the settlement ILUA;

registered native title body corporate has the meaning given in the Native Title Act section 253;

registered native title claim means a claim (within the meaning of the Native Title Act section 184) details of which are contained in the Register of Native Title Claims;

registered native title claimant has the meaning given in the Native Title Act section 253;

Register of Native Title Claims has the meaning given in the Native Title Act section 253;

settlement ILUA means —

(a) a settlement ILUA within the meaning of the *Land Administration (South West Native Title Settlement) Act 2016* section 3; or

(b) the ILUA named the Yamatji Nation Indigenous Land Use Agreement registered on 30 July 2020; or

(c) another prescribed ILUA under which native title rights and interests have been surrendered.

(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, Geothermal Energy and Greenhouse Gas Storage 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 and Greenhouse Gas 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 must 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.

(3A) As soon as practicable after making a decision under subsection (3) or (6A), the Minister must publish notice of the decision on a website maintained by, or on behalf of, the Department.

(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, or a native title party in relation to land, is aggrieved by a decision of the Minister made under subsection (3) or (6A) in relation to the land, the owner or native title party may apply to the State Administrative Tribunal for a review of the decision.

(5A) A provision of a contract or other agreement (whether entered into before, on or after 23 December 2021) that would otherwise prohibit or have the effect of prohibiting a native title party in relation to land, or a person who is a member of such a native title party, from doing any of the following is of no effect —

(a) making an application under subsection (5) in relation to the land;

(b) commencing or being heard in proceedings before a court or tribunal in relation to a matter arising under or in relation to this section in relation to the land;

(c) being heard or making submissions in relation to the performance of a function under this section in relation to the land.

(6) A consent given under subsection (3)(a), whether given before, on or after 23 December 2021, is subject to whichever of the following conditions is applicable —

(a) if the consent was given in relation to a notice under subsection (2) that was given to the Committee referred to in section 72(1) before 23 December 2021 — the condition is that an owner of the land the subject of the consent must, in accordance with the regulations (if any), notify the Minister if the owner becomes aware, on or after 1 July 2023, of any new information about an Aboriginal site on the land the subject of the consent;

(b) if the consent was given in relation to a notice under subsection (2) that was given to the Committee referred to in section 72(1) on or after 23 December 2021 but before 1 July 2023 — the condition is that an owner of the land the subject of the consent must, in accordance with the regulations (if any), notify the Minister if the owner becomes aware, on or after 23 December 2021, of any new information about an Aboriginal site on the land the subject of the consent;

(c) otherwise — the condition is that an owner of the land the subject of the consent must, in accordance with the regulations (if any), notify the Minister if the owner becomes aware, on or after the day on which the consent is given, of any new information about an Aboriginal site on the land the subject of the consent.

(6A) If, in relation to a consent given under subsection (3)(a), the Minister becomes aware of new information about an Aboriginal site, the Minister may, having regard to the general interest of the community, do 1 of the following —

(a) amend the consent by amending the conditions to which it is subject, imposing new conditions or changing the specification of the land to which it relates;

(b) revoke the consent;

(c) revoke the consent and give a new consent;

(d) confirm the consent.

(6B) However, if the Minister becomes aware of the new information about an Aboriginal site because of a notice given in accordance with a condition under subsection (6), the Minister must make a decision under subsection (6A).

(6C) If the Minister proposes to exercise a power under subsection (6A) in relation to a consent, the Minister may suspend the consent in whole or in part. A suspension cannot extend beyond when the exercise of the power under subsection (6A) has taken effect.

(6D) A consent given under subsection (6A)(c) —

(a) is taken to have been given under subsection (3)(a); and

(b) is subject to the condition in subsection (6)(c).

(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 subsection (3)(a) to use any land for a particular purpose nothing done pursuant to, and in accordance with any conditions attached to, the consent constitutes an offence against this Act.

(9) The regulations may provide for —

(a) procedural matters for the purposes of this section; and

(b) timeframes for doing things under or for the purposes of this section, or for performing functions under this section, including by —

(i) prescribing time limits within which a thing required or permitted to be done must be done; and

(ii) prescribing time limits within which a function must be performed; and

(iii) providing for the extension of such time limits.

(10) Regulations under subsection (9) may be made in relation to the jurisdiction of the State Administrative Tribunal under subsection (5) and, to the extent necessary for such regulations, the *State Administrative Tribunal Act 2004* section 92 is excluded.

[Section 18 inserted: No. 8 of 1980 s. 6; amended: 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; No. 27 of 2021 s. 340; No. 23 of 2023 s. 14; No. 17 of 2024 s. 433 and 434.]

18A. Premier may call in application to State Administrative Tribunal for review

(1) In this section —

owner, in relation to land, has a meaning affected by section 18(1) and (1a);

party, to an application, means —

(a) the applicant; and

(b) any other party to proceedings in the State Administrative Tribunal arising from the application.

(2) If an application is made to the State Administrative Tribunal under section 18(5) for review of a decision of the Minister made under section 18(3) or (6A), the Premier may determine the application if the Premier considers that the application raises issues of such State or regional importance that it would be appropriate for the application to be determined by the Premier.

(3) The Premier may —

(a) direct the President of the State Administrative Tribunal to refer the application to the Premier for determination; or

(b) direct the State Administrative Tribunal to hear the application and then, without determining it, refer it, with recommendations, to the Premier for determination.

(4) The Premier cannot give a direction under subsection (3) —

(a) more than 14 days, or any longer period prescribed by the regulations, after the application is made to the State Administrative Tribunal; or

(b) after a final determination has been made in relation to the application.

(5) If the Premier gives a direction under subsection (3), the Premier —

(a) must, within 14 days after the direction is given, give a copy of the direction to each party to the application and to the owner of the land the subject of the application if the owner is not a party; and

(b) may give a copy of the direction to any native title party in relation to the land that is not a party to the application; and

(c) must, as soon as is practicable, cause a copy of the direction to be laid before each House of Parliament.

(6) The Premier may suspend the decision the subject of the application, in which case the decision is, while it is suspended, taken not to have been made. A suspension cannot extend beyond when the exercise of the power under subsection (9) has taken effect.

(7) If the Premier gives a direction under subsection (3)(a), the owner of the land the subject of the application, and each native

title party in relation to the land, may make written submissions to the Premier.

(8) In determining the application, the Premier —

(a) must take into account submissions made under subsection (7); and

(b) must have regard to the general interest of the community; and

(c) may take into account any other matter that the Premier considers relevant.

(9) In determining the application, the Premier must do 1 of the following —

(a) if the decision the subject of the application was to give, amend or confirm a consent —

(i) confirm the decision the subject of the application;

(ii) amend the consent by amending the conditions to which it is subject, imposing new conditions or changing the specification of the land to which it relates;

(iii) revoke the consent;

(iv) revoke the consent and give a new consent;

(b) otherwise —

(i) confirm the decision the subject of the application;

(ii) give a consent;

(iii) reverse the decision.

(10) On determining the application, the Premier —

(a) must give written reasons for the determination to each party to the application and to the owner of the land the subject of the application if the owner is not a party; and

(b) may give written reasons for the determination to any native title party in relation to the land that is not a party to the application; and

(c) must, as soon as is practicable, cause a copy of those reasons to be laid before each House of Parliament.

(11) A consent given under subsection (9)(a)(iv) or (b)(ii) —

(a) is taken to have been given under section 18(3)(a), except that section 18(5) does not apply in relation to the decision to give the consent; and

(b) is subject to the condition in section 18(6)(c).

(12) The regulations may provide for —

(a) procedural matters for the purposes of this section; and

(b) timeframes for doing things under or for the purposes of this section, or for performing functions under this section, including by —

(i) prescribing time limits within which a thing required or permitted to be done must be done; and

(ii) prescribing time limits within which a function must be performed; and

(iii) providing for the extension of such time limits.

(13) Regulations under subsection (12) may be made in relation to hearings referred to in subsection (3)(b) and, to the extent necessary for such regulations, the *State Administrative Tribunal Act 2004* section 92 is excluded.

[Section 18A inserted: No. 23 of 2023 s. 15.]

18B. Change in ownership of land subject of s. 18 consent

(1) In this section —

owner, in relation to land, has a meaning affected by section 18(1) and (1a).

(2) If there is a change in ownership of land the subject of a consent under section 18(3)(a), an owner of the land must give notice in writing to the Minister within the period prescribed by the regulations.

Penalty for this subsection: a fine of $1 000.

(3) If, on receipt of a notice under subsection (2), the Minister is satisfied that the consent, or a condition to which the consent is subject, does not, because of the change in ownership, have its intended effect, the Minister may amend the consent accordingly.

(4) As soon as practicable after making a decision under subsection (3), the Minister must —

(a) give written notice of the decision to the person who gave notice under subsection (2); and

(b) publish notice of the decision on a website maintained by, or on behalf of, the Department.

(5) If there is a change in ownership of land the subject of a consent under section 18(3)(a), the Minister may, on written application by an owner of the land, revoke the consent.

(6) Regulations may provide for and in relation to notices for the purposes of this section, including the following —

(a) additional notice requirements to be imposed on an owner of land or other persons;

(b) the information that must be included in a notice;

(c) the period within which a notice must be given.

[Section 18B inserted: No. 23 of 2023 s. 15.]

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: No. 8 of 1980 s. 6; amended: 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: 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: No. 8 of 1980 s. 7; amended: 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: 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: No. 24 of 1995 s. 24.]

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: 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: 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: 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.

(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: No. 24 of 1995 s. 28.]

Part 5 — Aboriginal Cultural Heritage Committee

[Heading inserted: No. 23 of 2023 s. 16.]

28. Aboriginal Cultural Heritage Committee established

(1) A body called the Aboriginal Cultural Heritage Committee is established.

(2) The Committee is an agent of the State and has the status, immunities and privileges of the State.

[Section 28 inserted: No. 23 of 2023 s. 17.]

29. Composition of Committee

(1) The Committee is comprised of the following members —

(a) 2 persons appointed by the Minister to be chairpersons, each of whom is a person of Aboriginal descent —

(i) 1 of whom, in accordance with Aboriginal tradition, has rights, interests and responsibilities in respect of women's business; and

(ii) 1 of whom, in accordance with Aboriginal tradition, has rights, interests and responsibilities in respect of men's business;

and

(b) between 4 and 9 other persons appointed by the Minister.

(2) The Minister must seek nominations, in accordance with regulations made for the purposes of section 32, of persons for appointment as members.

(3) The Minister must ensure that —

(a) the members have, between them, such knowledge, skills and experience as the Minister considers appropriate to enable them to effectively perform the functions of the Committee under this Act; and

(b) as far as practicable —

(i) the majority of the members are persons of Aboriginal descent; and

(ii) the gender composition of the Committee is balanced.

[Section 29 inserted: No. 23 of 2023 s. 17.]

30. Procedures

Subject to regulations made for the purposes of section 32, the Committee may determine its own procedures.

[Section 30 inserted: No. 23 of 2023 s. 17.]

31. Remuneration of members of Committee or subcommittee

(1) A member of the Committee, or of a subcommittee, is entitled to be paid the remuneration and allowances determined by the Minister on the recommendation of the Public Sector Commissioner unless the member is a public service officer.

(2) In subsection (1) —

subcommittee means a subcommittee of the Committee established under regulations made for the purposes of section 32.

[Section 31 inserted: No. 23 of 2023 s. 17.]

32. Regulations about Committee

Regulations may be made about the Committee, including the following —

(a) nomination, appointment, term of office, resignation and removal from office of members of the Committee or of a subcommittee of the Committee;

(b) alternate members of the Committee to deputise for members temporarily unable or unavailable to act;

(c) the establishment of, and other matters relating to, subcommittees of the Committee;

(d) management of conflicts of interest of members of the Committee or of a subcommittee of the Committee;

(e) meetings and proceedings of the Committee, including the following —

(i) chairing meetings;

(ii) holding remote meetings;

(iii) making resolutions without meetings.

[Section 32 inserted: No. 23 of 2023 s. 17.]

*[**33-36.** Deleted: No. 23 of 2023 s. 17.]*

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: 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: 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: 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: 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: 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: 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: 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: 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: No. 24 of 1995 s. 35.]

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: 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.

(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: 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: 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: 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]

(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: 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: 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: 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: 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: 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: 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: 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: 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 consent or authorisation was made subject, commits an offence.

[Section 55 amended: No. 8 of 1980 s. 11; No. 23 of 2023 s. 18.]

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) deleted]

(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 [1].

[Section 57 amended: No. 78 of 1995 s. 4 and 147; No. 50 of 2003 s. 35(2); No. 9 of 2023 s. 10.]

58. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

s. 17	s. 18B(2)
s. 43(7)	s. 55

[Section 58 inserted: No. 9 of 2023 s. 11; amended: No. 23 of 2023 s. 19.]

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: 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: 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: 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: No. 24 of 1995 s. 50.]

*[**63-65.** Deleted: 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: 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: No. 24 of 1995 s. 52; amended: No. 8 of 2010 s. 8.]

67A. Fees regulations

(1) In this section —

fee includes a charge.

(2) Regulations may prescribe, or provide for the determination of, fees payable in relation to the performance of functions under this Act.

(3) Without limiting subsection (2), regulations may provide for the following —

(a) fees determined on the basis of recovering the costs of the performance of functions in relation to a particular case;

(b) interest payable on unpaid fees;

(c) penalties for, and other consequences of, failure to pay fees, late payment of fees or underpayment of fees;

(d) recovery of fees.

(4) Nothing in this section limits the operation of the *Interpretation Act 1984* sections 43, 45 and 45A.

[Section 67A inserted: No. 23 of 2023 s. 20.]

68. Regulations

(1) 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.

(2) The regulations may provide —

(a) that contravention of a regulation is an offence; and

(b) for the offence to be punishable on conviction by a penalty not exceeding a fine of $20 000.

(3) Section 57(1) does not apply to offences against the regulations.

[Section 68 inserted: No. 24 of 1995 s. 52; amended: No. 23 of 2023 s. 21.]

Part 9 — Transitional provisions for *Aboriginal Heritage Legislation Amendment and Repeal Act 2023*

[Heading inserted: No. 23 of 2023 s. 8.]

69. Terms used

In this Part —

2021 Act means the *Aboriginal Cultural Heritage Act 2021*;

2023 amendment Act means the ***Aboriginal Heritage Legislation Amendment and Repeal Act 2023***;

ACH Council means the body referred to in section 72(2)(a);

repeal day means the day on which section 3 of the 2023 amendment Act comes into operation;

transitional regulations has the meaning given in section 71(2).

[Section 69 inserted: No. 23 of 2023 s. 8; amended: No. 23 of 2023 s. 22.]

70. Application of *Interpretation Act 1984*

The *Interpretation Act 1984* applies in relation to a repeal or amendment under the 2023 amendment Act subject to this Part and transitional regulations.

[Section 70 inserted: No. 23 of 2023 s. 8.]

71. Transitional regulations

(1) In this section —

assent day means the day on which the 2023 amendment Act receives the Royal Assent;

publication day, for transitional regulations, means the day on which the transitional regulations are published in accordance with the *Interpretation Act 1984* section 41(1)(a);

specified means specified or described in transitional regulations;

transitional matter —

(a) means a matter or issue of a transitional nature that arises as a result of either or both of the following —

(i) the enactment of the 2023 amendment Act;

(ii) a repeal or amendment under the 2023 amendment Act;

and

(b) includes a saving or application matter or issue.

(2) Regulations (***transitional regulations***) may do either or both of the following —

(a) make any provision that is necessary or convenient for dealing with a transitional matter;

(b) make any provision that is necessary or convenient in consequence of, or for giving effect to, either or both of the following —

(i) the enactment of the 2023 amendment Act;

(ii) a repeal or amendment under the 2023 amendment Act.

(3) Without limiting subsection (2), transitional regulations may do any of the following —

(a) provide for any specified act or thing done or omitted to be done by, to or in respect of a specified person or body to be taken to have been done or omitted to be done by, to or in respect of another specified person or body;

(b) provide for any specified act or thing done or omitted to be done under the 2021 Act, or regulations made under the 2021 Act, to be taken to have been done or omitted to be done under this Act or another written law;

(c) provide for the substitution of a specified person or body for another specified person or body as a party to any proceedings;

(d) provide for proceedings and remedies that might have been commenced by, or available to or against, a specified person or body to be commenced by, or to be available to or against, another specified person or body;

(e) provide for the transfer of, or the creation of interests in, specified property, rights or liabilities;

(f) provide for the modification of specified agreements or other instruments;

(g) provide for a specified person or body to take possession of books, documents or other records, however compiled or stored, that are or were in the possession of another specified person or body;

(h) provide for officers of the Department to be able to exercise powers under the *Criminal Investigation Act 2006*;

(i) provide for the 2021 Act, or a specified provision of the 2021 Act, to continue to apply (with or without specified modifications) to, or in relation to, a specified matter or thing as if the 2021 Act had not been repealed;

(j) provide for regulations made under the 2021 Act, or a specified provision of regulations made under the 2021 Act, to continue to apply (with or without specified modifications) to, or in relation to, a specified matter or thing as if the regulations had not been repealed;

(k) deal with any incidental or supplementary matters or issues relating to a provision of this Part or transitional regulations, including by making provisions that do any of the following —

(i) require, or provide for, a specified person or body to enter into an agreement with, or execute an instrument in favour of, another specified person or body;

(ii) require, or provide for, a specified person or body to register or record a document or transaction in a specified register;

(iii) require, or provide for, a specified person or body otherwise to maintain, modify or make an entry in a specified register;

(iv) provide for enforcement by way of civil proceedings for an injunction, or for any other appropriate remedy or relief, in the Supreme Court or any other court.

(4) Transitional regulations may provide that specified provisions of this Act (including this Part but excluding this section) or another written law —

(a) do not apply to, or in relation to, a specified matter or thing; or

(b) apply with specified modifications to, or in relation to, a specified matter or thing.

(5) If transitional regulations provide that a specified state of affairs is taken to have existed, or not to have existed, on and after a day that is earlier than publication day but not earlier than assent day, the transitional regulations have effect according to their terms.

(6) If transitional regulations contain a provision referred to in subsection (5), the provision does not operate so as to —

(a) affect in a manner prejudicial to a person (other than the State or an authority of the State) the rights of that person existing before publication day; or

(b) impose liabilities on a person (other than the State or an authority of the State) in respect of an act done, or an omission made, before publication day.

[Section 71 inserted: No. 23 of 2023 s. 8.]

72. Abolition of bodies and appointment of members of Committee

(1) At the beginning of repeal day, the Aboriginal Cultural Material Committee established under section 28, as in force before repeal day, is abolished (and its members go out of office).

(2) At the beginning of repeal day —

(a) the Aboriginal Cultural Heritage Council established under section 20(1) of the 2021 Act is abolished (and its members go out of office); and

(b) any committee established under section 30(1) of the 2021 Act is abolished (and its members go out of office).

(3) The person who, immediately before repeal day, is the member of the ACH Council under section 21(1)(a)(i) of the 2021 Act is taken to be appointed as the member of the Committee under section 29(1)(a)(i) at the beginning of repeal day.

(4) The person who, immediately before repeal day, is the member of the ACH Council under section 21(1)(a)(ii) of the 2021 Act is taken to be appointed as the member of the Committee under section 29(1)(a)(ii) at the beginning of repeal day.

(5) A person who, immediately before repeal day, is a member of the ACH Council under section 21(1)(b) of the 2021 Act is taken to be appointed as a member of the Committee under section 29(1)(b) at the beginning of repeal day.

(6) A person who is taken to be appointed as a member of the Committee under any of subsections (3) to (5) holds office —

(a) for a term equal to the unfinished part of the person's term of office under the 2021 Act; and

(b) otherwise in accordance with the person's instrument of appointment under the 2021 Act.

(7) A determination made under section 32 of the 2021 Act that is in effect immediately before repeal day continues in effect as if it had been made under section 31.

[Section 72 inserted: No. 23 of 2023 s. 23.]

73. Protected area orders

(1) In this section —

historical protected area order means an order made under section 315(1) of the 2021 Act that, under section 316(1) of the 2021 Act, is in effect immediately before repeal day as if it were an order made under section 82(1) of the 2021 Act;

protected area order means —

(a) subject to subsection (8), an order made under section 82(1) of the 2021 Act that is in effect immediately before repeal day; or

(b) an historical protected area order;

spent protected area order —

(a) means an order that, under section 316(1) of the 2021 Act, is in effect immediately before repeal day as if it were an order made under section 82(1) of the 2021 Act; but

(b) does not include an historical protected area order.

(2) On and after repeal day —

(a) a protected area order continues in effect as if it were an order made under section 19(4); and

(b) the area declared by the protected area order as a protected area is, accordingly, a protected area for the purposes of this Act; and

(c) the protected area order may be varied or revoked under section 25 accordingly.

(3) Subsection (2) applies even if the area declared by the protected area order as a protected area, or any area included in that protected area —

(a) could not be declared to be a protected area under section 19(4); or

(b) could not be included in an area declared to be a protected area under section 19(4).

(4) If any conditions were stated in the protected area order under section 82(3)(d) or 315(5)(d) of the 2021 Act, the conditions cease to have effect at the beginning of repeal day.

(5) Section 21 does not apply in relation to an area that is a protected area by virtue of subsection (2).

(6) For the purposes of section 22(1), the exclusive right to the occupation and use of a place that is a protected area by virtue of subsection (2) vests in the Minister on behalf of the Crown at the beginning of repeal day.

(7) No person is entitled to be paid compensation under section 22(2) in relation to an area that is a protected area by virtue of subsection (2).

(8) Paragraph (a) of the definition of ***protected area order*** in subsection (1) does not include an order that, under section 316(1) of the 2021 Act, is in effect immediately before repeal day as if it were an order made under section 82(1) of the 2021 Act.

(9) All spent protected area orders are repealed.

[Section 73 inserted: No. 23 of 2023 s. 23.]

74. Previous consents under s. 18

(1) A consent that was in force and effect under section 18 immediately before 1 July 2023 is, on and after repeal day, in force and effect under, and subject to, section 18.

(2) A consent that was given under section 18 on or after 1 July 2023 but before repeal day is, on and after repeal day, in force and effect under, and subject to, section 18.

(3) Neither subsection (1) nor subsection (2) applies to the following —

(a) a consent that, before repeal day, expires in accordance with its terms;

(b) an historical AH Act section 18 consent that a person was taken to hold under section 328(1) of the 2021 Act;

(c) a purported section 18 consent (as was defined in section 330(2) of the 2021 Act).

(4) For the purposes of section 18(5), the effect of subsection (1) or (2) is not to be regarded as a decision of the Minister.

(5) A consent to which subsection (1) or (2) applies is subject to the condition in section 18(6)(a) or (b) depending on the day on which the notice under section 18(2) to which the consent relates was given to the Committee referred to in section 72(1).

[Section 74 inserted: No. 23 of 2023 s. 23.]

75. Previous other authorisations, approvals and consents

(1) An authorisation that was in force and effect under section 16(2) immediately before 1 July 2023 is, on and after repeal day, in force and effect under, and subject to, section 16(2).

(2) An authorisation that was given under section 16(2) on or after 1 July 2023 but before repeal day is, on and after repeal day, in force and effect under, and subject to, section 16(2).

(3) An approval referred to in the *Aboriginal Heritage Regulations 1974* regulation 7 that was in force and effect under that regulation immediately before 1 July 2023 is, on and after repeal day, in force and effect under, and subject to, that regulation.

(4) An approval referred to in the *Aboriginal Heritage Regulations 1974* regulation 7 that was given on or after 1 July 2023 but before repeal day is, on and after repeal day, in force and effect under, and subject to, that regulation.

(5) A consent referred to in the *Aboriginal Heritage Regulations 1974* regulation 10 that was in force and effect under that regulation immediately before 1 July 2023 is, on and after repeal day, in force and effect under, and subject to, that regulation.

(6) A consent referred to in the *Aboriginal Heritage Regulations 1974* regulation 10 that was given on or after 1 July 2023 but before repeal day is, on and after repeal day, in force and effect under, and subject to, that regulation.

(7) None of subsections (1) to (6) applies to an authorisation, approval or consent that, before repeal day, expires in accordance with its terms.

[Section 75 inserted: No. 23 of 2023 s. 23.]

76. ACH permits

(1) In this section —

ACH permit has the meaning that was given in section 100 of the 2021 Act.

(2) An ACH permit that is granted before repeal day on an application made under section 115(1) of the 2021 Act (whether or not the ACH permit takes effect before repeal day) is, on and after repeal day —

(a) a consent given under section 18(3)(a); and

(b) subject to section 18 accordingly.

(3) The consent is subject to the condition in section 18(6)(c) and, for the purposes of that condition, the day on which the consent is given is the day on which the ACH permit is granted.

(4) In relation to the consent, in the definition of ***new information about an Aboriginal site*** in section 18(1AA) —

(a) the reference to a person who made a decision to give, amend or confirm the consent includes a reference to the ACH Council as the body that decided to grant the ACH permit; and

(b) accordingly, the reference to the purposes of making the decision includes a reference to the purposes of making the decision to grant the ACH permit.

(5) For the purposes of section 18(5), the effect of subsection (2) is not to be regarded as a decision of the Minister.

(6) Subsection (7) applies to an application made under section 115(1) of the 2021 Act before repeal day if none of the following occurs before repeal day —

(a) the ACH Council refuses to consider, or consider further, the application under section 117 of the 2021 Act;

(b) the ACH Council grants an ACH permit on the application (whether or not the ACH permit takes effect before repeal day);

(c) the ACH Council refuses to grant an ACH permit on the application.

(7) On and after repeal day, the application is taken to be a notice given to the Committee under section 18(2) and is to be dealt with accordingly.

(8) If a consent is given under section 18(3)(a) in relation to the notice, the consent is subject to the condition in section 18(6)(c).

[Section 76 inserted: No. 23 of 2023 s. 23.]

77. ACH management plans

(1) In this section —

ACH management plan has the meaning that was given in section 137(1) of the 2021 Act.

(2) An approval or authorisation of an ACH management plan that is given before repeal day on an application made under section 147(1) or 157(1) of the 2021 Act (whether or not the approval or authorisation takes effect before repeal day) is, on and after repeal day —

(a) a consent given under section 18(3)(a); and

(b) subject to section 18 accordingly.

(3) The consent includes the approved or authorised ACH management plan.

(4) The consent is subject to the condition in section 18(6)(c) and, for the purposes of that condition, the day on which the consent is given is the day on which the approval or authorisation of the ACH management plan is given.

(5) In relation to the consent, in the definition of ***new information about an Aboriginal site*** in section 18(1AA) —

(a) the reference to a person who made a decision to give, amend or confirm the consent includes a reference to, as the case requires —

(i) the ACH Council as the body that decided to give the approval of the ACH management plan; or

(ii) the Minister in relation to the 2021 Act as the person who decided to give the authorisation of the ACH management plan;

and

(b) accordingly, the reference to the purposes of making the decision includes a reference to the purposes of making

the decision to give the approval or authorisation of the ACH management plan.

(6) For the purposes of section 18(5), the effect of subsection (2) is not to be regarded as a decision of the Minister.

(7) Subsection (8) applies to an application made under section 147(1) of the 2021 Act before repeal day if none of the following occurs before repeal day —

(a) the ACH Council refuses to consider, or consider further, the application under section 149 of the 2021 Act;

(b) the ACH Council approves the ACH management plan to which the application relates (whether or not the approval takes effect before repeal day);

(c) the ACH Council refuses to approve the ACH management plan to which the application relates.

(8) On and after repeal day, the application is taken to be a notice given to the Committee under section 18(2) and is to be dealt with accordingly.

(9) If a consent is given under section 18(3)(a) in relation to the notice, the consent is subject to the condition in section 18(6)(c).

(10) Subsection (11) applies to an application made under section 157(1) of the 2021 Act before repeal day if none of the following occurs before repeal day —

(a) the ACH Council refuses to consider, or consider further, the application under section 159 of the 2021 Act;

(b) in respect of the application, the Minister in relation to the 2021 Act authorises a plan under section 165(1)(b)(i) of the 2021 Act (whether or not the authorisation takes effect before repeal day);

(c) in respect of the application, the Minister in relation to the 2021 Act refuses to authorise a plan under section 165(1)(b)(ii) of the 2021 Act.

(11) On and after repeal day, the application is taken to be a notice given to the Committee under section 18(2) and is to be dealt with accordingly.

(12) If a consent is given under section 18(3)(a) in relation to the notice, the consent is subject to the condition in section 18(6)(c).

[Section 77 inserted: No. 23 of 2023 s. 23.]

78. Marandoo Act area

(1) In this section —

Marandoo Act area means the land described in the *Aboriginal Heritage (Marandoo) Act 1992* Schedule 1 Part 1, Schedule 2 Part 1 and Schedule 3 Part 1 immediately before 1 July 2023;

Note for this definition:

The *Aboriginal Heritage (Marandoo) Act 1992* was repealed on 1 July 2023 by section 312 of the 2021 Act.

Marandoo Reduced Area dataset means the geographical information systems spatial dataset titled "WA_MRA_20230524.shp" that was held by the chief executive officer of the Department on 24 May 2023;

Note for this definition:

This is the geographical information systems spatial dataset referred to in the definition of ***Marandoo Reduced Area dataset*** in the *Marandoo Reduced Area Order 2023* dated 24 May 2023 and published in the *Gazette* on 30 May 2023 at p. 1365.

owner, in relation to the specified land, means a person who, immediately before 1 July 2023, was using the specified land for the specified purpose;

specified land means the area of land that is part of the Marandoo Act area described in the Marandoo Reduced Area dataset;

specified purpose means undertaking any activity for and incidental to the exploration, mining, processing and transporting of iron ore, including, but not limited to, the construction, operation and maintenance of railways, power lines, roads and other associated infrastructure.

(2) The owner of specified land is taken to have been given, at the beginning of repeal day, a consent under section 18(3)(a) to use the specified land for the specified purpose.

(3) For the purposes of subsection (2) —

(a) the specified land is taken —

(i) to be the land the subject of the consent; and

(ii) to be specified in the consent;

and

(b) the specified purpose is taken —

(i) to be the purpose for which the land the subject of the consent may be used; and

(ii) to be specified in the consent.

(4) The consent is subject to the condition in section 18(6)(a) and is otherwise subject to section 18.

(5) In relation to the consent, section 18(1AA) applies as if the following definition were substituted for the definition of ***new information about an Aboriginal site*** —

new information about an Aboriginal site, in relation to land the subject of a consent given under subsection (3)(a), means information about an Aboriginal site on the land;

(6) For the purposes of section 18(5), the effect of subsection (2) is not to be regarded as a decision of the Minister.

(7) The chief executive officer of the Department must ensure that the Marandoo Reduced Area dataset is publicly available on a website maintained by, or on behalf of, the Department.

[Section 78 inserted: No. 23 of 2023 s. 23.]

79. Completion of certain things commenced

(1) Anything commenced by the ACH Council before repeal day may be continued by the Committee on and after repeal day, to the extent to which the doing of that thing is within the functions of the Committee.

(2) On and after repeal day, the Minister in relation to the 2021 Act continues in existence for the purpose of dealing with and finalising any proceedings commenced by or against the ACH Council or the Minister before that day.

(3) While the Minister in relation to the 2021 Act continues in existence under subsection (2), the Minister has the powers to do any act that the Minister considers necessary or convenient to do for the purpose for which the Minister is continued in existence.

(4) This section applies despite the repeal of the 2021 Act.

[Section 79 inserted: No. 23 of 2023 s. 23.]

80. Orders etc. under 2021 Act cease to have effect

(1) If a term used in subsection (2) (other than ***repeal day***) was given a meaning in section 11 of the 2021 Act, it has the same meaning in subsection (2).

(2) Any of the following that is in effect immediately before repeal day ceases to have effect at the beginning of repeal day —

(a) a prohibition order;

(b) a remediation order;

(c) a stop activity order;

(d) a designation under section 37(1) of the 2021 Act;

(e) a designation under section 224(1) of the 2021 Act;

(f) an appointment under section 225(1) of the 2021 Act;

(g) an entry warrant under Part 10 Division 4 of the 2021 Act that is not executed before repeal day;

(h) any guidelines approved under Part 13 Division 3 Subdivision 2 of the 2021 Act.

(3) A person whose designation or appointment ceases to have effect under subsection (2)(e) or (f) must, within 14 days after repeal day, return the identity card given to the person under section 226(1) of the 2021 Act to the chief executive officer of the Department.

(4) Any proceedings on an application for an entry warrant under Part 10 Division 4 of the 2021 Act that are commenced, but not completed, before repeal day are terminated at the beginning of repeal day.

[Section 80 inserted: No. 23 of 2023 s. 23.]

81. Information and documents on ACH Directory

On repeal day, all of the information and documents that were transferred under section 331 of the 2021 Act must be transferred to, and recorded in, a register under section 38.

[Section 81 inserted: No. 23 of 2023 s. 23.]

82. Aboriginal ancestral remains

(1) In this section —

Aboriginal ancestral remains has the meaning that was given in section 11 of the 2021 Act.

(2) This section applies to Aboriginal ancestral remains if —

(a) the ancestral remains are transferred into the custody of the ACH Council under the 2021 Act before repeal day; and

(b) the ancestral remains are still in the custody of the ACH Council immediately before repeal day.

(3) On repeal day, the ancestral remains must be transferred into the custody of the Committee.

(4) Despite the repeal of the 2021 Act, the Committee may then deal with the ancestral remains in accordance with section 60(a) to (c) of the 2021 Act as in force before repeal day (and as if references in those paragraphs to the ACH Council were references to the Committee).

[Section 82 inserted: No. 23 of 2023 s. 23.]

83. Secret or sacred objects

(1) In this section —

secret or sacred object has the meaning that was given in section 11 of the 2021 Act.

(2) This section applies to a secret or sacred object if —

(a) the object is transferred into the custody of the ACH Council under the 2021 Act before repeal day; and

(b) the object is still in the custody of the ACH Council immediately before repeal day.

(3) On repeal day, the object must be transferred into the custody of the Committee.

(4) Despite the repeal of the 2021 Act, the Committee may then deal with the object in accordance with section 66(a) to (c) of the 2021 Act as in force before repeal day (and as if references in those paragraphs to the ACH Council were references to the Committee).

[Section 83 inserted: No. 23 of 2023 s. 23.]

84. Offences

(1) Any proceedings for an offence committed under the 2021 Act (including regulations made under that Act) before repeal day may be continued, or commenced, on or after repeal day as if the 2021 Act (including regulations made under that Act) had not been repealed, and a person may be punished for the offence accordingly.

(2) Without limiting subsection (1), the following provisions of the 2021 Act apply in relation to any proceedings that are continued or commenced as referred to in subsection (1) as if the 2021 Act (including regulations made under that Act) had not been repealed —

(a) Part 5 Division 3;

(b) section 258;

(c) section 261;

(d) section 262;

(e) Part 11 Divisions 3 and 4.

(3) For the purposes of subsection (1), proceedings may be continued or commenced by the chief executive officer of the Department or a person authorised by that chief executive officer.

(4) Subsection (3) does not limit the ability of a person to commence or continue proceedings if the person has authority at law to do so.

(5) Despite subsection (2)(b), section 258(2) of the 2021 Act does not apply, but if the seized thing is an Aboriginal object (as was defined in section 11 of the 2021 Act) —

(a) the court's power under section 258(1) of the 2021 Act is limited to ordering the forfeiture of the object to the State and that the object be transferred into the custody of the Committee; and

(b) if the object is so transferred — despite the repeal of the 2021 Act, the Committee may then deal with the object in accordance with section 66(a) to (c) of the 2021 Act as in force before repeal day (and as if references in those paragraphs to the ACH Council were references to the Committee).

(6) For the purposes of subsection (5), it does not matter if the seized thing is not a secret or sacred object (as was defined in section 11 of the 2021 Act).

(7) This section applies despite *The Criminal Code* section 11.

[Section 84 inserted: No. 23 of 2023 s. 23.]

85. Dealing with seized things

(1) Section 241 of the 2021 Act continues to apply, subject to this section, on and after repeal day in relation to things seized before repeal day as if the 2021 Act had not been repealed.

(2) The functions of the inspector under section 241(2) of the 2021 Act are functions of any officer of the Department authorised by the chief executive officer of the Department for the purposes of this section.

(3) The functions of the CEO under section 241(2) of the 2021 Act are functions of the chief executive officer of the Department.

(4) Section 241(3) of the 2021 Act does not apply, but if the seized thing is an Aboriginal object (as was defined in section 11 of the 2021 Act) —

(a) the chief executive officer's power under section 241(2) of the 2021 Act to give directions is limited to directing that the object be transferred into the custody of the Committee; and

(b) if the object is so transferred — despite the repeal of the 2021 Act, the Committee may then deal with the object in accordance with section 66(a) to (c) of the 2021 Act

as in force before repeal day (and as if references in those paragraphs to the ACH Council were references to the Committee).

(5) For the purposes of subsection (4), it does not matter if the seized thing is not a secret or sacred object (as was defined in section 11 of the 2021 Act).

(6) In section 241(4)(b) of the 2021 Act the reference to the Aboriginal Cultural Heritage Account established under section 279(1) of the 2021 Act is to be read as a reference to the Consolidated Account.

[Section 85 inserted: No. 23 of 2023 s. 23.]

86. Application of *Criminal and Found Property Disposal Act 2006*

(1) Section 259(1) of the 2021 Act continues to apply in relation to the following as if the 2021 Act had not been repealed —

(a) a seized thing (as was defined in section 221 of the 2021 Act) that is seized before repeal day;

(b) a thing forfeited under section 258 of the 2021 Act before repeal day;

(c) a thing forfeited under section 258 of the 2021 Act as that section continues to apply on and after repeal day under section 84.

(2) For the purposes of subsection (1), in section 259(1)(a) of the 2021 Act the reference to section 241 of the 2021 Act includes that section as it continues to apply under section 85.

(3) For the purposes of subsection (1), the Department, when assisting the Minister in the administration of this Act, is a prescribed agency for the purposes of the *Criminal and Found Property Disposal Act 2006*.

[Section 86 inserted: No. 23 of 2023 s. 23.]

87. Closure of accounts

(1) In this section —

ACH Account means the account that was established under section 279(1) of the 2021 Act;

ACH Compensation Fund means the account that was established under section 280(1) of the 2021 Act.

(2) On repeal day, any moneys standing to the credit of the ACH Account or the ACH Compensation Fund must be credited to the Consolidated Account, and the ACH Account and the ACH Compensation Fund must then be closed.

(3) Any amount referred to in section 279(5) or 280(5) of the 2021 Act as in force before repeal day that becomes payable, but is not paid, before repeal day must be paid to the chief executive officer of the Department and credited to the Consolidated Account.

[Section 87 inserted: No. 23 of 2023 s. 23.]

Notes

This is a compilation of the *Aboriginal Heritage Act 1972* and includes amendments made by other written laws [5]. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Aboriginal Heritage Act 1972	53 of 1972	2 Oct 1972	15 Dec 1972 (see s. 2 and *Gazette* 15 Dec 1972 p. 4681)
Aboriginal Heritage Amendment Act (No. 2) 1980	8 of 1980	23 Sep 1980	23 Sep 1980
Reprint of the *Aboriginal Heritage Act 1972* as at 24 Jun 1981 (includes amendments listed above)			
Acts Amendment (Financial Administration and Audit) Act 1985 s. 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and *Gazette* 30 Jun 1986 p. 2255)
Acts Amendment (Land Administration) Act 1987 Pt. XIV	126 of 1987	31 Dec 1987	16 Sep 1988 (see s. 2 and *Gazette* 16 Sep 1988 p. 3637)
Guardianship and Administration Act 1990 s. 123	24 of 1990	7 Sep 1990	20 Oct 1992 (see s. 2 and *Gazette* 2 Oct 1992 p. 4811)
Acts Amendment (Public Sector Management) Act 1994 s. 3(1)	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and *Gazette* 30 Sep 1994 p. 4948)
Aboriginal Heritage Amendment Act 1995 [2, 3]	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 *Gazette* 30 Jun 1995 p. 2781)
Reprint of the *Aboriginal Heritage Act 1972* as at 4 Oct 1995 (includes amendments listed above)			
Sentencing (Consequential Provisions) Act 1995 Pt. 3 and s. 147	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and *Gazette* 25 Oct 1996 p. 5632)

Short title	Number and year	Assent	Commencement
Acts Amendment (Land Administration) Act 1997 Pt. 3 and s. 141	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and *Gazette* 27 Mar 1998 p. 1765)
Gas Corporation (Business Disposal) Act 1999 s. 39	58 of 1999	24 Dec 1999	24 Dec 1999 (see s. 2(1))
Reprint of the *Aboriginal Heritage Act 1972* as at 16 Feb 2001 (includes amendments listed above)			
Sentencing Legislation Amendment and Repeal Act 2003 s. 35	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and *Gazette* 14 May 2004 p. 1445)
State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 1 [4]	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7130)
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction in *Gazette* 7 Jan 2005 p. 53))
Petroleum Amendment Act 2007 s. 89	35 of 2007	21 Dec 2007	19 Jan 2008 (see s. 2(b) and *Gazette* 18 Jan 2008 p. 147)
Reprint 4: The *Aboriginal Heritage Act 1972* as at 7 Mar 2008 (includes amendments listed above)			
Approvals and Related Reforms (No. 3) (Crown Land) Act 2010 Pt. 3	8 of 2010	3 Jun 2010	18 Sep 2010 (see s. 2(b) and *Gazette* 17 Sep 2010 p. 4757)
Water Services Legislation Amendment and Repeal Act 2012 s. 203	25 of 2012	3 Sep 2012	18 Nov 2013 (see s. 2(b) and *Gazette* 14 Nov 2013 p. 5028)
Aboriginal Cultural Heritage Act 2021 Pt. 15	27 of 2021	22 Dec 2021	Pt. 15 (other than Div. 3): 23 Dec 2021 (see s. 2(b)); Pt. 15 Div. 3: 1 Jul 2023 (see s. 2(e) and SL 2023/40 cl. 2(b))
Directors' Liability Reform Act 2023 Pt. 3 Div. 2	9 of 2023	4 Apr 2023	5 Apr 2023 (see s. 2(j))

Short title	Number and year	Assent	Commencement
Aboriginal Heritage Legislation Amendment and Repeal Act 2023 Pt. 3	23 of 2023	24 Oct 2023	Pt. 3 (other than Div. 2): 25 Oct 2023 (see s. 2(b)); Pt. 3 Div. 2: 15 Nov 2023 (see s. 2(d) and SL 2023/161 cl. 2)
Petroleum Legislation Amendment Act 2024 s. 433 and 434	17 of 2024	14 May 2024	28 May 2026 (see s. 2(b) and SL 2026/70 cl. 2)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
Aboriginal Cultural Heritage Act 2021 s. 310	27 of 2021	22 Dec 2021	1 Jan 2024 (see s. 2(d))

Other notes

[1] 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).

[2] 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.

".

[3] 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.

".

[4] 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.

[5] The *Courts Legislation Amendment and Repeal Act 2004* Sch. 2 cl. 1 had not come into operation when it 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)
2021 Act	69
2023 amendment Act	69
Aboriginal	4
Aboriginal ancestral remains	82(1)
Aboriginal cultural material	4
Aboriginal site	4
ACH Account	87(1)
ACH Compensation Fund	87(1)
ACH Council	69
ACH management plan	77(1)
ACH permit	76(1)
approved determination of native title	18(1AA)
assent day	71(1)
claim area	18(1AA)
Committee	4
Department	4
determination area	18(1AA)
fee	67A(1)
historical protected area order	73(1)
ILUA	18(1AA)
Marandoo Act area	78(1)
Marandoo Reduced Area dataset	78(1)
Minister for Lands	66(1)
Museum	4
National Native Title Register	18(1AA)
native title	18(1AA)
Native Title Act	18(1AA)
native title party	18(1AA)
native title rights and interests	18(1AA)
new information about an Aboriginal site	18(1AA)
owner	18A(1), 18B(1), 78(1)
party	18A(1)
person of Aboriginal descent	4
proceedings under this Act	4
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Register of Native Title Claims ..... 18(1AA)
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traditional custodian 4
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transitional regulations ..... 69, 71(2)

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