

WESTERN AUSTRALIA

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# ABORIGINAL HERITAGE AMENDMENT ACT 1995

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No. 24 of 1995

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**AN ACT to amend the *Aboriginal Heritage Act 1972* and as  
a consequence to amend the —**

- ***Control of Vehicles (Off-road Areas) Act 1978;***
- ***Financial Administration and Audit Act 1985;***
- **and**
- ***Litter Act 1979.***

[Assented to 30 June 1995]

The Parliament of Western Australia enacts as follows:

**PART 1 — PRELIMINARY**

**Short title**

1. This Act may be cited as the *Aboriginal Heritage Amendment Act 1995*.

**Commencement**

2. This Act comes into operation on such day as is fixed by proclamation.

**PART 2 — ABORIGINAL HERITAGE ACT 1972 AMENDED**

**Principal Act**

3. In this Part the *Aboriginal Heritage Act 1972\** is referred to as the principal Act.

[\* *Approved for reprint 24 June 1981.  
For subsequent amendments see 1993 Index to  
Legislation of Western Australia, Table 1, p. 3 and Act  
No. 32 of 1994. ]*

**Section 3 repealed**

4. Section 3 of the principal Act is repealed.

**Section 4 amended**

5. Section 4 of the principal Act is amended —

(a) by inserting after the definition of “Committee” the following definition —

“

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

”;

(b) in the definition of “Registrar” —

(i) by deleting “nominated” and substituting the following —

“ appointed ”; and

(ii) by deleting “37” and substituting the following —

“ 37 (1) ”;

(c) by deleting the definition of “section”;

(d) in the definition of “the Trustees” by deleting “, and may include a person or persons acting under the authority of the Trustees pursuant to subsection (1) of section 9”; and

(e) in the definition of “traditional custodian” by deleting “Trustees” and substituting the following —

“  
Minister in consultation with the  
Committee  
”.

**Section 5 amended**

6. Section 5 (c) of the principal Act is amended by deleting “Trustees” and substituting the following —

“ Committee ”.

**Section 6 amended**

7. Section 6 of the principal Act is amended —

(a) in subsection (1) by deleting “This Act” and substituting the following —

“ Subject to subsection (2a), this Act ”;

- (b) in subsection (2) by deleting “This Act” and substituting the following —

“ Subject to subsection (2a), this Act ”;

- (c) by inserting after subsection (2) the following subsection —

“  
(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.  
”;

and

- (d) in subsection (3) (b) by deleting “Trustees” and substituting the following —

“ Minister ”.

### **Section 7 amended**

8. Section 7 (2) of the principal Act is amended by deleting “Trustees” and substituting the following —

“ Minister ”.

### **Section 8 amended**

9. Section 8 of the principal Act is amended —

- (a) by deleting “Trustees are” and substituting the following —

“ Committee is ”; and

- (b) by deleting “the Trustees, the Trustees” and substituting the following —

“  
the Minister, the Minister after  
consultation with the Committee  
”.

**Section 9 amended**

**10. Section 9 of the principal Act is amended —**

- (a) in subsection (1) —

- (i) by deleting “Trustees are” and substituting the following —

“ Committee is ”;

- (ii) by deleting “Trustees may” and substituting the following —

“ Minister may ”; and

- (iii) by deleting “Trustees and to perform such of their duties” and substituting the following —

“  
Minister and to perform such of the  
Minister’s duties  
”;

and

- (b) in subsection (2) by deleting “Trustees” in the 2 places it occurs and substituting in each place the following —

“ Minister ”.

**Section 10 amended**

11. Section 10 (3) of the principal Act is repealed.

**Section 11 repealed and sections substituted**

12. Section 11 of the principal Act is repealed and the following sections are substituted —

“

**Minister a body corporate**

11. (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.

**Administration**

**11A.** 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 12 repealed**

**13.** Section 12 of the principal Act is repealed.

**Section 13 repealed and a section substituted**

**14.** Section 13 of the principal Act is repealed and the following section is substituted —

“

**Powers of delegation**

**13.** 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 14 amended**

**15.** Section 14 of the principal Act is amended by deleting “Museum” and substituting the following —

“ Minister ”.



**Section 15 amended**

**16.** Section 15 of the principal Act is amended by deleting “Trustees” in the 2 places it occurs and substituting in each place the following —

“ Registrar ”.

**Section 16 amended**

**17.** Section 16 of the principal Act is amended —

- (a) in subsection (1) by deleting “Trustees” and substituting the following —

“ Registrar ”; and

- (b) in subsection (2) —

- (i) by deleting “Trustees” and substituting the following —

“ Registrar, on the advice of the  
Committee,  
”;

and

- (ii) by deleting “they may direct” and substituting the following —

“ the Committee may advise ”.

**Section 17 amended**

**18.** Section 17 of the principal Act is amended by deleting “Trustees” and substituting the following —

“ Registrar ”.

**Section 18 amended, and validation and savings**

**19.** (1) Section 18 of the principal Act is amended —

(a) in subsection (2) —

(i) by deleting “Trustees” and substituting the following —

“ Committee ”;

(ii) by deleting “Trustees shall, as soon as they are” and substituting the following —

“ Committee shall, as soon as it is ”;

and

(iii) by deleting “their” and substituting the following —

“ its ”;

(b) in subsection (3) —

(i) by deleting “Trustees submit” and substituting the following —

“ Committee submits ”;

and

- (ii) by deleting “their” and substituting the following —

“ its ”;

- (c) in subsection (4) —

- (i) by deleting “Trustees” and substituting the following —

“ Committee ”;

- (ii) by deleting “Trustees have not submitted it with their” and substituting the following —

“  
Committee has not submitted it with  
its  
”;  
and

- (iii) by deleting “Trustees” in the 3 further places it occurs and substituting in each place the following —

“ Committee ”; and

- (d) in subsection (7) by deleting “Trustees under subsection (2) of this section, the Trustees may, if they are” and substituting the following —

“  
Committee under subsection (2), the  
Committee may, if it is  
”.

(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.

### **Section 19 amended**

**20.** Section 19 of the principal Act is amended —

(a) in subsection (1) —

(i) by deleting “Trustees recommend” and substituting the following —

“ Committee recommends ”; and

(ii) by deleting “them” and substituting the following —

“ the Committee ”;

(b) in subsection (2) by deleting “Trustees” and substituting the following —

“ Committee ”; and

(c) in subsection (3) by deleting “Trustees” in the 2 places it occurs and substituting in each place the following —

“ Committee ”.

**Section 20 amended**

**21.** Section 20 of the principal Act is amended —

(a) in subsection (1) —

(i) by deleting “Trustees recommend” and substituting the following —

“ Committee recommends ”; and

(ii) by deleting “consent of, the Trustees” and substituting the following —

“ authorization of, the Registrar ”;  
and

(b) in subsection (3) by deleting “Trustees” and substituting the following —

“ Committee ”.

**Section 21 amended**

**22.** Section 21 of the principal Act is amended by deleting “Trustees” in the 3 places it occurs and substituting in each place the following —

“ Committee ”.

**Section 22 amended**

**23.** Section 22 of the principal Act is amended —

(a) in subsection (1) by deleting “Museum” and substituting the following —

“ Minister ”; and

(b) in subsection (2) —

(i) by deleting “Museum” and substituting the following —

“ Minister ”; and

(ii) by deleting “Trustees” and substituting the following —

“ Minister ”.

### **Section 23 amended**

**24.** Section 23 (1) of the principal Act is amended by deleting “Trustees” in the 2 places it occurs and substituting in each place the following —

“ Registrar ”.

### **Section 24 amended**

**25.** Section 24 of the principal Act is amended —

(a) in paragraph (a) by deleting “Trustees” and substituting the following —

“ Registrar ”; and

(b) in paragraph (b) —

(i) by deleting “Trustees” and substituting the following —

“ Registrar ”; and

- (ii) by deleting “them” and substituting the following —

“ the Registrar ”.

### **Section 25 amended**

**26.** Section 25 of the principal Act is amended —

- (a) in subsection (1) by deleting “Trustees” and substituting the following —

“ Committee ”; and

- (b) in subsection (2) by deleting “section thirty-six of the Interpretation Act 1918” and substituting the following —

“ section 42 of the *Interpretation Act 1984* ”.

### **Section 26 amended**

**27.** Section 26 (1) (d) of the principal Act is amended by deleting “Trustees have” and substituting the following —

“ Registrar has ”.

### **Section 27 amended**

**28.** Section 27 of the principal Act is amended —

- (a) in subsection (1) —

- (i) by deleting “Trustees” in the 2 places it occurs and substituting in each place the following —

“ Minister ”; and

(ii) by deleting "Museum" and substituting the following —

" Minister ";

(b) in subsection (2) —

(i) by deleting "Trustees are" and substituting the following —

" Minister is ";

(ii) by deleting "Trustees may" and substituting the following —

" Minister may "; and

(iii) by deleting "Museum" and substituting the following —

" Minister ";

and

(c) in subsection (4) (b) by deleting "Ordinance" and substituting the following —

" Act ".

### **Section 28 amended**

**29.** Section 28 of the principal Act is amended —

(a) in subsection (4) —

(i) by deleting "opinion of the Trustees" and substituting the following —

" opinion of the Minister "; and



(ii) by deleting “by the Trustees” and substituting the following —

“ by the Registrar ”;

and

(b) in subsection (5) by deleting “Trustees” and substituting the following —

“ Minister ”.

### **Section 37 repealed and a section substituted**

**30.** Section 37 of the principal Act is repealed and the following section is substituted —

“

#### **Registrar of Aboriginal Sites**

**37.** (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 38 amended**

**31.** Section 38 of the principal Act is amended —

- (a) by deleting “of Aboriginal Sites”; and
- (b) by deleting “Trustees” and substituting the following —  
“ Minister ”.

**Section 39 amended**

**32.** Section 39 (1) of the principal Act is amended —

- (a) in paragraph (c) by deleting “Trustees” in the 2 places it occurs and substituting in each place the following —  
“ Minister ”;
- (b) in paragraph (e) by deleting “and the Trustees”;
- (c) after paragraph (e) by inserting the following paragraph —  
“  
(ea) to perform the functions allocated to the Committee by this Act; and  
”;  
and
- (d) in paragraph (f) by deleting “Trustees” and substituting the following —  
“ Minister ”.

**Sections 39A, 39B, 39C and 39D inserted**

**33.** Part VI of the principal Act is amended by inserting before section 40 the following sections —

“

**Consultation between Minister and Trustees concerning administration of Part VI**

**39A.** 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.

**Minister may delegate to Trustees under Part VI**

**39B.** The Minister may delegate any or all of his powers and duties under this Part to the Trustees.

**Registrar may act on Minister's behalf**

**39C.** 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.

**Minister to consult with Committee**

**39D.** 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 40 amended**

**34.** Section 40 of the principal Act is amended by deleting “Trustees recommend” and substituting the following —

“ Committee recommends ”.

**Section 41 amended**

**35.** Section 41 of the principal Act is amended —

(a) in subsection (1) by deleting “Trustees” in the 2 places it occurs and substituting in each place the following —

“ Minister ”;

(b) in subsection (2) —

(i) by deleting “Trustees” in the 2 places it occurs and substituting in each place the following —

“ Minister ”; and

(ii) by deleting “them” in the 2 places it occurs and substituting in each place the following —

“ the Minister ”;

and

(c) in subsection (3) —

(i) by deleting “them the Trustees are” and substituting the following —

“ the Minister the Minister is ”; and

- (ii) by deleting “Trustees may” in the 2 places it occurs and substituting in each place the following —

“ Minister may ”.

**Section 42 amended**

**36. Section 42 of the principal Act is amended —**

- (a) in subsection (1) —

- (i) by deleting “Trustees may” and substituting the following —

“ Minister may ”;

- (ii) by deleting “to them” and substituting the following —

“ to the Minister ”;

- (iii) in paragraph (b) —

- (I) by deleting “Trustees” and substituting the following —

“ Committee ”; and

- (II) by deleting “enable them” and substituting the following —

“ enable it ”;

- (iv) by deleting “Trustees shall” and substituting the following —

“ Minister shall ”; and

- (v) by deleting “they think” and substituting the following —

“ the Minister thinks ”;

and

- (b) in subsection (2) —

- (i) by deleting “Trustees may” and substituting the following —

“ Minister may ”;

- (ii) by deleting “them” and substituting the following —

“ the Minister ”; and

- (iii) by deleting “they” and substituting the following —

“ the Minister ”.

**Section 43 amended**

**37.** Section 43 of the principal Act is amended —

- (a) in subsection (1) —

- (i) in paragraph (e) —

- (I) by deleting “Trustees” in the 2 places it occurs and substituting in each place the following —

“ Minister ”; and

(II) by deleting “they do” and substituting the following —

“ he does ”;

(ii) in paragraph (f) —

(I) by deleting “Trustees” in the 2 places it occurs and substituting in each place the following —

“ Minister ”; and

(II) by deleting “they did” and substituting the following —

“ he did ”;

and

(iii) in paragraph (g) by deleting “Trustees” and substituting the following —

“ Minister ”;

(b) in subsection (2) —

(i) by deleting “Trustees” in the 2 places it occurs and substituting in each place the following —

“ Minister ”;

(ii) by deleting “they shall” and substituting the following —

“ he shall ”; and

(iii) by deleting “them that they do not” and substituting the following —

“ the Minister that he does not ”;

(c) in subsection (3) —

(i) by deleting “Trustees are of ” and substituting the following —

“ Minister is of the ”;

(ii) by deleting “them” and substituting the following —

“ him ”; and

(iii) by deleting “they” and substituting the following —

“ the Minister ”;

(d) in subsection (4) —

(i) by deleting “Trustees” in the 4 places it occurs and substituting in each place the following —

“ Minister ”; and

(ii) in paragraph (b) —

(I) by deleting “they shall” and substituting the following —

“ the Minister shall ”; and

(II) by deleting “they do not” and substituting the following —

“ the Minister does not ”;

(e) in subsection (5) by deleting “Trustees” in the 4 places it occurs and substituting in each place the following —

“ Minister ”; and



- (f) in subsection (6) by deleting “Trustees” in the 4 places it occurs and substituting in each place the following —

“ Minister ”.

**Section 44 amended**

**38.** Section 44 of the principal Act is amended by deleting “Trustees” and substituting the following —

“ Minister ”.

**Section 45 amended**

**39.** Section 45 of the principal Act is amended —

- (a) in subsection (1) —

- (i) by deleting “to the Trustees” and substituting the following —

“ to the Minister ”;

- (ii) by deleting “Trustees are” and substituting the following —

“ Minister is ”;

- (iii) by deleting “Trustees may” and substituting the following —

“ Minister may ”; and

- (iv) by deleting “to them that they do” and substituting the following —

“ to the Minister that he does ”;

and

- (b) in subsection (2) —
  - (i) by deleting “Trustees are” and substituting the following —

“ Minister is ”; and
  - (ii) by deleting “Trustees may” and substituting the following —

“ Minister may ”.

**Section 46 amended**

**40. Section 46 of the principal Act is amended —**

- (a) in subsection (1) —
  - (i) by deleting “Trustees” and substituting the following —

“ Minister ”; and
  - (ii) by deleting “Museum” and substituting the following —

“ Minister ”;
- (b) in subsection (2) by deleting “Museum” and substituting the following —

“ Minister ”;
- (c) in subsection (3) by deleting “Trustees” and substituting the following —

“ Minister ”; and

- (d) in subsection (5) by deleting “Trustees” and substituting the following —

“ Minister ”.

### **Section 47 amended**

**41.** Section 47 of the principal Act is amended —

- (a) in subsection (1) —

- (i) by deleting “Trustees are” and substituting the following —

“ Minister is ”;

- (ii) by deleting “they may” and substituting the following —

“ the Minister may ”; and

- (iii) by deleting “their desire” and substituting the following —

“ his desire ”;

and

- (b) in subsection (2) by deleting “Trustees” in the 2 places it occurs and substituting in each place the following —

“ Minister ”.

### **Section 48 amended**

**42.** Section 48 of the principal Act is amended by deleting “Trustees they” and substituting the following —

“ Minister, the Minister ”.

**Section 49 amended**

43. Section 49 (1) of the principal Act is amended in paragraph (b) by deleting "Trustees" and substituting the following —

" Minister ".

**Section 50 amended**

44. Section 50 (1) of the principal Act is amended by deleting "Trustees" and substituting the following —

" Minister ".

**Section 51 amended**

45. Section 51 of the principal Act is amended —

(a) in subsection (1) by deleting "Any member of the staff of the Museum" and substituting the following —

"  
Any officer of the Department, or any  
honorary warden,  
";

(b) in subsection (2) by deleting "a person" and substituting the following —

"  
an officer of the Department, or an  
honorary warden,  
";

and

(c) in subsection (3) —

(i) by deleting "any member of the staff of the Museum," and substituting the following —

" any officer of the Department, "; and

- (ii) by deleting “that member or warden” and substituting the following —

“ that officer or honorary warden ”.

### **Section 52 amended**

**46.** Section 52 of the principal Act is amended —

- (a) by deleting “a warden, or a member of the staff of the Museum” and substituting the following —

“  
an honorary warden, or an officer of the  
Department  
”;  
and

- (b) by deleting “the chairman or vice-chairman of Trustees, may represent the Museum” and substituting the following —

“ the Registrar may represent the Minister ”.

### **Section 53 repealed and a section substituted**

**47.** Section 53 of the principal Act is repealed and the following section is substituted —

“

#### **Proceedings by the Minister**

**53.** In any complaint preferred by the Minister 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 59 amended**

48. Section 59 of the principal Act is amended by deleting “Trustees” and substituting the following —

“

Minister, in consultation with the Committee, for the purpose of the protection of Aboriginal heritage

”.

### **Section 61 amended**

49. Section 61 of the principal Act is amended —

(a) in paragraph (a) by deleting “Trustees” and substituting the following —

“ Committee ”;

(b) in paragraph (b) by deleting “Trustees” and substituting the following —

“ Registrar ”; and

(c) in paragraph (c) by inserting before “consent” the following —

“ authorization or ”.

**Part VIII heading amended**

50. The heading to Part VIII of the principal Act is amended by deleting “FINANCIAL AND”.

**Sections 63, 64, 65 and 66 repealed, and transitional provisions**

51. (1) Sections 63, 64, 65 and 66 of the principal Act are repealed.

(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.

**Sections 67 and 68 repealed and sections substituted**

52. Sections 67 and 68 of the principal Act are repealed and the following sections are substituted —

“

**Indemnity**

67. 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.

### **Regulations**

**68.** 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.

”



### PART 3 — CONSEQUENTIAL AMENDMENTS

#### ***Control of Vehicles (Off-road Areas) Act 1978 amended***

53. The *Control of Vehicles (Off-road Areas) Act 1978\** is amended in section 38 (2) (e) by deleting “a member of the staff of the Museum or”.

[\* *Act No. 117 of 1978.*  
*For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, pp. 147-48 and Acts Nos. 32 and 84 of 1994. ]*

#### ***Financial Administration and Audit Act 1985 amended***

54. Schedule 1 to the *Financial Administration and Audit Act 1985\** is amended by deleting “Aboriginal Material Preservation Fund”.

[\* *Reprinted as at 1 July 1991.*  
*For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, pp. 75-76 and Acts Nos. 32, 40 and 53 of 1993 and 6, 26, 32, 35, 36, 45, 59, 83, 84, 89 and 103 of 1994.]*

#### ***Litter Act 1979 amended***

55. The *Litter Act 1979\** is amended —

- (a) in section 26 (2) (c) (v) by deleting “or an honorary warden, under the *Aboriginal Heritage Act 1972*”; and
- (b) in the Third Schedule to that Act, in column 1 in the item commencing “Members of the staff of the

Western Australian Museum” by deleting “or honorary wardens under the *Aboriginal Heritage Act 1972*”.

[\* *Approved for reprint 20 July 1983.*  
*For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 122 and Acts No. 32 and 92 of 1994. ]*