

ABORIGINAL HERITAGE (No. 2).

No. 8 of 1980.

AN ACT to amend the Aboriginal Heritage Act 1972.

[Assented to 23 September 1980.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Aboriginal Heritage Amendment Act (No. 2) 1980*. Short title and citation.

(2) In this Act the Aboriginal Heritage Act 1972 is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Aboriginal Heritage Act 1972-1980.

Section 5
substituted.

2. Section 5 of the principal Act is repealed and the following section is substituted—

Application
to places.

“ 5. 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 Trustees, 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 11
amended.

3. Section 11 of the principal Act is amended by repealing subsection (2) and substituting the following subsection—

“ (2) The Minister may—

- (a) after consultation with the body concerned, give to the Trustees, or to the Committee;

(b) give to the Director or to the Registrar, directions of a general or specific character as to the exercise of any function under this Act or the doing of any thing for the purposes of this Act and that body or person shall give effect to any such direction. ” .

4. Section 13 of the principal Act is amended in subsection (1) by deleting “or to the Committee,” . Section 13 amended.

5. Section 16 of the principal Act is amended in subsection (1) by deleting “The right” and substituting the following— Section 16 amended.

“ Subject to section 18, the right ” .

6. Sections 17, 18 and 19 of the principal Act are repealed and the following sections are substituted— Sections 17, 18 and 19 substituted.

“ 17. 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 authorization of the Trustees under section 16 or the consent of the Minister under section 18.

18. (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 Act 1967, in relation to the land. Consent to certain uses.

(2) Where the owner of any land gives to the Trustees 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 Trustees shall, as soon as they are reasonably able, form an opinion as to whether there is any Aboriginal site on the land, evaluate the importance and significance of any such site, and submit the notice to the Minister together with their 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 Trustees submit a notice to the Minister under subsection (2) of this section he shall consider their recommendation and having regard to the general interest of the community shall either—

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

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

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

(5) Where the owner of any land is aggrieved by a decision of the Minister made under subsection (3) of this section he may, within the time and in the manner prescribed by rules of court, appeal from the decision of the Minister to the Supreme Court which may hear and determine the appeal.

(6) In determining an appeal under subsection (5) of this section the Judge hearing the appeal may confirm or vary the decision of the Minister against which the appeal is made or quash the decision and substitute his own decision which shall have effect as if it were the decision of the Minister, and may make such order as to the costs of the appeal as he sees fit.

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

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

19. (1) Where the Trustees recommend to the Minister that an Aboriginal site is of outstanding importance and that it appears to them that the Aboriginal site should be declared a protected area the Minister shall give notice in writing of the recommendation—

Protected
areas.

- (a) to every person entitled to give notice under subsection (2) of section 18; 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 Trustees to consider the representations and report to him on them.

(3) If upon considering the representations, the report of the Trustees, and any further information that the Minister may require the complainant or the Trustees 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 21
substituted.

7. Section 21 of the principal Act is repealed and the following section is substituted—

Objection to
declaration.

“ 21. 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 Trustees to consider the representations and report to him on them, and, if upon considering the representations, the report of the Trustees, and any further information that the Minister may require the complainant or the Trustees 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. ” .

8. Section 25 of the principal Act is amended— Section 25 amended.

(a) by inserting after the section designation “25.” the following subsection designation—

“ (1) ” ;

(b) by inserting after “Trustees,” the following—

“ or after considering a recommendation of the Minister under section 21 ” ; and

(c) by inserting at the end of the section the following subsection—

“ (2) An Order in Council under subsection (1) of this section varying or revoking the declaration of a protected area shall be published in the *Gazette* and section thirty-six of the Interpretation Act 1918 shall apply to and in relation to the Order in Council as if it were a regulation. ” .

9. Section 28 of the principal Act is amended in subsection (1) by deleting “a” and substituting the following— Section 28 amended.

“ an advisory ” .

Section 39
amended.

10. Section 39 of the principal Act is amended in subsection (1)—

(a) by deleting paragraphs (c) and (d) and substituting the following paragraph—

“ (c) to recommend to the Trustees 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 Trustees; ” ;
and

(b) by deleting paragraph (f) and substituting the following paragraph—

“ (f) to advise the Trustees when requested to do so as to the apportionment and application of moneys available for the administration of this Act. ” .

Section 55
amended.

11. Section 55 of the principal Act is amended by deleting “the consent or authorization of the Trustees” and substituting the following—

“ consent or authorization ” .

Section 58
repealed.

12. Section 58 of the principal Act is repealed.

Section 60
amended.

13. Section 60 of the principal Act is amended by inserting after subsection (3) the following subsection—

“ (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. ” .

14. Section 61 of the principal Act is amended by deleting "Trustees," in paragraph (b) and substituting the following—

Section 61
amended.

“ Trustees;

(c) no consent had been given by the
Minister, ” .
