

ABORIGINAL HERITAGE.

No. 53 of 1972.

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

[Assented to 2nd October, 1972.]

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:—

PART I.—PRELIMINARY.

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

Commence-
ment.

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

Arrange-
ment.

3. This Act is divided into Parts as follows—

PART I.—PRELIMINARY, ss. 1-4.

PART II.—APPLICATION AND TRADITIONAL USE, ss. 5-9.

PART III.—ADMINISTRATION, ss. 10-14.

PART IV.—PROTECTION OF ABORIGINAL SITES, ss. 15-27.

PART V.—ABORIGINAL CULTURAL MATERIAL COMMITTEE, ss. 28-39.

PART VI.—PROTECTION FOR ABORIGINAL OBJECTS, ss. 40-49.

PART VII.—ENFORCEMENT, ss. 50-62.

PART VIII.—FINANCIAL AND GENERAL, ss. 63-68.

Interpreta-
tion.

4. In this Act, unless the context requires otherwise,—

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

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

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

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

“Director” means the person appointed Director of the Museum under the Museum Act, 1969;

“Museum” means the body corporate constituted by that name under the Museum Act, 1969;

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

“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 nominated Registrar of Aboriginal Sites under section 37;

“section” means section of this Act;

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

“traditional custodian” in relation to any place or object means a person named by the Trustees in relation thereto under section 9.

PART II.—APPLICATION AND TRADITIONAL USE.

5. This Act applies to—

Application
to places.

- (a) any place 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 place, including any sacred, ritual or ceremonial site, which is of importance or of 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 may be of historical, anthropological, archaeological or ethnographical interest;
- (d) any place where objects to which this Act applies are stored, or to which such objects have been taken or removed under the provisions of this Act,

and which has not been excluded from the provisions of this Act by agreement with the Trustees in accordance with subsection (6) of section 18.

Application
to objects.

6. (1) 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) 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.

(3) The provisions of Part VI of this Act 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) of this subsection that is disposed of or dealt with by or with the consent of the Trustees.

7. (1) Subject to subsection (2) of this section, 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—

Traditional
use.

- (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) of this section authorizes 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 Trustees, detrimental to the purposes of this Act.

8. Where the Trustees are 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 Trustees, the Trustees 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.

Availability
for
traditional
use.

9. (1) Where the Trustees are 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

Traditional
custodians

to it the Trustees may, by notice in the *Gazette*, authorize a person or persons nominated by that body and named in the notice to exercise such of the powers of the Trustees and to perform such of their duties in relation to that place or object as are set out in that notice, and any such authorization may in the like manner be varied or revoked.

(2) For the purposes of Part VII of this Act, and in any proceedings, a reference to the Trustees shall be deemed to include a reference to a person or persons lawfully acting under the authority of the Trustees pursuant to subsection (1) of this section.

PART III.—ADMINISTRATION.

Duty of the
Minister
and of the
Trustees.

10. (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 co-ordinated 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.

(3) It is the duty of the Trustees acting in accordance with the provisions of the Museum Act, 1969, as read with the provisions of this Act, to advise and assist the Minister in the exercise of his functions under this Act.

Administra-
tive
responsibil-
ity.

11. (1) Subject to the Minister the responsibility for the administration of this Act is vested in the Trustees who are required to have regard to the recommendations of the Committee but are not bound to give effect to any such recommendation.

(2) The Minister, after consultation with the body concerned, may give to the Trustees, or to the Committee, directions of a general or specific character as to the exercise of any function under this Act and that body shall give effect to any such direction.

(3) The exercise of a power or the performance of a duty by the Trustees, or by the Committee, does not prevent the subsequent exercise of a function under this Act by the Minister in relation to the same matter.

(4) The provisions of this section shall not be construed so as to take away or restrict the discretion vested in the Trustees under the Museum Act, 1969, in so far as any matter might be dealt with by the Trustees under that Act.

12. (1) The Trustees are responsible for the proper care and protection of places and objects to which this Act applies. Care and protection.

(2) The Trustees may, by agreement with a person owning or possessing, or having the custody and control of, any place or object to which this Act applies take such action as they think is practicable for the proper care and protection, or exhibition, of that place or object.

13. (1) The Trustees may, with the consent in writing of the Minister, in relation to any matter or class of matters, or in relation to any activity or function of the Museum, by resolution, delegate to any member of the staff of the Museum, or to the Committee, or to any other person or body specified in the instrument of delegation, all or any of the powers or duties of the Trustees under this Act, other than this power of delegation, and may in like manner vary or revoke any such delegation. Delegation by the Trustees.

(2) Where a power or duty delegated by the Trustees is dependent upon the opinion, belief or state of mind of the Trustees it may be exercised or performed upon the opinion, belief or state of mind of the delegate in relation to the matter.

(3) A person or body purporting to exercise a power or to perform a duty pursuant to a delegation conferred under this section is presumed to do so in accordance with the terms of the delegation in the absence of proof to the contrary.

(4) A delegation under this section does not prevent the exercise of a power or the performance of a duty by the Trustees.

Compensation on statutory vesting.

14. 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 Museum on behalf of the Crown by the operation of this Act.

PART IV.—PROTECTION OF ABORIGINAL SITES.

Report of findings.

15. 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 Trustees, 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 Trustees.

Excavation of Aboriginal sites.

16. (1) The right to excavate or to remove any thing from an Aboriginal site is reserved to the Trustees.

(2) The Trustees 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 they may direct.

17. A person who—

- (a) excavates, destroys, damages, conceals or in any way alters any Aboriginal site without the consent of the Trustees; or
- (b) in any way alters, damages, removes, destroys, conceals, or who deals with in a manner not sanctioned by relevant Aboriginal custom, or assumes the possession, custody or control of, any object on or under an Aboriginal site without the consent of the Trustees,

Offences relating to Aboriginal sites.

commits an offence.

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 in relation to the land on which the Aboriginal site is located.

Aboriginal sites required for other purposes.

(2) Where the owner of any land on which an Aboriginal site is located gives to the Trustees written notice that he requires to use the land for a purpose which would be likely to have a deleterious effect on the preservation of the site the Trustees shall within a reasonable time thereafter, evaluate the importance and significance of the site and thereupon the Trustees shall either—

- (a) make recommendations for the declaration of the site as a protected area under section 19 or section 20; or

- (b) give notice in writing to the owner of their consent to the use of the land or of such part of it as may be agreed, for the purpose required.

(3) Where the owner of any land is aggrieved by the conditions proposed by the Trustees in relation to any consent sought under subsection (2) of this section, or where the owner alleges that in the circumstances the Trustees have failed to act with due diligence in response to a notice given under that subsection, or a direction of the Minister given under section 21, he may cause a complaint to be made to the Local Court held nearest to the place where the Aboriginal site is located, or, at his option, to the Local Court at Perth, and the Local Court shall thereupon issue a summons requiring the Trustees to show cause why an order should not be made requiring consent to be granted, without condition, within a time to be specified.

(4) Where on the hearing of a complaint under this section the Local Court is satisfied that the Trustees have failed to act with due diligence, or have been unreasonable having regard to the general interest of the community, the Local Court may order the Trustees to pay to the complainant such reasonable sum as the Local Court may determine in respect of the expenses incurred by the complainant in or in connection with the making of the complaint and the proceedings before the Local Court.

(5) 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 site to a place of safe custody.

(6) Where any land comprised in an Aboriginal site is the subject of a consent given under this section that site, or so much of it as is the subject of that consent, shall be deemed to be excluded from the provisions of this Act.

19. (1) Where the Trustees recommend that any Aboriginal site is of outstanding importance the Governor may, by Order in Council, declare that site to be a protected area. Protected areas.

(2) 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.

(3) 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.

20. (1) Where the Trustees recommend 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 consent of, the Trustees 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. Temporarily protected areas.

(2) Subject to the provisions of subsection (3) of this section, an Order made under subsection (1) of this section has effect for a period of six months, and no longer, and may be revoked or varied at any time.

(3) The Governor, on the recommendation of the Trustees 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) of this section shall continue to have effect for such period as is therein specified.

Objections
to
declaration.

21. Where any person is aggrieved by the declaration of an Aboriginal site as a protected area, or by a recommendation or proposal likely to lead to any such declaration, 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 that the Trustees shall—

- (a) consider the representations made; and
- (b) report on these representations to the Governor in Council.

Compensa-
tion and
compulsory
acquisition.

22. (1) Subject to subsection (2) of this section, the exclusive right to the occupation and use of every place that is declared to be a protected area is vested in the Museum 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 Museum under subsection (1) of this section, was the holder of any interest in or relating to that land is entitled to be paid by the Trustees 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) of this section, 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 Governor may instead set apart or compulsorily take or resume the land comprised in a protected area or terminate any interest in or relating to that land, as though it was an acquisition made 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.

23. (1) Upon any area of land becoming a protected area the Trustees—

Marking of protected areas.

- (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 Trustees 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) of this section 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.

Notification
of changes
etc.

24. 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 Trustees 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 Trustees or a person authorized by them.

Variation of
Orders in
Council.

25. 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 Trustees, is satisfied that it is in the general interest of the community so to do, but not otherwise.

Regulations
as to
protected
areas.

26. (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 Trustees have 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) of this section 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.

27. (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 Trustees 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 Museum 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 Trustees in consideration thereof shall do, or shall refrain from doing, any specified thing under this Act. Covenants.

(2) Where the Trustees are satisfied that it is in the general interest of the community so to do the Trustees may agree to a proposal made under subsection (1) of this section, and any such covenant shall thereupon have effect as if the Museum 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 Ordinance, 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.

PART V.—ABORIGINAL CULTURAL MATERIAL
COMMITTEE.

Aboriginal
Cultural
Material
Committee.

28. (1) For the purposes of this Act there is hereby established a body by the name of the Aboriginal Cultural Material Committee.

(2) The membership of the Committee consists of—

- (a) appointed members, each of whom shall hold and vacate office in accordance with the terms of the instrument under which he is appointed; and
- (b) *ex-officio* members.

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

(4) Subject to subsection (3) of this section, the appointed members shall be selected from amongst persons, whether or not of Aboriginal descent, having special knowledge, experience or responsibility which in the opinion of the Trustees will assist the Committee in relation to the recognition and evaluation of the cultural significance of matters coming before the Committee, and shall be appointed by the Minister from a panel of names submitted for the purposes of this Act by the Trustees.

(5) The Trustees shall appoint the Chairman of the Committee from amongst the members of the Committee, but where the Chairman is absent from or unable or unwilling to preside at any meeting of the Committee the members present may elect one of their number to preside thereat and while so presiding that member has all the powers and duties of the Chairman.

29. The following persons, namely—

Ex-officio
members.

- (a) the person appointed Director of the Museum;
- (b) the person immediately responsible to a Minister of the Crown for the administration of Aboriginal affairs and the support of traditional Aboriginal culture;
- (c) the person occupying the office of Surveyor General in the Department of Lands and Surveys,

are members of the Committee by virtue of their office, and while any of those offices is vacant the person acting in that office is thereby constituted a member while so acting.

Resignation,
disqualifi-
cation and
co-optation.

30. (1) Notwithstanding anything in the instrument under which he is appointed, an appointed member of the Committee may resign his office by a written notice given under his hand to, and accepted by, the Minister, and a member of the Committee who ceases to hold office shall, unless otherwise disqualified, be eligible for re-appointment.

(2) If an appointed member of the Committee—

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

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

(c) is an incapable person within the meaning of section 5 of the Mental Health Act, 1962,

his office becomes vacant and he shall not be eligible for re-appointment.

(3) The Committee has power, subject to the approval of the Minister and on such terms and conditions as the Minister may determine, to invite any person to act in an advisory capacity to the Committee in relation to any or all aspects of the functions of the Committee, but any such person shall not be entitled to a vote in the Committee.

Deputies

31. (1) The Minister may, in respect of each member of the Committee, appoint a person representative of the same interests as that member to be his deputy.

(2) While taking the place of a member a deputy has all the powers and entitlements of and all the protection given to, the member under this Act.

(3) Any reference in this Act to a member shall be construed as including a reference to a deputy taking the place of that member.

32. (1) The quorum to constitute a meeting of the Committee shall be such as the Committee may from time to time determine but shall not be less than five persons of whom two shall be *ex-officio* members.

Quorum
and
meetings.

(2) The Minister or the Chairman may at any time convene a meeting of the Committee, and a meeting shall be convened by the Chairman within seven days of the receipt by him of a written request signed by two or more members of the Committee specifying the business in respect of which the meeting is to be convened.

(3) The Committee shall hold such meetings as are necessary for the performance of the functions of the Committee, or to give effect to any special or general direction of the Minister.

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

Records and
validity of
proceedings.

(2) All acts done at any meeting of the Committee shall, notwithstanding that it is afterwards discovered that there was some defect in the

appointment or qualification of a person purporting to be a member, be as valid as if that defect had not existed.

(3) The performance of the functions of the Committee is not affected by reason only of there being a vacancy in the office of a member.

(4) Subject to the Minister, the decision of the Chairman shall be final and conclusive in all cases of dispute, doubt or difficulty respecting or arising out of matters of procedure or order.

Procedure.

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

Public
Service Act
provisions.

35. Acceptance of or acting in the office of member of the Committee by any person does not of itself render the provisions of the Public Service Act, 1904, or any other Act applying to persons as officers of the Public Service of the State, applicable to that member, or affect or prejudice the application to him of those provisions if they applied to him at the time of the acceptance of or acting in that office.

Remunera-
tion, etc.

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

Registrar of
Aboriginal
Sites.

37. (1) The Trustees shall nominate a member of the staff of the Museum to be the Registrar of Aboriginal Sites.

(2) The Registrar shall be the principal executive officer of the Committee and shall be directly responsible to the Director.

(3) All communications required by this Act to be made by or to the Trustees, the Committee or the Director may be made by or through the Registrar.

38. The Registrar of Aboriginal Sites shall, so far as practicable, maintain, in such manner and form as the Trustees may determine, a register of—

Register
of places
and objects.

- (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.

39. (1) The functions of the Committee are—

Functions
of the
Committee.

- (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 preserve, acquire, and manage on behalf of the Trustees, places and objects which in their opinion are, or have been, of special significance to persons of Aboriginal descent;
- (d) to carry out such of the activities or functions of the Museum, or of the Trustees, as the Trustees may with the consent in writing of the Minister delegate to the Committee;
- (e) to advise the Minister and the Trustees on any question referred to the Committee, and generally on any matter related to the objects and purposes of this Act;
- (f) to administer this Act in so far as directed by the Minister to do so, and to that end to apportion and apply the moneys available.

(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.

PART VI.—PROTECTION FOR ABORIGINAL OBJECTS.

Aboriginal
cultural
material.

40. Where the Trustees recommend 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.

Notification
and
production
of objects.

41. (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 Trustees 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 Trustees.

Penalty: One hundred dollars.

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

(3) Where after inspecting any object produced to them the Trustees are of the opinion that it is an object to which this Act applies the Trustees may continue in possession of the object for a period of thirty days, or for such longer period as the person producing the object and the Trustees 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.

42. (1) The Trustees may retain any object produced to them pursuant to the provisions of section 41—

Retention
by Trustees.

- (a) if the object is classified as Aboriginal cultural material, by agreement or acquisition;
- (b) if the object, in the opinion of the Trustees 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 them 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 Trustees 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 they think fit.

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

Restrictions
on dealing
with
Aboriginal
cultural
material

43. (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 Trustees, and has been advised, in writing, by the Trustees that they do not wish to purchase it; or
- (f) the object has previously been offered for sale to the Trustees pursuant to this subsection, and when it was so offered the Trustees advised that they did not wish to purchase it; or
- (g) he is expressly authorised by the Trustees so to do.

(2) Where an object that is classified as Aboriginal cultural material is offered for sale to the Trustees, the Trustees may accept the offer and so purchase the object or may, subject to subsection (3) of this section, decline the offer, in which event they shall as soon as practicable, in writing, advise the person by whom it was offered to them that they do not wish to purchase it.

(3) Where the Trustees are of opinion that the price at which an object of Aboriginal cultural material has been offered to them for the purposes of subsection (1) of this section is excessive, they may apply to the Local Court at Perth which may determine a reasonable price for the object.

(4) Where the Local Court, in determining a reasonable price for an object pursuant to subsection (3) of this section, determines a price which is greater than the price at which it was offered for sale to the Trustees, the person by whom the object was offered for sale to the Trustees shall be deemed for all purposes to have offered the object for sale to the Trustees at the price so determined, and within fourteen days of the determination by the Local Court the Trustees 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 they shall as soon as practicable, in writing, advise the person that they do not wish to purchase it.

(5) Where the Local Court, in determining the reasonable price for an object pursuant to subsection (3) of this section, determines a price which is less than the price at which it was offered for sale to the Trustees, the person by whom the object was offered for sale to the Trustees shall not, for the purpose of subsection (1) of this section, be deemed to have offered the object for sale to the Trustees until he offers the object for sale to the Trustees at the price determined by the Local Court.

(6) Every application made to the Local Court pursuant to this section shall be made and dealt with as prescribed by the rules of Court, or in the absence of those rules, as the Court determines, and the costs of making and hearing such an application shall be borne—

- (a) by the person who offered the object for sale to the Trustees where—
 - (i) the price determined by the Local Court for the object was less than the price at which the person offered the object for sale to the Trustees; and

(ii) the person fails, within one month of the determination of the price by the Local Court, to offer the object for sale to the Trustees at the price so determined; or

(b) in any other case, by the Trustees.

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

Prices to be
at local
rates.

44. For the purpose of determining what is a reasonable price at which an object shall be offered for sale to the Trustees under the provisions of section 43 the Local Court 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.

Trustees
may
purchase
as agents.

45. (1) Where an object that is classified as Aboriginal cultural material is offered for sale to the Trustees but the Trustees are unable to accept the offer, the Trustees may, before advising the person by whom it was offered to them that they do 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) of this section the Trustees are satisfied that an offer to purchase would be in the general interest of the community the Trustees 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.

46. (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 Trustees 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 Museum 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.

Vesting of objects, and inquiries into origin.

(2) Where a notice vesting the property in and right to possession of an object in the Museum 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, within the period of twenty-one days after the service of the notice, appeal to the Local Court held nearest to the place where the object is then located, or, at his option, to the Local Court at Perth, against the decision of the Trustees by causing notice in writing of the appeal to be served within that period upon the Court and the Registrar.

(4) At the hearing of an appeal duly made under subsection (3) of this section the Local Court shall inquire as to the manner in which the object came into the custody of the person served with the notice, and may inquire generally as to the question of ownership and the right to possession and control of that object, and thereupon may—

- (a) set aside wholly or in relation to any object the notice served by the Registrar;

- (b) decline to set aside the notice; and
- (c) make such other order in the matter as the Court thinks fit which may include an order as to costs,

and the decision of the Court is final and is not subject to any appeal.

(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 appeal was duly made against the decision of the Trustees or where such an appeal was made but the notice was not set aside at the hearing of the appeal, commits an offence.

(6) In any proceedings for the purposes of this section the Court may order that the provisions of the Evidence Act, 1906, or any rule of evidence at common law or otherwise shall not apply to those proceedings, either wholly or to such extent as the Court thinks fit.

(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.

47. (1) Where the Trustees are of the opinion that it would be in the general interest of the community to acquire any object to which this Act applies they may give notice to the person owning,

or apparently having the custody and control of, that object of their desire to acquire that object at a price therein specified.

(2) A notice given by the Trustees under the provisions of subsection (1) of this section has effect as though it were the reply to an offer for sale made to the Trustees 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 Local Court in accordance with the provisions of that section.

48. 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 Trustees they 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.

Restriction
on exhibi-
tion of
objects.

49. (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—

Prohibition
on
publication.

(a) absolutely; or

(b) except for such purposes and subject to such conditions as the Trustees 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) of this section commits an offence.

PART VII.—ENFORCEMENT,

Honorary
Wardens.

50. (1) The Trustees 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 of the appointment of the honorary warden to whom the certificate relates and of his authority to exercise the powers specified in that certificate.

Powers of
inspection.

51. (1) Any member of the staff of the Museum 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) of this section a person 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 member of the staff of the Museum, or any honorary warden duly authorised, all reasonable assistance and all such information that he is capable of furnishing or as required by that member or warden with respect to the exercise of his powers and the discharge of his duties under this Act.

52. In any proceedings a traditional custodian, a warden, or a member of the staff of the Museum appointed for the purpose generally or in a particular case in writing signed by the chairman or vice-chairman of Trustees, may represent the Museum in all respects as if he were the party concerned.

Power of
officers to
represent
Museum.

53. In any complaint preferred by the Trustees against a person under this Act, and in any proceedings instituted in relation to, any property vested in the Museum or under the care and control of the Trustees, it is sufficient to state generally that the property in respect of which the proceedings are instituted is the property of the Museum.

Proceedings
by Trustees.

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

Persons
obstructing
execution
of 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 authorized 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.

Breach of conditions.

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

Secrecy.

56. 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: One thousand dollars.

Penalties.

57. (1) A person convicted of an offence against this Act is liable on summary conviction, where no penalty is expressly provided for the offence,—

(a) if he has not been previously convicted of any offence against this Act, to—

- (i) a penalty of five hundred dollars;
- (ii) imprisonment for three months; or
- (iii) both such a fine and imprisonment;

or

(b) if he has been previously convicted of any offence against this Act, to—

- (i) a penalty of two thousand dollars;
- (ii) imprisonment for twelve months; or
- (iii) both such a fine and imprisonment;

and

(c) in the case of a continuing offence, to a daily penalty of one hundred dollars for every day that the offence continues after the offender is convicted.

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

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

(3) The court convicting a person of an offence against this Act may, whether inflicting any penalty or not, order the offender to pay such amount by way of restitution for the affected place or object or compensation for the damage occasioned to it, as the court thinks fit.

58. Where a person—

Special
penalty.

- (a) is convicted of an offence against this Act in relation to any place or object located on any land; and
- (b) the court is satisfied that the offence was committed—
 - (i) knowingly;
 - (ii) for the purposes of gain; and
 - (iii) with intent to defeat the purposes of this Act,

the court by which the person is convicted may order the suspension or forfeiture of any right, title or interest held by that person in or affecting that land or anything on or under that land or any mining tenement or mining privilege relating thereto, and effect shall be given to that order notwithstanding the provisions of any other Act or law of the State.

59. 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 Trustees, and any order so made has effect according to its tenor.

Forfeiture.

60. (1) Where—

Evidence.

- (a) notice of intention to adduce evidence by certificate is given not less than three 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 defendant.

(3) Where in a complaint 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.

Presumption.
as to
notices.

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

- (a) no notice had been given to the Trustees;
- (b) no permission or authorisation had been given by the Trustees,

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.

Special
defence of
lack of
knowledge.

62. 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.—FINANCIAL AND GENERAL.

63. (1) The funds available for the exercise of the powers conferred and duties imposed by this Act consist of—

Financial provisions.

- (a) moneys from time to time appropriated by Parliament for the purposes of this Act; and
- (b) gifts and bequests made to the Trustees or to the Museum specifically for the purposes of this Act, or which were so made for the general purposes of the Museum Act, 1969, and are appropriated by the Trustees specifically for the purposes of this Act.

(2) The Treasurer shall cause an account to be called the "Aboriginal Material Preservation Fund" to be opened and kept at the Treasury and the moneys and the proceeds of the sale or conversion of any gift or bequest mentioned in subsection (1) of this section shall be paid into that account.

64. (1) The moneys from time to time standing to the credit of the account at the Treasury called the "Western Australian Museum Account" may be appropriated by the Trustees specifically for the purposes of this Act and credited to the Aboriginal Material Preservation Fund.

Museum moneys and investments.

(2) The proceeds of the disposal of or dealing with any property that the Trustees are authorized to effect under the provisions of this Act, together with any moneys standing to the credit of the Aboriginal Material Preservation Fund, and not required for immediate use, may be invested by the Trustees in any investment authorized by law for the investment of trust funds.

65. (1) All expenditure incurred by the Trustees, for the purpose of giving effect to this Act, shall be paid from the Aboriginal Material Preservation Fund.

Accounting and audit.

(2) The Auditor General has, in respect of the accounts of the Trustees, all powers conferred on him by any law for the time being in force relating to the audit of public accounts.

Annual
report.

66. (1) The Trustees shall, in each year, furnish to the Minister a report of their activities pursuant to this Act during the year ending on the preceding thirtieth day of June, containing a full account of the income and expenditure of the Trustees in relation to this Act for that period audited by the Auditor General, and the report, if any, of the Auditor General thereon.

(2) The Minister shall cause a copy of every report received by him pursuant to this section to be laid before each House of Parliament.

Indemnity.

67. A person who is, or has been, a Trustee, a member of the Committee, or a 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 for or with respect to any matter, whether general or to meet a particular case, that is requisite or expedient to give effect to the purposes of this Act.
