

SOUTH AUSTRALIA

ABORIGINAL HERITAGE ACT, 1979

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ABORIGINAL HERITAGE ACT, 1979

being

Aboriginal Heritage Act, 1979,
No. 46 of 1979 [Assented to 15 March 1979]¹

¹ Act not yet in operation.

An Act to provide for the protection and preservation of sites and items of sacred, ceremonial, mythological or historic significance to the Aboriginal people; to repeal the Aboriginal and Historic Relics Preservation Act, 1965; and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I
PRELIMINARY

Short title

1. This Act may be cited as the *Aboriginal Heritage Act, 1979*.

Commencement

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

Arrangement of Act

3. This Act is arranged as follows:—

PART I—PRELIMINARY

PART II—ADMINISTRATION

PART III—PROTECTION OF ABORIGINAL SITES

PART IV—THE PROTECTION OF ITEMS OF THE ABORIGINAL HERITAGE

PART V—MISCELLANEOUS.

Repeal

4. The *Aboriginal and Historic Relics Preservation Act, 1965*, is repealed.

Interpretation

5. In this Act, unless the contrary intention appears—

"Aboriginal" means of, or pertaining to, the Aboriginal people:

"Aboriginal people" means the people who inhabited Australia prior to European colonization and includes the descendants of those people:

"Aboriginal site" means any area of archaeological, anthropological, ethnological, or historic significance relating to the Aboriginal people:

"the Committee" means the Aboriginal Heritage Committee:

"Crown lands" means any lands in the State except private lands:

"Inspector" means a person holding the office of Inspector under this Act:

"item of the Aboriginal heritage" or "item" means—

3.

- (a) any Aboriginal artifact or handiwork, including any tree or rock face apparently marked in a traditional manner by an Aboriginal person, but not including any artifact or handiwork made for the purpose of sale for a monetary consideration;
- (b) any traces of Aboriginal culture;
- (c) any Aboriginal remains of archaeological or anthropological interest:

"private lands" means lands alienated from the Crown by grant, lease, licence or agreement for sale and purchase:

"protected area" means an Aboriginal site declared to be a protected area in pursuance of this Act:

"the register" means the register kept by the Minister in pursuance of this Act:

"registered Aboriginal site" means an Aboriginal site delineated or otherwise identified by an entry in the register:

"registered item" means an item in respect of which an entry has been made in the register:

"sell" means—

- (a) sell, barter or exchange;
 - (b) agree or offer to sell, barter or exchange;
- or
- (c) receive, expose, store, have in possession, send, consign or deliver for or in pursuance of sale, barter or exchange,

and "sale" has a corresponding meaning.

Act not to prohibit Aboriginal customs

6. This Act shall not be construed as prohibiting any Aboriginal ceremonial or cultural observance conducted in accordance with the tribal law or traditions of the Aboriginal people.

PART II
ADMINISTRATION

General Administrative Duties of the Minister

Duties of the Minister

7. (1) The Minister shall—

(a) cause such searches to be made as are likely to result in the discovery of items of the Aboriginal heritage or of information in relation to Aboriginal sites or items;

(b) keep a register of Aboriginal sites and items;

and

(c) take such measures as may be practicable for the protection and preservation of Aboriginal sites and items.

(2) Part of the register referred to in subsection (1)(b) of this section shall be set apart for the recording of confidential information in relation to Aboriginal sites and items and shall only be available for inspection by such persons and upon such conditions as the Minister may determine.

The Fund

The Aboriginal Heritage Fund

8. (1) There shall be a fund at the Treasury entitled the "South Australian Aboriginal Heritage Fund".

(2) The following moneys shall be paid into the fund—

(a) any moneys received from the Government of the Commonwealth for the purpose;

(b) any moneys appropriated by Parliament for the purpose;

(c) any income derived from the investment of moneys standing to the credit of the fund;

and

(d) any other moneys received by the Minister for the purposes of this Act.

(3) The Minister may, with the approval of the Treasurer, invest moneys standing to the credit of the fund in any manner approved by the Treasurer.

5.

(4) The Minister may, for the purposes of this Act, borrow moneys from the Treasurer or, with the approval of the Treasurer, from any other person.

(5) Any moneys so borrowed shall be paid into the fund.

Application of the fund

9. The Minister may apply the fund—

- (a) for the purpose of acquiring registered items and registered Aboriginal sites;
- (b) for the purpose of meeting grants or loans to persons or bodies of persons with a view to preserving and protecting the Aboriginal heritage;

and

- (c) for any other purpose related to the preservation and protection of the Aboriginal heritage.

Delegation

Delegation by the Minister

10. (1) The Minister may, by instrument in writing, delegate to any person such of his powers under this Act as may be specified in the instrument.

(2) A delegation under this section may be made subject to such conditions and restrictions as the Minister thinks fit and specifies in the instrument of delegation.

(3) A delegation under this section shall be revocable at will, and shall not derogate from the power of the Minister to act personally in any matter.

The Committee

Constitution of the Committee

11. (1) There shall be a Committee entitled the "Aboriginal Heritage Committee".

(2) The Committee shall consist of nine members appointed by the Governor of whom—

- (a) at least three must be Aboriginals;
- (b) one must be a nominee of the Board of the South Australian Museum;

and

- (c) one must be a nominee of the Pastoral Board.

6.

(3) One of the members of the Committee shall be appointed by the Governor to be Chairman of the Committee.

Terms and conditions of office

12. (1) A member of the Committee shall be appointed for such term of office, not exceeding four years, and upon such conditions as the Governor may determine, and upon the expiration of his term of office shall be eligible for re-appointment.

(2) The Governor may appoint a person to be a deputy of a member of the Committee, and that person, while acting in the absence of that member, shall be deemed to be a member of the Committee.

(3) The Governor may remove a member of the Committee from office for—

(a) any breach of, or non-compliance with, the conditions of his appointment;

(b) mental or physical incapacity;

(c) neglect of duty;

or

(d) dishonourable conduct.

(4) The office of a member of the Committee shall become vacant if—

(a) he dies;

(b) his term of office expires;

(c) he resigns by written notice addressed to the Minister;

or

(d) he is removed from office by the Governor pursuant to subsection (3) of this section.

(5) Upon the office of a member of the Committee becoming vacant, a person shall be appointed in accordance with this Act to the vacant office.

Allowances and expenses

13. The members of the Committee shall be entitled to receive such allowances and expenses as may be determined by the Governor.

Quorum, etc.

14. (1) Five members of the Committee shall constitute a quorum of the Committee.

7.

(2) The chairman of the Committee shall preside at any meeting of the Committee at which he is present and, in the absence of the chairman from a meeting, the members of the Committee present shall decide who is to preside at that meeting.

(3) A decision carried by a majority of the votes of the members present at a meeting of the Committee shall be a decision of the Committee.

(4) Each member of the Committee shall be entitled to one vote on a matter arising for determination by the Committee and the person presiding at the meeting of the Committee shall, in the event of an equality of votes, have a second or casting vote.

(5) The Committee shall cause accurate minutes to be kept of the business conducted at meetings of the Committee.

(6) Subject to this Act, the business of the Committee shall be conducted in a manner determined by the Committee.

The secretary

15. (1) There shall be a secretary to the Committee.

(2) The secretary to the Committee shall be appointed, and shall hold office, in accordance with the *Public Service Act, 1967-1978*.

(3) The office of secretary to the Committee may be held in conjunction with any other office in the Public Service of the State.

Functions of the Committee

16. (1) The functions of the Committee are as follows:—

- (a) to recommend the registration of items or Aboriginal sites;
- (b) to recommend to the Minister the declaration of protected areas;
- (c) to recommend the acquisition of items that in their opinion warrant acquisition;
- (d) to carry out such other functions and duties as the Minister may assign to the Committee;

and

- (e) to consider and report to the Minister upon any matter referred by the Minister to the Committee for advice.

(2) Aboriginal sacred beliefs and ritual and ceremonial usage shall, insofar as they can be ascertained, be regarded as the primary consideration to be taken into account in the exercise of the functions of the Committee.

Annual report

17. (1) The Committee shall, as soon as practicable after the thirtieth day of June in each year, present a report to the Minister upon the administration of this Act during the period of twelve months ending on that day.

(2) The Minister shall, as soon as practicable after his receipt of a report under subsection (1) of this section cause copies of the report to be laid before both Houses of Parliament.

Inspectors

Inspectors

18. (1) The following persons shall be Inspectors for the purposes of this Act:—

(a) the members of the Police Force;

and

(b) any Aboriginal or other suitable persons appointed by the Minister to be Inspectors for the purposes of this Act.

(2) A person may be appointed as an Inspector under this section upon such terms and conditions as the Minister thinks fit.

Powers of Inspectors

19. (1) An Inspector may for the purposes of this Act—

(a) exercise reasonable force to prevent the commission of an offence against this Act, or the continuance of such an offence;

(b) require a person who is on a protected area without lawful authority to leave that protected area forthwith;

(c) require any person whom he reasonably suspects of having damaged an Aboriginal site, or an item upon an Aboriginal site, to leave that site forthwith;

or

(d) seize and retain any item for investigation or legal proceedings.

Resisting an Inspector

20. (1) A person shall not assault, hinder or resist an Inspector in the execution of his powers, duties or functions under this Act.

Penalty: One thousand dollars or imprisonment for three months.

9.

(2) A person of whom a requirement is made by an Inspector pursuant to the provisions of this Act shall forthwith comply with that requirement.

Penalty: One thousand dollars or imprisonment for three months.

PART III
PROTECTION OF ABORIGINAL SITES

Protected areas

21. (1) Where the Minister is satisfied that it is necessary for the protection of an Aboriginal site that it should become a protected area under the provisions of this Act, he may, by notice published in the *Gazette*, declare that site to be a protected area for the purposes of this Act.

(2) A declaration shall not be made under this section in respect of private lands unless—

(a) the Minister—

(i) has at least eight weeks before making the declaration given the owner and occupier of those lands a notice in writing setting out the terms of the proposed declaration and informing them that they or either of them may, within six weeks after service of the notice, object to the proposal;

and

(ii) has considered the objections (if any) made in response to the notice;

or

(b) the Minister is of the opinion that the declaration is urgently required in the public interest or in the interests of Aboriginal people.

(3) Where a declaration is made under this section in respect of private lands without notice being given in accordance with subsection (2)(a) of this section, the following provisions shall apply—

(a) the Minister shall as soon as practicable after the date of the declaration inform the owner and occupier in writing that they or either of them may within six weeks after that date object to the declaration;

and

(b) the declaration shall upon the expiration of eight weeks from the day on which it was made expire unless the Minister, after consideration of the objections (if any) made in response to the notice under paragraph (a) of this subsection, confirms the declaration by notice published in the *Gazette*.

(4) A notice under subsection (1) of this section may contain such restrictions upon access to, or the use of, the protected area as may be specified in the notice.

(5) A person shall not, without the written permission of the Minister, enter, or use, a protected area in contravention of a restriction contained in a notice under subsection (1) of this section.

Penalty: Ten thousand dollars or imprisonment for three months.

(6) The Minister may, by subsequent notice published in the *Gazette*, vary or revoke a notice under subsection (1) of this section.

Signs

22. (1) The Minister may erect, or cause to be erected, in or in the vicinity of a protected area or registered Aboriginal site signs indicating that the land is a protected area or registered Aboriginal site and any restrictions imposed in respect of access to or use of that protected area or registered Aboriginal site.

(2) The fact that a sign is not erected under this section in respect of a protected area or registered Aboriginal site shall not affect the liability of the person for contravention of any provision of this Act.

(3) A person shall not destroy, damage, deface, move or interfere with a sign erected pursuant to this section.

Penalty: One thousand dollars or imprisonment for one month.

(4) Upon conviction of a person for an offence against subsection (3) of this section, the court may (whether or not it imposes any penalty) order the convicted person to pay to the Minister such sum as the court thinks fit as compensation for any loss caused by reason of the commission of the offence.

Endorsements upon title

23. Where any land has become, or has ceased to be, a protected area under this Act, the Registrar-General shall, upon receipt of an application by the Minister, make such endorsements in the Register Book or the Register of Crown Leases as may be necessary to evidence that fact.

Acquisition of land

24. (1) The Minister may, subject to and in accordance with the provisions of the *Land Acquisition Act, 1969-1972*, acquire land for the purposes of this Act.

(2) Any such land may, if the Minister thinks fit, be declared to be a protected area.

PART IV
THE PROTECTION OF ITEMS OF THE ABORIGINAL HERITAGE

Land not to be excavated without permit

25. (1) A person shall not, without the consent of the Minister, excavate any land for the purpose of exploring for an item of the Aboriginal heritage (either within or outside a protected area).

Penalty: One thousand dollars.

(2) Subject to subsection (3) of this section, a person shall not, without the consent of the Minister, remove or otherwise interfere with an item of the Aboriginal heritage.

Penalty: Ten thousand dollars.

(3) Where a person discovers and collects items from land—

(a) being land included in a hundred;

and

(b) not being a registered Aboriginal site or a protected area,

he is not, by reason only of so doing, guilty of an offence under subsection (2) of this section.

(4) A person shall take reasonable measures to protect any item of the Aboriginal heritage in his ownership or possession.

Penalty: Five hundred dollars.

(5) A person shall not sell any item of the Aboriginal heritage (not being a part of, or fixture to, land) unless the sale is to the Minister or with his written consent.

Penalty: Five hundred dollars.

(6) A consent under this section may be unconditional, or subject to such conditions as the Minister thinks fit.

Excavation and removal of items of the Aboriginal heritage

26. (1) Where the Minister has reason to believe that items of the Aboriginal heritage may be lying upon or under any land, he may, by instrument in writing, authorize any person to enter and excavate the land (either within or outside a protected area) and to remove any items to safe storage.

(2) A person so authorized may, after giving reasonable notice to the occupier of land of his intention to do so, enter the land, carry out an excavation, and remove any items of the Aboriginal heritage in accordance with the terms and conditions of the authorization.

(3) An authorized person shall not enter land in pursuance of subsection (2) of this section unless before the date of entry he has given reasonable notice in writing to the occupier of the land identifying the land to be affected by the proposed excavation.

(4) The Minister shall make good any damage done to land by an authorized person acting in pursuance of this section.

Penalty for damaging or destroying registered item

27. (1) A person shall not damage or destroy a registered item.

Penalty: Ten thousand dollars or imprisonment for three months.

(2) It shall be a defence to a charge for an offence against subsection (1) of this section for the defendant to prove that the act alleged against him was neither intentional nor negligent.

Discovery of items to be reported

28. (1) A person who discovers an item of the Aboriginal heritage shall forthwith report the discovery to the Minister.

(2) Where any item of the Aboriginal heritage is discovered in the course of operations conducted on any land, the person in charge of those operations shall forthwith report the discovery to the Minister.

(3) A person who fails to report the discovery of an item of the Aboriginal heritage in accordance with this section shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

Surrender of item to the Minister for classification

29. (1) The Minister may require a person who has an item of the Aboriginal heritage in his possession to surrender that item to the Minister, or to a person nominated by the Minister, and the Minister may retain that item for a period not exceeding four months for the purpose of examination and classification.

(2) A person of whom a requirement is made by the Minister under this section shall comply with that requirement forthwith.

Penalty: Five hundred dollars.

PART V
MISCELLANEOUS

Proceedings

30. (1) Proceedings for offences against this Act shall be disposed of summarily.

(2) An allegation in a complaint—

- (a) that an object referred to in the complaint is an item of the Aboriginal heritage;
- (b) that a place referred to in the complaint is or was at the time specified in the complaint, a protected area;

or

- (c) that a person named in the complaint is, or was at a time referred to in the complaint, an Inspector under this Act,

shall be deemed to have been proved in the absence of proof to the contrary.

Forfeiture and seizure of items related to the Aboriginal heritage

31. (1) Where the owner of an item of the Aboriginal heritage is convicted of an offence in relation to that item, the Court may order that it be forfeited to the Crown.

(2) Where an Inspector has reasonable cause to suspect that an offence has been, or is about to be, committed in relation to an item of the Aboriginal heritage, he may seize and retain that item for a period not exceeding four months.

(3) Where an Inspector seizes an item in pursuance of subsection (2) of this section, he shall forthwith make a report upon the matter to the Minister.

Regulations

32. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of the foregoing, those regulations may—

- (a) provide for the supervision of operations carried out on or in the vicinity of Aboriginal sites and protected areas;
- (b) regulate, restrict or prohibit—
 - (i) persons or livestock entering or remaining within a registered Aboriginal site or protected area;
 - (ii) the use of vehicles, explosives, instruments or equipment within an Aboriginal site or a protected area;

15.

- (iii) damage or destruction to vegetation, or the disturbance of the surface or subsoil of land within a registered Aboriginal site or protected area;
 - (iv) the lighting or maintenance of fires within a registered Aboriginal site or protected area;
- (c) make any other provision for the protection of registered Aboriginal sites, protected areas, and items of the Aboriginal heritage;

and

- (d) prescribe penalties not exceeding five hundred dollars for breach of, or non-compliance with, any regulation.

(3) No regulation shall be made preventing watering of stock upon an Aboriginal site or protected area where there is no other reasonably accessible source of water in the near vicinity of the Aboriginal site or protected area.