



ABORIGINAL HERITAGE ACT, 1988

No. 12 of 1988

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ANNO TRICESIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1988

No. 12 of 1988

An Act to provide for the protection and preservation of the Aboriginal heritage; to repeal the Aboriginal and Historic Relics Preservation Act, 1965, and the Aboriginal Heritage Act, 1979; to amend the Mining Act, 1971, the Planning Act, 1982, and the South Australian Heritage Act, 1978; and for other purposes.

[Assented to 17 March 1988]

The Parliament of South Australia enacts as follows:

PART I PRELIMINARY

- Short title.** 1. This Act may be cited as the "Aboriginal Heritage Act, 1988".
- Commencement.** 2. (1) This Act will come into operation on a day to be fixed by proclamation.
- (2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.
- Interpretation.** 3. In this Act, unless the contrary intention appears—
- "Aboriginal object" means an object—
- (a) of significance according to Aboriginal tradition;
- or
- (b) of significance to Aboriginal archaeology, anthropology or history,
- and includes an object or an object of a class declared by regulation to be an Aboriginal object but does not include an object or an object of a class excluded by regulation from the ambit of this definition:
- "Aboriginal organization" means an association, body or group comprised, or substantially comprised, of Aboriginal persons having as its principal objects the furtherance of interests of Aboriginal people:

“Aboriginal record” means a record of information that must, in accordance with Aboriginal tradition, be kept secret from a person or group of persons:

“Aboriginal remains” means the whole or part of the skeletal remains of an Aboriginal person but does not include remains that have been buried in accordance with the law of the State:

“Aboriginal site” means an area of land—

(a) that is of significance according to Aboriginal tradition;

or

(b) that is of significance to Aboriginal archaeology, anthropology or history,

and includes an area or an area of a class declared by regulation to be an Aboriginal site but does not include an area or an area of a class excluded by regulation from the ambit of this definition:

“Aboriginal tradition” means traditions, observances, customs or beliefs of the people who inhabited Australia before European colonization and includes traditions, observances, customs and beliefs that have evolved or developed from that tradition since European colonization:

“central archives” means the archives kept by the Minister under Part II:

“the Committee” means the Aboriginal Heritage Committee established under Part II:

“to damage” includes to desecrate, deface or destroy:

“the Fund” means the South Australian Aboriginal Heritage Fund established under Part II:

“inspector” means a person appointed to be an inspector under Part II:

“land” includes land lying beneath inland waters or the sea:

“local archives” means archives kept with the assistance of the Minister under Part II:

“mining tenement” means—

(a) a mineral claim, a lease or licence under the Mining Act, 1971;

(b) a licence under the Petroleum Act, 1940;

or

(c) a permit, lease or licence under the Petroleum (Submerged Lands) Act, 1982:

“object” includes an object that forms part of, or is a fixture to, land:

“owner” in relation to private land means—

(a) in the case of land alienated from the Crown in fee simple—the holder of an estate in fee simple in the land;

(b) in the case of land held from the Crown under a lease or licence—the lessee or licensee;

(c) in the case of land occupied under an agreement for sale and purchase with the Crown—the person entitled to exercise the right of purchase,

and if the land is subject to a mining tenement a reference to the owner of the land extends to the holder of the tenement:

“private land” means—

(a) land alienated from the Crown in fee simple;

(b) land occupied under a lease, licence or agreement for sale and purchase with the Crown;

or

(c) land subject to a mining tenement:

“record” means—

(a) a documentary record;

(b) a record made by an electronic, electromagnetic, photographic or optical process;

(c) any other kind of record:

“Register of Aboriginal Sites and Objects” means the part of the central archives so entitled and kept by the Minister under Part II:

“to sell” means—

(a) to sell, barter or exchange;

(b) to agree or offer to sell, barter or exchange;

or

(c) to expose for sale, barter or exchange,

and “sale” has a corresponding meaning:

“traditional owner” of an Aboriginal site or object means an Aboriginal person who, in accordance with Aboriginal tradition, has social, economic or spiritual affiliations with, and responsibilities for, the site or object:

“working day” means any day except a Saturday, Sunday or public holiday.

Act binds Crown.

4. This Act binds the Crown.

PART II

ADMINISTRATION

DIVISION I—GENERAL

Functions of the Minister.

5. (1) The functions of the Minister under this Act are—

(a) to take such measures as are practicable for the protection and preservation of Aboriginal sites, objects and remains;

(b) to conduct, direct or assist searches for the purpose of discovering Aboriginal sites or objects;

(c) to conduct, direct or assist research into the Aboriginal heritage;
and

(d) to carry out any other function assigned to the Minister under this Act.

(2) The Minister must, in carrying out functions under this Act, consider any relevant recommendations of the Committee.

6. (1) The Minister may delegate any of the Minister's powers or functions under this Act other than the power to authorize the commencement of proceedings for an offence against this Act. Delegation.

(2) The Minister must, at the request of the traditional owners of an Aboriginal site or object, delegate the Minister's powers under sections 21, 23, 29 and 35 to the traditional owners of the site or object.

(3) A delegation under this section—

(a) must be in writing;

(b) may be subject to such conditions as the Minister considers appropriate;

(c) may authorize the sub-delegation of a specified power;

(d) if made to the holder of a specified office or position, empowers any person holding or acting in the office or position to exercise the delegated powers;

(e) is revocable at will;

and

(f) does not prevent the Minister from acting personally in any matter.

(4) The Minister must not revoke a delegation under subsection (2) without the consent of the traditional owners.

7. (1) The *Aboriginal Heritage Committee* is established. Aboriginal Heritage Committee.

(2) The Committee consists of Aboriginal persons appointed, as far as is practicable, from all parts of the State by the Minister to represent the interests of Aboriginal people throughout the State in the protection and preservation of the Aboriginal heritage.

(3) The Minister must, as far as is practicable, appoint equal numbers of men and women to the Committee.

(4) The members of the Committee will be appointed on such conditions and for such terms as the Minister considers appropriate.

(5) The Committee may, with the approval of the Minister, establish subcommittees (which may—but need not—consist of or include members of the Committee) to investigate and report to the Committee on any matter.

8. (1) The functions of the Committee are— Functions of the Committee.

(a) to advise the Minister, either on its own initiative or at the request of the Minister, with respect to—

(i) the making of entries in the central archives and the removal of any such entry;

- (ii) measures that should, in the Committee's opinion, be taken for the protection or preservation of Aboriginal sites, objects or remains;
 - (iii) the appointment of suitable persons as inspectors for the purposes of this Act;
- and
- (iv) any other matter related to the administration or operation of this Act or to the protection or preservation of the Aboriginal heritage;

and

- (b) to carry out any other function assigned to the Committee by this Act or by the Minister.

Central and local
archives.

9. (1) The Minister must keep central archives relating to the Aboriginal heritage.

(2) Part of the central archives (to be entitled the "Register of Aboriginal Sites and Objects") must contain entries describing, with sufficient particularity to enable them to be readily identified, sites or objects determined by the Minister to be Aboriginal sites or objects.

(3) The Minister must not remove an entry from the Register of Aboriginal Sites and Objects unless the Minister determines that the site or object to which the entry relates is not an Aboriginal site or object.

(4) The Minister may assist (financially or in any other manner) an Aboriginal organization to keep local archives relating to the Aboriginal heritage.

Confidentiality of
archives.

10. (1) The confidentiality of information entered in the central or local archives that relates to an Aboriginal site or object must be maintained unless—

- (a) the traditional owners of the site or object have approved disclosure of the information;
- (b) where all reasonable steps have been taken to consult the traditional owners but the Minister or organization keeping the archives is satisfied that there are no traditional owners or that they cannot be identified or located, the Committee (in the case of the central archives), or the organization keeping the archives (in the case of local archives), has approved disclosure of the information;

or

- (c) the information is made available by the Minister in response to an application under section 12.

(2) The confidentiality of information entered in the central or local archives that does not relate to an Aboriginal site or object must be maintained unless the Committee (in the case of the central archives), or the organization keeping the archives (in the case of local archives), has approved disclosure of the information.

(3) The disclosure of information from the central or local archives must be on such conditions (if any) as are stipulated by—

- (a) the traditional owners;

and

(b) in the case of information made available from—

(i) the central archives, the Committee;

and

(ii) local archives, the organization keeping the archives.

(4) A person must not—

(a) disclose information from the central or local archives contrary to this section;

or

(b) fail to comply with a condition referred to in subsection (3).

Penalty: \$10 000 or imprisonment for 6 months.

11. In any legal proceedings—

(a) a site or object will be conclusively presumed to be an Aboriginal site or object if it is entered in the Register of Aboriginal Sites and Objects;

and

(b) a site or object will be conclusively presumed not to be an Aboriginal site or object if the Minister has determined that it should not be entered in the Register and the Minister has not reversed that determination.

Effect of entries in the Register.

12. (1) If a person proposes to take action in relation to a particular object and that action may constitute an offence against this Act if the object is an Aboriginal object, the person may apply to the Minister under this section.

Determination of whether site or object is an Aboriginal site or object.

(2) On an application under subsection (1), the Minister must—

(a) if the object is entered in the Register of Aboriginal Sites and Objects, give the applicant written notice that it is so entered;

(b) if the object is not entered in the Register, determine whether it should be so entered and give the applicant written notice of the determination.

(3) If a person proposes to take action in relation to a particular area and that action may constitute an offence against this Act if the area is, is part of or includes an Aboriginal site or if an Aboriginal object is located in the area, the person may apply to the Minister under this section.

(4) On an application under subsection (3), the Minister must—

(a) determine whether any entries should be made in the Register of Aboriginal Sites and Objects in relation to sites or objects in the area that are not so entered and give the applicant written notice of the determination;

or

(b) subject to subsection (5), give the applicant written notice of the location of each Aboriginal site or object in the area that is entered, or that the Minister has determined should be entered, in the Register.

(5) The Minister must not disclose the exact location of a site or object if, in the Minister's opinion, the disclosure is likely to be detrimental to the protection or preservation of the site or object or to be in contravention of Aboriginal tradition.

(6) The Minister may, within 20 working days after receiving an application, require an applicant to provide information in connection with the application or to engage an expert acceptable to the Minister to do so.

(7) Where the Minister requires information to be provided under subsection (6), the Minister must determine the application within 30 working days of receiving that information.

(8) The Minister may refuse to entertain an application under this section on the grounds—

- (a) that the area or object is insufficiently identified;
- (b) that the application is not genuine;
- or
- (c) that the Minister does not have the resources to determine the application.

Consultation on determinations, authorizations and regulations.

13. (1) The Minister must—

- (a) before making a determination under this Act;
- (b) before giving an authorization under this Act;
- or
- (c) before a site or object is declared by regulation to be an Aboriginal site or object or is excluded by regulation from the ambit of the definition of Aboriginal site or object,

take all reasonable steps to consult with—

- (d) the Committee;
- (e) any Aboriginal organization that, in the opinion of the Minister, has a particular interest in the matter;
- and
- (f) any—

- (i) traditional owners;

and

- (ii) other Aboriginal persons,

who, in the opinion of the Minister, have a particular interest in the matter.

(2) When determining whether an area of land is an Aboriginal site or an object is an Aboriginal object, the Minister must accept the views of the traditional owners of the land or object on the question of whether the land or object is of significance according to Aboriginal tradition.

(3) This section does not apply to—

- (a) a determination under section 24 (8);
- or
- (b) an authorization under section 27 or 36.

14. An authorization may be given by the Minister under this Act on such conditions as the Minister considers appropriate. Authorizations subject to conditions.

DIVISION II—INSPECTORS

15. (1) The Minister may, by instrument in writing, appoint suitable persons to be inspectors for the purposes of this Act. Inspectors.

(2) The Minister may, in the instrument of appointment—

- (a) limit the area in which the inspector may act;
- (b) restrict the powers that the inspector may exercise;
- (c) authorize the inspector to give instructions in relation to a particular Aboriginal site or object.

(3) The traditional owners of an Aboriginal site or object may inform the Minister, by notice in writing, that they object to an inspector named in the notice exercising powers under this Act in relation to the site or object, and, in that event, the inspector must not exercise those powers in relation to the site or object.

16. (1) The Minister must provide an inspector with a certificate of appointment setting out any limitations, restrictions or authorizations attaching to the appointment. Identification.

(2) An inspector must, at the request of a person in relation to whom the inspector has exercised, or intends to exercise, powers under this Act, produce the inspector's certificate of appointment.

17. (1) An inspector may, for the purposes of this Act— Powers.

- (a) at any reasonable time enter any land for the purpose of inspecting an Aboriginal site or object or a site or object that the inspector has reason to believe is an Aboriginal site or object;
- (b) at any reasonable time enter and inspect any land, premises, vehicle or place for the purpose of determining whether a provision of this Act is being or has been contravened or complied with;
- (c) seize and retain—
 - (i) an Aboriginal object in relation to which the inspector has reason to suspect that an offence has been or is about to be committed;
 - (ii) anything that affords evidence of an offence against this Act;
- (d) exercise reasonable force to prevent the commission of an offence against this Act, or the continuance of such an offence;
- (e) require a person whom the inspector reasonably suspects of having committed or being about to commit an offence against this Act to state the person's full name and usual residential or business address;
- (f) require a person holding or required to hold an authorization under this Act to produce that authorization for inspection.

(2) Where an inspector is authorized by the Minister to give directions in relation to a particular Aboriginal site or object, the inspector may, for

the purpose of averting harm to the site or object, give reasonable instructions to any person visiting the site or in the immediate vicinity of the site or object.

(3) Where anything is seized by an inspector, the inspector must forthwith report the matter to the Minister.

(4) In the exercise of powers under this Act an inspector may be assisted by such persons as are, in the inspector's opinion, necessary or desirable in the circumstances.

(5) The powers conferred by this section must not be exercised contrary to a direction of the Minister.

Offences.

18. A person must not, without reasonable excuse—

- (a) hinder or obstruct an inspector, or any person assisting an inspector, in the exercise of a power conferred by this Act;
- (b) refuse or fail to comply with a requirement of an inspector under this Act;
- (c) refuse or fail to comply with the reasonable instructions of an inspector under this Act.

Penalty: \$2 000 or imprisonment for 3 months.

DIVISION III—SOUTH AUSTRALIAN ABORIGINAL HERITAGE FUND

The Fund.

19. (1) The *South Australian Aboriginal Heritage Fund* is established and administered by the Minister.

(2) The Fund consists of—

- (a) money received from the Government of the Commonwealth for the purposes of this Act;
- (b) money appropriated by Parliament for the purposes of this Act;
- (c) income paid into the Fund under subsection (5);

and

(d) all money received by the Minister for the purposes of this Act.

(3) The Fund must be kept in a separate account at the Treasury.

(4) Any money standing to the credit of the Fund that is not for the time being required for the purposes of this Act may be invested by the Treasurer.

(5) Income from investment of the Fund will, at the direction of the Treasurer, be paid into the Fund, or into the Consolidated Account.

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

(7) The Minister may apply the Fund—

- (a) in acquiring land or Aboriginal objects or records under this Act;
- (b) in making grants or loans to persons or bodies undertaking research into, or in relation to, the Aboriginal heritage;

- (c) in making payments under a heritage agreement entered into by the Minister under the South Australian Heritage Act, 1978;
- (d) in the administration of this Act;
- (e) for any other purpose related to the protection or preservation of the Aboriginal heritage.

PART III

PROTECTION AND PRESERVATION OF ABORIGINAL HERITAGE

DIVISION I—DISCOVERY OF, AND SEARCH FOR, ABORIGINAL SITES, OBJECTS AND REMAINS

20. (1) An owner or occupier of private land, or an employee or agent of such an owner or occupier, who discovers on the land—

Discovery of sites, objects or remains.

(a) an Aboriginal site;

or

(b) an Aboriginal object or remains,

must, as soon as practicable, report the discovery to the Minister giving particulars of the nature and location of the site, object or remains.

Penalty: (a) in the case of a body corporate—\$50 000;

(b) in any other case—\$10 000 or imprisonment for 6 months.

(2) This section does not apply to the traditional owner of the site or object or to an employee or agent of the traditional owner.

(3) The Minister may direct a person making a report to take such immediate action for the protection or preservation of the remains as the Minister considers appropriate.

(4) A person must not, without reasonable excuse, fail to comply with a direction of the Minister under this section.

Penalty: \$2 000 or imprisonment for 3 months.

21. A person must not, without the authority of the Minister, excavate land for the purpose of uncovering any Aboriginal site, object or remains.

Excavating sites, objects or remains.

Penalty: (a) in the case of a body corporate—\$50 000;

(b) in any other case—\$10 000 or imprisonment for 6 months.

22. (1) Where the Minister has reason to believe that any Aboriginal site, object or remains have been or may be found on or under any land (including private land), the Minister may authorize a person—

Access to and excavation of land by authorized persons.

(a) to enter the land;

(b) to search for the site, object or remains;

and

(c) to excavate the land.

(2) Before entering any land pursuant to an authorization under this section, the authorized person must give reasonable notice in writing to the owner and occupier (if any) of the land identifying the land affected.

(3) Where any Aboriginal object or remains, or any object or remains that may be an Aboriginal object or Aboriginal remains, is or are found on the land, the Minister, if satisfied that it is necessary to do so for the protection or preservation of the object or remains, may take possession of the object or remains.

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

(5) A person must not, without reasonable excuse, hinder or obstruct a person acting pursuant to an authorization under this section.

Penalty: \$2 000 or imprisonment for 3 months.

DIVISION II—PROTECTION OF ABORIGINAL SITES, OBJECTS AND REMAINS

Damage, etc., to sites, objects or remains.

23. A person must not, without the authority of the Minister—

(a) damage, disturb or interfere with any Aboriginal site;

(b) damage any Aboriginal object;

or

(c) where any Aboriginal object or remains are found—

(i) disturb or interfere with the object or remains;

or

(ii) remove the object or remains.

Penalty: (a) in the case of a body corporate—\$50 000;

(b) in any other case—\$10 000 or imprisonment for 6 months.

Directions by Minister restricting access to sites, objects or remains.

24. (1) Subject to this section, where the Minister is satisfied that it is necessary for the protection or preservation of—

(a) an Aboriginal site, object or remains;

or

(b) a site, object or remains that the Minister has reason to believe may be an Aboriginal site, object or remains,

the Minister may give directions prohibiting or restricting—

(c) access to the site or an area surrounding the site or to the object or remains;

(d) activities on or in relation to the site or an area surrounding the site or in relation to the object or remains.

(2) The Minister must not give directions under subsection (1) (c) except with the approval of the Governor.

(3) Directions may be given under this section—

(a) if limited in their application to a particular person or persons—
by notice in writing to that person or those persons;

or

(b) if of general application—

(i) by notice published in the *Gazette*;

(ii) by notice published in a newspaper circulating generally throughout the State;

(iii) by the erection of signs in the vicinity of the site, area, object or remains;

or

(iv) by a combination of methods referred to in this paragraph,

as the Minister considers appropriate in the circumstances.

(4) Subject to subsection (5), the Minister must, before giving any directions under this section, take reasonable steps to give not less than eight weeks notice of the proposed directions to—

(a) the owner and occupier (if any) of private land in relation to which the directions apply;

(b) the Committee;

(c) any Aboriginal organization that, in the opinion of the Minister, has a particular interest in the matter;

and

(d) a representative of—

(i) any traditional owners;

and

(ii) any other Aboriginal persons,

who, in the opinion of the Minister, have a particular interest in the matter.

(5) The Minister may, if satisfied that urgent action is necessary, give directions under this section without the notice required by subsection (4), but must, in that event, take reasonable steps to give the notice as soon as practicable after giving the directions.

(6) A notice must—

(a) set out the directions;

(b) give the reasons for the directions;

(c) state that any interested person or body may make representations to the Minister with respect to the directions;

and

(d) if given under subsection (3) (a), set out the penalty for contravening or failing to comply with a direction.

(7) Where directions are given under this section in relation to a site or object that is not entered in the Register of Aboriginal Sites and Objects, the Minister must, as soon as practicable—

(a) determine whether the site or object should be entered in the Register;

and

(b) if the Minister determines that the site or object should not be entered in the Register—revoke the directions.

(8) Where directions are given under this section in relation to remains not known to be Aboriginal remains, the Minister must, as soon as practicable—

(a) determine whether the remains are Aboriginal remains;
and

(b) if the Minister determines that the remains are not Aboriginal remains—revoke the directions.

(9) The Minister must—

(a) give due consideration to any representations made with respect to the directions;

and

(b) if satisfied (whether on the basis of such representations or otherwise) that the directions should be revoked or modified, revoke or modify the directions accordingly.

(10) Within 30 days after the sale of land in relation to which directions under this section apply, the vendor must provide the Minister with the following information in writing—

(a) the date of the sale;

and

(b) the name and address of the purchaser.

Penalty: \$2 000.

(11) This section does not apply to Aboriginal objects or remains that are in a public or private collection.

Directions by
inspector
restricting access
to sites, objects or
remains.

25. (1) Where an inspector is satisfied that urgent action is necessary for the protection or preservation of—

(a) an Aboriginal site, object or remains;

or

(b) a site, object or remains that the inspector has reason to believe may be an Aboriginal site, object or remains,

the inspector may give directions prohibiting or restricting—

(c) access to the site, or an area surrounding the site, or to the object or remains;

(d) activities on or in relation to the site or an area surrounding the site or in relation to the object or remains.

(2) Directions may be given under this section—

(a) if limited in their application to a particular person or persons—by notice in writing to that person or those persons;

or

(b) if of general application—by the erection of signs in the vicinity of the site, area, object or remains to which the directions relate.

(3) A notice under subsection (2) (a) must set out the penalty for contravening or failing to comply with a direction.

(4) Where an inspector gives any directions under this section, the inspector must forthwith report the matter to the Minister.

(5) Any directions given under this section cease to have effect on revocation by the Minister, or, in any event, on the expiration of 10 working days after the day on which they were given.

(6) This section does not apply to Aboriginal objects or remains that are in a public or private collection.

26. A person must not, without reasonable excuse, contravene, or fail to comply with, a direction given under section 24 or 25.

Failure to comply with directions of Minister or inspector.

Penalty: (a) in the case of a body corporate—\$50 000;

(b) in any other case—\$10 000 or imprisonment for 6 months.

27. (1) Directions under section 24 or 25 do not apply to—

Entry by officials.

(a) an inspector acting in the course of official duties;

(b) a member of the police force acting in the course of official duties;

(c) a person acting with the authority of the Minister, who enters a restricted area for the purpose of carrying out functions that have been assigned to a Minister, statutory office holder or instrumentality of the Crown;

(d) a person acting in response to an emergency.

(2) Where a person proposes to enter an area in pursuance of subsection (1) (c), reasonable notice of the time, place and purpose of the proposed entry must be given to the Minister.

28. A person must take reasonable measures to protect an Aboriginal object that is in that person's ownership or possession as part of a public or private collection.

Care of Aboriginal objects.

Penalty: (a) in the case of a body corporate—\$50 000;

(b) in any other case—\$10 000 or imprisonment for 6 months.

DIVISION III—CONTROL OF SALE OF, AND OTHER DEALINGS WITH, ABORIGINAL OBJECTS

29. (1) A person must not, without the authority of the Minister—

Control of sale of and other dealings with objects.

(a) sell or dispose of an Aboriginal object;

or

(b) remove an Aboriginal object from the State.

Penalty: (a) in the case of a body corporate—\$50 000;

(b) in any other case—\$10 000 or imprisonment for 6 months.

(2) This section does not affect the sale of land of which an Aboriginal object forms part or to which an Aboriginal object is affixed.

(3) The Minister must in determining whether to give an authorization for the purposes of this section comply with the regulations.

**DIVISION IV—ACQUISITION AND CUSTODY OF ABORIGINAL SITES, OBJECTS
AND RECORDS**

Acquisition of
land.

30. The Minister may, subject to and in accordance with the Land Acquisition Act, 1969, acquire land for the purposes of protecting or preserving an Aboriginal site, object or remains.

Acquisition of
objects and
records.

31. (1) The Minister may—

(a) acquire an Aboriginal object or record by purchase;

or

(b) compulsorily acquire an Aboriginal object or record in accordance with this section.

(2) If the owner of an Aboriginal object or record is unwilling to sell the object to the Minister, or is unwilling to sell it for an amount the Minister considers reasonable, the Minister may apply to the Land and Valuation Court for a valuation of the object or record.

(3) If within one month after the date of a valuation by the Court, the Minister pays into the Court the amount of the valuation, the Court may—

(a) make an order vesting title to the object or record in the Minister; and

(b) make any incidental or ancillary orders that may be necessary or desirable in the circumstances of the case.

Surrender of
objects and
records.

32. (1) The Minister may require a person who has possession of an Aboriginal object or record, or an object or record that the Minister has reason to believe may be an Aboriginal object or record, to surrender the object or record to the Minister, or to a person nominated by the Minister, for one or more of the following purposes:

(a) determination of whether the object or record is an Aboriginal object or record;

(b) examination for the purposes of making an entry in the central or local archives;

(c) consideration of acquisition by the Minister of the object or record under this Act;

(d) in the case of an object, research related to the object.

(2) An object or record surrendered under subsection (1)—

(a) may, unless acquired by the Minister, be retained for a period not exceeding 3 months;

and

(b) if returned, must, subject to any agreement to the contrary with the owner of the object or record, be returned in the condition in which it was surrendered.

(3) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made under this section.

Penalty: \$2 000 or imprisonment for 3 months.

Forfeiture of
objects.

33. Where the owner of an Aboriginal object is found guilty of an offence in relation to that object, the court may, in addition to any penalty that the court may impose, order that the object be forfeited to the Crown.

34. Where land or an Aboriginal object or record has been acquired or has come into the possession of the Minister (except by surrender of the object or record under section 32), the land or object may, if the Minister so determines—

- (a) be placed in the custody of an Aboriginal person or organization;
- or
- (b) be dealt with in any other manner, subject to such conditions as the Minister may determine.

Custody of land, objects and records.

DIVISION V—PROTECTION OF TRADITIONS

35. (1) Except as authorized or required by this Act, a person must not, in contravention of Aboriginal tradition, divulge information relating to—

- (a) an Aboriginal site, object or remains;
- or
- (b) Aboriginal tradition.

Divulging information contrary to Aboriginal tradition.

Penalty: \$10 000 or imprisonment for 6 months.

(2) Such information may be divulged with the authority of the Minister.

36. (1) The Minister may authorize an Aboriginal person or group of Aboriginal persons to enter any land (including private land) for the purpose of gaining access to an Aboriginal site, object or remains.

Access to land by Aboriginal people.

(2) Before giving an authorization under this section, the Minister must allow the owner and occupier (if any) of the land a reasonable opportunity to make representations on the question of whether the authorization should be given and if so, subject to what conditions.

(3) Where the Minister gives an authorization under this section, the Minister must as soon as practicable notify the owner and occupier (if any) of the land of the conditions of the authorization.

(4) A person must not, without reasonable excuse, hinder or obstruct a person acting pursuant to an authorization under this section.

Penalty: \$2 000 or imprisonment for 3 months.

37. Nothing in this Act prevents Aboriginal people from doing anything in relation to Aboriginal sites, objects or remains in accordance with Aboriginal tradition.

Preservation of right to act according to tradition.

PART IV MISCELLANEOUS

38. A person must not damage or interfere with a sign erected pursuant to this Act.

Interference with signs.

Penalty: \$1 000.

39. A notice or other document required or authorized to be given under this Act may be given personally or sent by post.

Service.

40. (1) A person engaged in the administration or enforcement of this Act incurs no liability for an honest act or omission in the exercise or

Immunity from liability.

discharge or purported exercise or discharge of a power, duty or function under this Act.

(2) A liability that would, but for subsection (1), lie against the person lies against the Crown.

Vicarious liability.

41. (1) Where an employee or agent acting in the course of his or her employment or agency commits an offence against this Act, the employer or principal is also guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

(2) Where a body corporate commits an offence against this Act, each member of the governing body of the body corporate is guilty of an offence and liable to the same penalty applicable to the principal offence when committed by a natural person unless it is proved that the member could not by the exercise of reasonable diligence have prevented the commission of that offence.

Failure to consult, etc., traditional owners.

42. No person other than a traditional owner is entitled to call into question the validity of an act or determination of the Minister on the ground that there has been a failure to comply with a requirement of this Act as to consultation with traditional owners, or as to the obtaining of approval from, or the stipulation of conditions by, traditional owners.

Evidence.

43. In any proceedings a document apparently signed by the Minister certifying a matter relating to—

(a) an entry in the Register of Aboriginal Sites and Objects;

(b) a direction or determination made or an authorization given under this Act;

(c) the appointment of an inspector;

or

(d) the delegation of a power or function by the Minister under this Act,

constitutes, in the absence of proof to the contrary, proof of the matter certified.

Summary offences.

44. Offences against this Act are summary offences.

Commencement of prosecutions.

45. (1) A prosecution for an offence against this Act—

(a) in relation to an Aboriginal site, object or remains located on or partly on the lands vested in Maralinga Tjarutja pursuant to the Maralinga Tjarutja Land Rights Act, 1984, must not be commenced except—

(i) by a person authorized by the Minister with the approval of Maralinga Tjarutja;

or

(ii) by Maralinga Tjarutja or a person authorized by Maralinga Tjarutja;

(b) in relation to an Aboriginal site, object or remains located on or partly on the lands vested in Anangu Pitjantjatjara pursuant to the Pitjantjatjara Land Rights Act, 1981, must not be commenced except—

- (i) by a person authorized by the Minister with the approval of Anangu Pitjantjatjara;
 - or
 - (ii) by Anangu Pitjantjatjara or a person authorized by Anangu Pitjantjatjara;
- (c) in relation to an Aboriginal site, object or remains located on or partly on the lands vested in the Aboriginal Lands Trust pursuant to the Aboriginal Lands Trust Act, 1966, must not be commenced except—
- (i) by a person authorized by the Minister with the approval of the Aboriginal Lands Trust;
 - or
 - (ii) by the Aboriginal Lands Trust or a person authorized by the Trust;
- (d) in relation to any other Aboriginal site, object or remains must not be commenced except by a person authorized by the Minister.

(2) Such a prosecution may, if the Minister so authorizes, be commenced notwithstanding that more than six months have elapsed (as at the date of the authorization) from the date on which the offence is alleged to have been committed.

(3) The traditional owners of an Aboriginal site or object may request the Minister to authorize a person to commence a prosecution for an offence against this Act in relation to that site or object and the Minister must give proper consideration to such a request.

(4) In any proceedings for an offence against this Act—

- (a) a document apparently signed by the Minister authorizing the commencement of the proceedings by a particular person constitutes, in the absence of proof to the contrary, proof of the authorization;
- (b) a document apparently executed by Maralinga Tjarutja, Anangu Pitjantjatjara or the Aboriginal Lands Trust authorizing or approving the commencement of the proceedings by a particular person constitutes, in the absence of proof to the contrary, proof of the authorization or approval.

46. (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. Regulations.

(2) In particular, the regulations may prescribe penalties not exceeding \$2 000 for contravention of, or non-compliance with, a regulation.

SCHEDULE 1
REPEAL OF ACTS

The following Acts are repealed:

Aboriginal and Historic Relics Preservation Act, 1965.

Aboriginal Heritage Act, 1979.

SCHEDULE 2
AMENDMENT OF ACTS

The following Acts are amended as set out below:

Provision Amended	How Amended
<p><i>Mining Act, 1971</i> Section 30 (2) Section 34 (6) Section 41a (5) Section 52 (4)</p>	<p>Insert the following paragraph after paragraph (c) in each case:</p> <p>(d) any Aboriginal sites or objects within the meaning of the Aboriginal Heritage Act, 1988, that may be affected by those operations.</p>
<p><i>Planning Act, 1982</i> New section 48b Aboriginal sites and objects</p>	<p>Insert the following section after section 48a:</p> <p>48b. (1) Where an application is made for planning authorization in respect of a development of a prescribed kind or in a prescribed area, the planning authority from which the authorization is sought—</p> <p>(a) must refer the application to the Minister responsible for the administration of the Aboriginal Heritage Act, 1988;</p> <p>(b) must not grant the authorization until it has received and had regard to any representations that the Minister desires to make on the subject;</p> <p>and</p> <p>(c) where the planning authority is a council— must not grant the authorization without the concurrence of the Commission.</p> <p>(2) If the Minister decides to make representations in relation to the application he or she must do so within two months after the referral of the application.</p> <p>(3) The Commission must, before concurring or refusing to concur in the granting of an authorization by a council, have regard to any representations of the Minister.</p>
<p><i>South Australian Heritage Act, 1978</i> Section 4 (1)</p>	<p>Insert after paragraph (ab) of the definition of "the Authority" the following paragraph:</p> <p>(ac) where the agreement was entered into by the Minister responsible for the administration of the Aboriginal Heritage Act, 1988, that Minister.</p>
<p>Section 16a</p>	<p>Insert the following subsection after subsection (3):</p> <p>(4) The Minister responsible for the administration of the Aboriginal Heritage Act, 1988, may enter into a heritage agreement with the owner of an Item comprising land on which an Aboriginal site or object within the meaning of that Act is situated.</p>

SCHEDULE 3

Transitional Provisions

The Minister may give directions under section 24 in relation to Aboriginal sites, objects or remains within an area that was a prohibited area or historic reserve under the Aboriginal and Historic Relics Preservation Act, 1965, immediately prior to the commencement of this Act, without complying with subsection (3) of that section.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor