

South Australia

Aboriginal Heritage Act 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*; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Aboriginal Heritage Act 1988*.

2—Commencement

- (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.

3—Interpretation

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 organisation 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 colonisation and includes traditions, observances, customs and beliefs that have evolved or developed from that tradition since European colonisation;

central archives means the archives kept by the Minister under Part 2;

the Committee means the Aboriginal Heritage Committee established under Part 2;

to damage includes to desecrate, deface or destroy;

the Fund means the South Australian Aboriginal Heritage Fund established under Part 2;

inspector means a person appointed to be an inspector under Part 2;

land includes land lying beneath inland waters or the sea;

local archives means archives kept with the assistance of the Minister under Part 2;

mining tenement means—

- (a) a mineral claim, a lease or licence under the *Mining Act 1971*; or
- (b) a licence under the *Petroleum Act 1940*; or
- (c) a permit, lease or licence under the *Petroleum (Submerged Lands) Act 1982*; or
- (d) a licence under the *Offshore Minerals Act 2000*;

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; or
- (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 2;

to sell means—

- (a) to sell, barter or exchange; or
- (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.

4—Act binds Crown

This Act binds the Crown.

Part 2—Administration

Division 1—General

5—Functions of the Minister

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

- (1) The Minister may delegate any of the Minister's powers or functions under this Act other than the power to authorise the commencement of proceedings for an offence against this Act.
- (3) A delegation under this section—
 - (a) must be in writing; and
 - (b) may be subject to such conditions as the Minister considers appropriate; and
 - (c) may authorise the sub-delegation of a specified power; and
 - (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; and
 - (e) is revocable at will; and
 - (f) does not prevent the Minister from acting personally in any matter.

7—Aboriginal Heritage Committee

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

- (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.
- (6) A member of the Committee will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter that is shared in common with Aboriginal persons generally, or a substantial section of Aboriginal persons.

8—Functions of the Committee

- (1) The functions of the Committee are—
 - (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; and
 - (ii) measures that should, in the Committee's opinion, be taken for the protection or preservation of Aboriginal sites, objects or remains; and
 - (iii) the appointment of suitable persons as inspectors for the purposes of this Act; and
 - (iiia) Aboriginal heritage agreements; 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.

9—Central and local archives

- (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 organisation to keep local archives relating to the Aboriginal heritage.

10—Confidentiality of archives

- (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; or
 - (b) where all reasonable steps have been taken to consult the traditional owners but the Minister or organisation 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 organisation 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 organisation 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 organisation 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).

Maximum penalty: \$10 000 or imprisonment for 6 months.

11—Effect of entries in the Register

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.

12—Determination of whether site or object is an Aboriginal site or object

- (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.

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

13—Consultation on determinations, authorisations and regulations

- (1) The Minister must—
 - (a) before making a determination under this Act; or
 - (b) before giving an authorisation 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; and

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- (e) any Aboriginal organisation 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 authorisation under section 27 or 36.

14—Authorisations subject to conditions

An authorisation may be given by the Minister under this Act on such conditions as the Minister considers appropriate.

Division 2—Inspectors

15—Inspectors

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

- (1) The Minister must provide an inspector with a certificate of appointment setting out any limitations, restrictions or authorisations attaching to the appointment.
- (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—Powers

- (1) An inspector may, for the purposes of this Act—
 - (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;
 - (ba) at any reasonable time enter and inspect land for the purposes of determining whether an Aboriginal heritage agreement entered into under this Act is being, or has been, 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 authorisation under this Act to produce that authorisation for inspection.
- (2) Where an inspector is authorised 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.

18—Offences

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.

Maximum penalty: \$2 000 or imprisonment for 3 months.

Division 3—South Australian Aboriginal Heritage Fund

19—The Fund

- (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; and
 - (b) money appropriated by Parliament for the purposes of this Act; and
 - (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 an Aboriginal heritage agreement entered into by the Minister under this Act;
 - (d) in the administration of this Act;
 - (e) for any other purpose related to the protection or preservation of the Aboriginal heritage.

Part 3—Protection and preservation of Aboriginal heritage

Division 1—Discovery of, and search for, Aboriginal sites, objects and remains

20—Discovery of sites, objects or remains

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

Maximum 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.

Maximum penalty: \$2 000 or imprisonment for 3 months.

21—Excavating sites, objects or remains

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

Maximum penalty:

- (a) in the case of a body corporate—\$50 000;
- (b) in any other case—\$10 000 or imprisonment for 6 months.

22—Access to and excavation of land by authorised persons

- (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 authorise a person—
- (a) to enter the land; and
 - (b) to search for the site, object or remains; and
 - (c) to excavate the land.
- (2) Before entering any land pursuant to an authorisation under this section, the authorised 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 authorisation under this section.

Maximum penalty: \$2 000 or imprisonment for 3 months.

Division 2—Protection of Aboriginal sites, objects and remains

23—Damage etc to sites, objects or remains

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

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

Maximum penalty:

- (a) in the case of a body corporate—\$50 000;
- (b) in any other case—\$10 000 or imprisonment for 6 months.

24—Directions by Minister restricting access to sites, objects or remains

- (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; or
 - (ii) by notice published in a newspaper circulating generally throughout the State; or
 - (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; and
 - (b) the Committee; and
 - (c) any Aboriginal organisation 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; and
 - (b) give the reasons for the directions; and
 - (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.

Maximum penalty: \$2 000.

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

25—Directions by inspector restricting access to sites, objects or remains

(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—Failure to comply with directions of Minister or inspector

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

Maximum penalty:

- (a) in the case of a body corporate—\$50 000;
- (b) in any other case—\$10 000 or imprisonment for 6 months.

27—Entry by officials

- (1) Directions under section 24 or 25 do not apply to—
 - (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—Care of Aboriginal objects

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.

Maximum penalty:

- (a) in the case of a body corporate—\$50 000;
- (b) in any other case—\$10 000 or imprisonment for 6 months.

Division 3—Control of sale of, and other dealings with, Aboriginal objects

29—Control of sale of and other dealings with objects

- (1) A person must not, without the authority of the Minister—
 - (a) sell or dispose of an Aboriginal object; or
 - (b) remove an Aboriginal object from the State.

Maximum 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 authorisation for the purposes of this section comply with the regulations.

Division 4—Acquisition and custody of Aboriginal sites, objects and records

30—Acquisition of land

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.

31—Acquisition of objects and records

- (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.

32—Surrender of objects and records

- (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.

Maximum penalty: \$2 000 or imprisonment for 3 months.

33—Forfeiture of objects

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—Custody of land, objects and records

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 organisation; or
- (b) be dealt with in any other manner, subject to such conditions as the Minister may determine.

Division 5—Protection of traditions

35—Divulging information contrary to Aboriginal tradition

- (1) Except as authorised 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.

Maximum penalty: \$10 000 or imprisonment for 6 months.

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

36—Access to land by Aboriginal people

- (1) The Minister may authorise 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.
- (2) Before giving an authorisation 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 authorisation should be given and if so, subject to what conditions.
- (3) Where the Minister gives an authorisation 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 authorisation.
- (4) A person must not, without reasonable excuse, hinder or obstruct a person acting pursuant to an authorisation under this section.

Maximum penalty: \$2 000 or imprisonment for 3 months.

37—Preservation of right to act according to tradition

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

Division 6—Aboriginal heritage agreements

37A—Aboriginal heritage agreements

- (1) The Minister may enter into an Aboriginal heritage agreement with the owner of land on which any Aboriginal site, object or remains is situated.

- (2) An Aboriginal heritage agreement attaches to the land and is binding on the current owner of the land whether or not that owner was the person with whom the agreement was made.
- (3) The Minister may, by agreement with the owner of the land to which an Aboriginal heritage agreement applies, vary or terminate the agreement.
- (4) An Aboriginal heritage agreement is, to the extent specified in the agreement, binding on the occupier of the land.
- (5) Before entering into, varying or terminating an Aboriginal heritage agreement the Minister must take all reasonable steps to consult with—
 - (a) the Committee; and
 - (b) any Aboriginal organisation that, in the opinion of the Minister, has a particular interest in the matter; and
 - (c) any—
 - (i) traditional owners; and
 - (ii) other Aboriginal persons,who, in the opinion of the Minister, have a particular interest in the matter.
- (6) Before entering into an Aboriginal heritage agreement the Minister must take all reasonable steps to give any traditional owners of an Aboriginal site or object on the land (or a representative of those traditional owners) an opportunity to become parties to the agreement.

37B—Effect of Aboriginal heritage agreement

- (1) An Aboriginal heritage agreement may contain any provision for the protection or preservation of Aboriginal sites, objects or remains.
- (2) An Aboriginal heritage agreement may, for example—
 - (a) restrict the use of land to which it applies;
 - (b) require specified work or work of a specified kind to be carried out in accordance with specified standards on the land;
 - (c) restrict the nature of work that may be carried out on the land;
 - (d) provide for the management of the land or any Aboriginal site, object or remains in accordance with a particular management plan or in accordance with management plans to be agreed from time to time between the Minister and the owner;
 - (e) provide for financial, technical or other professional advice or assistance to the owner of the land with respect to the maintenance or conservation of the land or the protection or preservation of any Aboriginal site, object or remains;
 - (f) provide for remission of rates or taxes in respect of the land.
- (3) An Aboriginal heritage agreement may not provide for the remission of rates payable to a council unless the council is a party to the agreement.

- (4) Any money required by the Minister to meet his or her obligations under an Aboriginal heritage agreement entered into under this section must be paid to the Minister from the Fund.

37C—Registration of Aboriginal heritage agreements

When the Minister enters into an Aboriginal heritage agreement, or an agreement varying or terminating an Aboriginal heritage agreement, the Registrar-General must, on application by the Minister or another party to the agreement, note the agreement against the relevant instrument of title or, in the case of land not under the provisions of the *Real Property Act 1886*, against the land.

37D—Enforcement of Aboriginal heritage agreements

- (1) If—
- (a) a party to an Aboriginal heritage agreement fails to comply with it; or
 - (b) there is reason to apprehend that a party to an Aboriginal heritage agreement may fail to comply with it,
- any other party to the agreement may apply to the District Court for an order under this section.
- (2) On such an application, the Court may make such orders as are necessary to secure compliance with the agreement, or to remedy the default, and to deal with any related or incidental matters.

Part 4—Miscellaneous

38—Interference with signs

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

Maximum penalty: \$1 000.

39—Service

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

41—Vicarious liability

- (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 a prescribed offence, 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.
- (3) In this section—
- prescribed offence* means—
- (a) an offence against Part 3 (other than an offence against section 20(4), 22(5), 24(10), 32(3) or 36(4)); or

- (b) an offence against subsection (1) that relates to such an offence.

42—Failure to consult etc traditional owners

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.

43—Evidence

- (1) 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; or
 - (b) a direction or determination made or an authorisation given under this Act; or
 - (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.
- (2) In any legal proceedings, an apparently genuine document appearing to be a copy of an Aboriginal heritage agreement certified by the Minister, is, in the absence of proof to the contrary, proof of the agreement and its terms.

44—Summary offences

Offences against this Act are summary offences.

45—Commencement of prosecutions

- (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 authorised by the Minister with the approval of Maralinga Tjarutja; or
 - (ii) by Maralinga Tjarutja or a person authorised 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 authorised by the Minister with the approval of Anangu Pitjantjatjara; or
 - (ii) by Anangu Pitjantjatjara or a person authorised 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* or the *Aboriginal Lands Trust Act 2013* must not be commenced except—

- (i) by a person authorised by the Minister with the approval of the Aboriginal Lands Trust; or
 - (ii) by the Aboriginal Lands Trust or a person authorised by the Trust;
- (d) in relation to any other Aboriginal site, object or remains must not be commenced except by a person authorised by the Minister.
- (2) Such a prosecution may, if the Minister so authorises, be commenced notwithstanding that more than six months have elapsed (as at the date of the authorisation) 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 authorise 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 authorising the commencement of the proceedings by a particular person constitutes, in the absence of proof to the contrary, proof of the authorisation;
 - (b) a document apparently executed by Maralinga Tjarutja, Anangu Pitjantjatjara or the Aboriginal Lands Trust authorising or approving the commencement of the proceedings by a particular person constitutes, in the absence of proof to the contrary, proof of the authorisation or approval.

46—Regulations

- (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) 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*¹

Note—

- 1 The *Aboriginal Heritage Act 1979* had not been repealed at the date of this version.

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.

Legislative history

Notes

- In this version provisions that are uncommenced appear in italics.
- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation amended by principal Act

The *Aboriginal Heritage Act 1988* amended the following:

Mining Act 1971

Planning Act 1982

South Australian Heritage Act 1978

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1988	12	<i>Aboriginal Heritage Act 1988</i>	17.3.1988	1.3.1989 (<i>Gazette</i> 9.2.1989 p354) except the provision of Sch 1 that repeals the <i>Aboriginal Heritage Act 1979</i> —uncommenced
1993	56	<i>Heritage Act 1993</i>	27.5.1993	15.1.1994 (<i>Gazette</i> 27.10.1993 p1890)
2000	11	<i>Offshore Minerals Act 2000</i>	4.5.2000	4.5.2002 (s 7(5) <i>Acts Interpretation Act 1915</i>)
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 2 (ss 4 & 5)—1.2.2010 (<i>Gazette</i> 28.1.2010 p320)
2011	36	<i>Statutes Amendment (Directors' Liability) Act 2011</i>	22.9.2011	Pt 2 (s 4)—1.1.2012 (<i>Gazette</i> 15.12.2011 p4988)
2013	81	<i>Aboriginal Lands Trust Act 2013</i>	5.12.2013	Sch 1 (cl 2)—1.7.2014 (<i>Gazette</i> 6.2.2014 p546)
2016	9	<i>Aboriginal Heritage (Miscellaneous) Amendment Act 2016</i>	24.3.2016	24.3.2016 except Pt 2 (ss 4, 6—14)—uncommenced: s 2

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	
Pt 1		
s 3		
Aboriginal Heritage Guidelines	inserted by 9/2016 s 4(1)	uncommenced—not incorporated
local heritage agreement	inserted by 9/2016 s 4(2)	uncommenced—not incorporated
mining tenement	amended by 11/2000 Sch 2	4.5.2002
Recognised Aboriginal Representative Body	inserted by 9/2016 s 4(3)	uncommenced—not incorporated
Pt 2		
s 6		
s 6(2)	<i>deleted by 9/2016 s 5(1)</i>	24.3.2016
s 6(4)	<i>deleted by 9/2016 s 5(2)</i>	24.3.2016
s 7		
s 7(2)	amended by 9/2016 s 6	uncommenced—not incorporated
s 7(6)	inserted by 84/2009 s 4	1.2.2010
s 8		
s 8(1)	amended by 56/1993 Sch 2	15.1.1994
s 13		
s 13(3)	amended by 9/2016 s 7	uncommenced—not incorporated
s 14		
s 14(1)	s 14 redesignated as s 14(1) by 9/2016 s 8	uncommenced—not incorporated
s 14(2)	inserted by 9/2016 s 8	uncommenced—not incorporated
s 17		
s 17(1)	amended by 56/1993 Sch 2	15.1.1994
s 19		
s 19(7)	amended by 56/1993 Sch 2	15.1.1994
Pts 2A and 2B	inserted by 9/2016 s 9	uncommenced—not incorporated
Pt 3		
Pt 3 Divs A1—A3	inserted by 9/2016 s 10	uncommenced—not incorporated
Pt 3 Div 2		
s 24		
s 24(2a)	inserted by 9/2016 s 11(1)	uncommenced—not incorporated
s 24(4)	amended by 9/2016 s 11(2)	uncommenced—not incorporated
s 25		

s 25(1a)	inserted by 9/2016 s 12	uncommenced—not incorporated
Pt 3 Div 5		
s 37A(5)	amended by 9/2016 s 13	uncommenced—not incorporated
Pt 3 Div 6	inserted by 56/1993 Sch 2	15.1.1994
Pt 4		
s 37E	inserted by 9/2016 s 14	uncommenced—not incorporated
s 40	<i>deleted by 84/2009 s 5</i>	1.2.2010
s 41		
s 41(2)	amended by 36/2011 s 4(1)	1.1.2012
s 41(3)	inserted by 36/2011 s 4(2)	1.1.2012
s 43		
s 43(1)	s 43 redesignated as s 43(1) by 56/1993 Sch 2	15.1.1994
s 43(2)	inserted by 56/1993 Sch 2	15.1.1994
s 45		
s 45(1)	amended by 81/2013 Sch 1 cl 2	1.7.2014
Sch 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	

Transitional etc provisions associated with Act or amendments

Aboriginal Heritage (Miscellaneous) Amendment Act 2016, Sch 1—Transitional provision

1—Delegations under section 6(2) of the *Aboriginal Heritage Act 1988*

- (1) Despite section 16 of the *Acts Interpretation Act 1915* or a provision of any other Act or law—
 - (a) a request of traditional owners of an Aboriginal site or object made under section 6(2) of the *Aboriginal Heritage Act 1988* (as in force before the commencement of this clause) for the delegation of the Minister's powers but in relation to which a delegation has not yet been made will, by force of this subclause, be taken to be void and of no effect;
 - (b) any right to make a request under section 6(2) of the *Aboriginal Heritage Act 1988* that exists on the commencement of this clause is, by force of this subclause, extinguished.
- (2) Without limiting subclause (1), a delegation under section 6(2) of the *Aboriginal Heritage Act 1988* (whether made before or after the commencement of this clause) will, by force of this subclause, be taken to be revoked.

Historical versions

Reprint No 1—15.1.1994

Reprint No 2—4.5.2002

1.2.2010

1.1.2012

1.7.2014

