



Aboriginal and Torres Strait Islander Heritage Protection Act 1984

Act No. 79 of 1984 as amended

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taking into account amendments up to Act No. 152 of 2006

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act to preserve and protect places, areas and objects of particular significance to Aboriginals, and for related purposes

Part I—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*.

2 Commencement [see Note 1]

This Act shall come into operation on the day on which it receives the Royal Assent.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

Aboriginal means a member of the Aboriginal race of Australia, and includes a descendant of the indigenous inhabitants of the Torres Strait Islands.

Aboriginal remains means the whole or part of the bodily remains of an Aboriginal, but does not include:

- (a) a body or the remains of a body:
 - (i) buried in accordance with the law of a State or Territory; or
 - (ii) buried in land that is, in accordance with Aboriginal tradition, used or recognized as a burial ground;
- (b) an object made from human hair or from any other bodily material that is not readily recognizable as being bodily material; or
- (c) a body or the remains of a body dealt with or to be dealt with in accordance with a law of a State or Territory relating to medical treatment or post-mortem examinations.

Aboriginal tradition means the body of traditions, observances, customs and beliefs of Aboriginals generally or of a particular

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community or group of Aboriginals, and includes any such traditions, observances, customs or beliefs relating to particular persons, areas, objects or relationships.

area includes a site.

Australian waters means:

- (a) the territorial sea of Australia and any sea on the landward side of that territorial sea;
- (b) the territorial sea of an external Territory and any sea on the landward side of that territorial sea; or
- (c) the sea over the continental shelf of Australia.

Federal Court means the Federal Court of Australia.

significant Aboriginal area means:

- (a) an area of land in Australia or in or beneath Australian waters;
- (b) an area of water in Australia; or
- (c) an area of Australian waters;

being an area of particular significance to Aboriginals in accordance with Aboriginal tradition.

significant Aboriginal object means an object (including Aboriginal remains) of particular significance to Aboriginals in accordance with Aboriginal tradition.

- (2) For the purposes of this Act, an area or object shall be taken to be injured or desecrated if:
 - (a) in the case of an area:
 - (i) it is used or treated in a manner inconsistent with Aboriginal tradition;
 - (ii) by reason of anything done in, on or near the area, the use or significance of the area in accordance with Aboriginal tradition is adversely affected; or
 - (iii) passage through or over, or entry upon, the area by any person occurs in a manner inconsistent with Aboriginal tradition; or
 - (b) in the case of an object—it is used or treated in a manner inconsistent with Aboriginal tradition;

and references in this Act to injury or desecration shall be construed accordingly.

- (3) For the purposes of this Act, an area or object shall be taken to be under threat of injury or desecration if it is, or is likely to be, injured or desecrated.

4 Purposes of Act

The purposes of this Act are the preservation and protection from injury or desecration of areas and objects in Australia and in Australian waters, being areas and objects that are of particular significance to Aboriginals in accordance with Aboriginal tradition.

5 Extension to Territories

This Act extends to every external Territory.

6 Act binds the Crown

This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

6A Application of the *Criminal Code*

Chapter 2 (other than Part 2.5) of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

7 Application of other laws

- (1) This Act, except Part IIA, is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.
- (1A) Part IIA is not intended to exclude or limit the operation of:
- (a) any provision of the *Archeological and Aboriginal Relics Preservation Act 1972* of Victoria in so far as it applies to or in relation to an entry made in a register, or a declaration made, under that Act before the commencement of the *Aboriginal and Torres Strait Islander Heritage Protection Amendment Act 1987*; or

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- (b) any other law of Victoria (other than a law for the preservation or protection of Aboriginal cultural property within the meaning of Part IIA) except as referred to in paragraph (a);
that is capable of operating concurrently with that Part.
- (2) A law of a Territory has effect to the extent to which it is not inconsistent with a provision of the regulations, or of a declaration under this Act, having effect in that Territory, but such a law shall not be taken for the purposes of this subsection to be inconsistent with such a provision to the extent that it is capable of operating concurrently with that provision.
- (3) Where:
 - (a) a law of a State or Territory deals with a matter dealt with in this Act; and
 - (b) an act or omission by a person that constitutes an offence against that law also constitutes an offence against this Act or an offence referred to in paragraph 23(1)(b);the person may be prosecuted and convicted under that law or under this Act, the *Criminal Code* or the *Crimes Act 1914*, as the case may be, but nothing in this subsection renders a person liable to be punished more than once in respect of the same act or omission.
- (4) Nothing in this Act derogates from the rights of any person to any remedy consistent with this Act that he or she would have apart from this Act.

8 Application of Act

- (1) Subject to subsection (2), this Act applies, according to its tenor, to all persons, including foreigners, and to all vessels, including foreign vessels, whether or not they are within Australia or Australian waters.
- (2) This Act has effect subject to the obligations of Australia under international law, including obligations under any agreement between Australia and another country or other countries.

8A Application of Part II to Victoria

- (1) The Minister shall not make a declaration under Division 1 of Part II in relation to an area or object in Victoria unless the Minister is satisfied that:
 - (a) the applicant for the declaration has made an application in relation to the area or object under Part IIA and the application has been rejected; or
 - (b) such an application would be inappropriate or could not be made.

- (2) An authorised officer shall not make a declaration under Division 2 of Part II in relation to an area or an object in Victoria unless the authorised officer is satisfied that an application in relation to the area or object under Part IIA would be inappropriate or could not be made.

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Part II—Protection of significant Aboriginal areas and objects

Division 1—Declarations by Minister

9 Emergency declarations in relation to areas

- (1) Where the Minister:
 - (a) receives an application made orally or in writing by or on behalf of an Aboriginal or a group of Aboriginals seeking the preservation or protection of a specified area from injury or desecration; and
 - (b) is satisfied:
 - (i) that the area is a significant Aboriginal area; and
 - (ii) that it is under serious and immediate threat of injury or desecration;he or she may, by legislative instrument, make a declaration in relation to the area.
- (2) Subject to this Part, a declaration under subsection (1) has effect for such period, not exceeding 30 days, as is specified in the declaration.
- (3) The Minister may, if he or she is satisfied that it is necessary to do so, declare by legislative instrument that a declaration made under subsection (1) shall remain in effect for such further period as is specified in the declaration made under this subsection, not being a period extending beyond the expiration of 60 days after the day on which the declaration under subsection (1) came into effect.

10 Other declarations in relation to areas

- (1) Where the Minister:
 - (a) receives an application made orally or in writing by or on behalf of an Aboriginal or a group of Aboriginals seeking the preservation or protection of a specified area from injury or desecration;
 - (b) is satisfied:
 - (i) that the area is a significant Aboriginal area; and
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- (ii) that it is under threat of injury or desecration;
 - (c) has received a report under subsection (4) in relation to the area from a person nominated by him or her and has considered the report and any representations attached to the report; and
 - (d) has considered such other matters as he or she thinks relevant;
- he or she may, by legislative instrument, make a declaration in relation to the area.
- (2) Subject to this Part, a declaration under subsection (1) has effect for such period as is specified in the declaration.
 - (3) Before a person submits a report to the Minister for the purposes of paragraph (1)(c), he or she shall:
 - (a) publish, in the *Gazette*, and in a local newspaper, if any, circulating in any region concerned, a notice:
 - (i) stating the purpose of the application made under subsection (1) and the matters required to be dealt with in the report;
 - (ii) inviting interested persons to furnish representations in connection with the report by a specified date, being not less than 14 days after the date of publication of the notice in the *Gazette*; and
 - (iii) specifying an address to which such representations may be furnished; and
 - (b) give due consideration to any representations so furnished and, when submitting the report, attach them to the report.
 - (4) For the purposes of paragraph (1)(c), a report in relation to an area shall deal with the following matters:
 - (a) the particular significance of the area to Aboriginals;
 - (b) the nature and extent of the threat of injury to, or desecration of, the area;
 - (c) the extent of the area that should be protected;
 - (d) the prohibitions and restrictions to be made with respect to the area;
 - (e) the effects the making of a declaration may have on the proprietary or pecuniary interests of persons other than the Aboriginal or Aboriginals referred to in paragraph (1)(a);
 - (f) the duration of any declaration;

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- (g) the extent to which the area is or may be protected by or under a law of a State or Territory, and the effectiveness of any remedies available under any such law;
- (h) such other matters (if any) as are prescribed.

11 Contents of declarations under section 9 or 10

A declaration under subsection 9(1) or 10(1) in relation to an area shall:

- (a) describe the area with sufficient particulars to enable the area to be identified; and
- (b) contain provisions for and in relation to the protection and preservation of the area from injury or desecration.

12 Declarations in relation to objects

- (1) Where the Minister:
 - (a) receives an application made orally or in writing by or on behalf of an Aboriginal or a group of Aboriginals seeking the preservation or protection of a specified object or class of objects from injury or desecration;
 - (b) is satisfied:
 - (i) that the object is a significant Aboriginal object or the class of objects is a class of significant Aboriginal objects; and
 - (ii) that the object or the whole or part of the class of objects, as the case may be, is under threat of injury or desecration;
 - (c) has considered any effects the making of a declaration may have on the proprietary or pecuniary interests of persons other than the Aboriginal or Aboriginals referred to in paragraph (1)(a); and
 - (d) has considered such other matters as he or she thinks relevant;he or she may, by legislative instrument, make a declaration in relation to the object or the whole or that part of the class of objects, as the case may be.
- (2) Subject to this Part, a declaration under subsection (1) has effect for such period as is specified in the declaration.

- (3) A declaration under subsection (1) in relation to an object or objects shall:
- (a) describe the object or objects with sufficient particulars to enable the object or objects to be identified; and
 - (b) contain provisions for and in relation to the protection and preservation of the object or objects from injury or desecration.
- (3A) A declaration under subsection (1) cannot prevent the export of an object if there is a certificate in force under section 12 of the *Protection of Movable Cultural Heritage Act 1986* authorising its export.
- (4) A declaration under subsection (1) in relation to Aboriginal remains may include provisions ordering the delivery of the remains to:
- (a) the Minister; or
 - (b) an Aboriginal or Aborigines entitled to, and willing to accept, possession, custody or control of the remains in accordance with Aboriginal tradition.

13 Making of declarations

- (1) In this section:

declaration means a declaration under this Division.

Minister, in relation to Norfolk Island, means an executive member as defined by the *Norfolk Island Act 1979*.

- (2) The Minister shall not make a declaration in relation to an area, object or objects located in a State, the Northern Territory or Norfolk Island unless he or she has consulted with the appropriate Minister of that State or Territory as to whether there is, under a law of that State or Territory, effective protection of the area, object or objects from the threat of injury or desecration.
- (3) The Minister may, at any time after receiving an application for a declaration, whether or not he or she has made a declaration pursuant to the application, request such persons as he or she considers appropriate to consult with him or her, or with a person nominated by him or her, with a view to resolving, to the

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satisfaction of the applicant or applicants and the Minister, any matter to which the application relates.

- (4) Any failure to comply with subsection (2) does not invalidate the making of a declaration.
- (5) Where the Minister is satisfied that the law of a State or of any Territory makes effective provision for the protection of an area, object or objects to which a declaration applies, he or she shall revoke the declaration to the extent that it relates to the area, object or objects.
- (6) Nothing in this section limits the power of the Minister to revoke or vary a declaration at any time.

14 Publication and commencement of declarations

- (1) A declaration under this Division:
 - (a) shall be published in the *Gazette* and in a local newspaper, if any, circulating in any region concerned; and
 - (b) comes into operation on the day after the day of its registration under the *Legislative Instruments Act 2003* or such later date as is specified in the declaration.
- (2) As soon as practicable after making a declaration under this Division, the Minister shall:
 - (a) take reasonable steps to give notice, in writing, of the declaration to persons likely to be substantially affected by the declaration; and
 - (b) in the case of a declaration in relation to an area—serve a copy of the declaration on the Australian Institute of Aboriginal Studies and, if the Institute maintains a register of significant Aboriginal areas, it shall enter the area in the register.
- (3) Any failure to publish a declaration in a newspaper or failure to comply with subsection (2) does not affect the validity of a declaration.

16 Refusal to make declaration

Where the Minister refuses to make a declaration under this Division in pursuance of an application, he or she shall take

reasonable steps to notify the applicant or applicants of his or her decision.

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Division 2—Declarations by authorized officers

17 Authorised officers

- (1) The Minister may, by instrument in writing, designate persons to be authorized officers for the purposes of this Division.
- (2) The Minister shall cause to be issued to each authorized officer an identity card in the form prescribed, containing a photograph of the officer.
- (3) Where an authorized officer notifies a person of a declaration made under section 18, he or she shall:
 - (a) if it is reasonably practicable to do so—produce his or her identity card for inspection by that person; or
 - (b) in any other case—give that person such particulars of his or her identity card as are prescribed.
- (4) A person who ceases to be an authorized officer shall forthwith return his or her identity card to the Minister.

18 Emergency declarations in relation to areas or objects

- (1) Where:
 - (a) at any time, an authorized officer is satisfied that:
 - (i) an area is a significant Aboriginal area, an object is a significant Aboriginal object or a class of objects is a class of significant Aboriginal objects;
 - (ii) the area or object is, or objects are, under serious and immediate threat of injury or desecration; and
 - (iii) in the case of an area—the circumstances of the case would justify the making of a declaration under section 9, but the injury or desecration is likely to occur before such a declaration can be made; and
 - (b) no declaration has been made under this section in relation to the area, object or objects within 3 months before that time by reason of a threat that is substantially the same as the threat referred to in subparagraph (a)(ii);the officer may make a declaration for the purposes of this section.

- (2) A declaration under subsection (1):
 - (a) shall be in writing;
 - (b) shall specify the period, not exceeding 48 hours, for which it is to remain in effect;
 - (c) shall:
 - (i) where the declaration relates to an area—describe the area with sufficient particulars to enable the area to be identified; or
 - (ii) where the declaration relates to an object or a class of objects—describe the object or objects with sufficient particulars to enable the object or objects to be identified; and
 - (d) shall contain provisions for and in relation to the protection and preservation of the area, object or objects from injury or desecration, including, in the case of Aboriginal remains, provisions for their custody.
- (2A) A declaration under subsection (1) cannot prevent the export of an object if there is a certificate in force under section 12 of the *Protection of Movable Cultural Heritage Act 1986* authorising its export.
- (2A) A declaration under subsection (1) is not a legislative instrument.
- (3) A declaration under subsection (1) may be revoked or varied at any time, by instrument in writing, by the Minister or any authorized officer.

19 Notification of declarations

- (1) An authorized officer shall, as soon as practicable after making a declaration under section 18:
 - (a) in such manner as he or she thinks appropriate in the circumstances, notify the Minister of the making of the declaration, the terms of the declaration and the reasons for which it was made; and
 - (b) take reasonable steps to give notice of the declaration to persons likely to be substantially affected by the declaration.
- (2) Any failure to comply with subsection (1) does not invalidate a declaration.

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Division 3—Discovery and disposal of Aboriginal remains

20 Discovery of Aboriginal remains

- (1) A person who, except in Victoria, discovers anything that he or she has reasonable grounds to suspect to be Aboriginal remains shall report his or her discovery to the Minister, giving particulars of the remains and of their location.
- (2) Where the Minister receives a report made under subsection (1) and he or she is satisfied that the report relates to Aboriginal remains, he or she shall take reasonable steps to consult with any Aboriginals that he or she considers may have an interest in the remains, with a view to determining the proper action to be taken in relation to the remains.

21 Disposal of Aboriginal remains

- (1) Where Aboriginal remains, other than remains discovered in Victoria, are delivered to the Minister, whether in pursuance of a declaration made under section 12 or otherwise, he or she shall:
 - (a) return the remains to an Aboriginal or Aboriginals entitled to, and willing to accept, possession, custody or control of the remains in accordance with Aboriginal tradition;
 - (b) otherwise deal with the remains in accordance with any reasonable directions of an Aboriginal or Aboriginals referred to in paragraph (a); or
 - (c) if there is or are no such Aboriginal or Aboriginals—transfer the remains to a prescribed authority for safekeeping.
- (2) Nothing in this section shall be taken to derogate from the right of any Aboriginal or Aboriginals accepting possession, custody or control of any Aboriginal remains pursuant to this section to deal with the remains in accordance with Aboriginal tradition.

Part IIA—Victorian Aboriginal cultural heritage

Division 1—Preliminary

21A Interpretation

(1) In this Part:

Aboriginal cultural heritage agreement means an agreement made in accordance with section 21K.

Aboriginal cultural property means Aboriginal places, Aboriginal objects and Aboriginal folklore.

Aboriginal folklore means traditions or oral histories that are or have been part of, or connected with, the cultural life of Aboriginals (including songs, rituals, ceremonies, dances, art, customs and spiritual beliefs) and that are of particular significance to Aboriginals in accordance with Aboriginal tradition.

Aboriginal object means an object (including Aboriginal remains) that is in Victoria and is of particular significance to Aboriginals in accordance with Aboriginal tradition.

Aboriginal place means an area in Victoria that is of particular significance to Aboriginals in accordance with Aboriginal tradition.

community area, in relation to a local Aboriginal community, means the area in Victoria declared by the regulations to be the area of that community for the purposes of this Part.

local Aboriginal community means an organisation that is specified in the Schedule.

magistrate means a magistrate of the State of Victoria.

police officer means:

- (a) a member or special member of the Australian Federal Police; or
- (b) a member of the Police Force of the State of Victoria.

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State Minister means a Minister of the Crown of the State of Victoria.

- (2) The regulations may amend the Schedule by adding, omitting or varying the name of an organisation that is incorporated in, or carries on business in, Victoria.

21B Delegation

- (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Minister, delegate all or any powers that are conferred on the Minister by or under this Part to:
 - (a) a State Minister; or
 - (b) an officer of the Department.
- (2) A State Minister to whom a power has been delegated under subsection (1) may, by writing signed by that Minister, authorise another person to exercise the power so delegated.
- (3) An authority under subsection (2) may be given to:
 - (a) a specified person; or
 - (b) the person for the time being occupying or performing the duties of a position in the public service of the State of Victoria, being a position specified in the instrument by which the authority is given.
- (4) Any act or thing done in the exercise of a power by a person to whom that power has been delegated by the Minister under subsection (1) or by a person authorised by a delegate of the Minister under subsection (2) to exercise that power has the same force and effect as if it had been done by the Minister.
- (5) Where the exercise of a power by the Minister is dependent upon the opinion, belief or state of mind of the Minister in relation to a matter and that power has been delegated under subsection (1), that power may be performed or exercised by the delegate or by a person authorised by the delegate under subsection (2) upon the opinion, belief or state of mind of the delegate or of the authorised person, as the case may be, in relation to that matter.
- (6) A delegation under subsection (1) does not prevent the exercise of a power by the Minister.

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- (7) The giving of an authority under subsection (2) does not prevent the exercise of a power by the person by whom the authority was given.
- (8) Where a person purports to exercise a power conferred or expressed to be conferred on the Minister by this Act, it shall be presumed, unless the contrary is established, that the person is duly authorised by a delegation under subsection (1), or by an authority under subsection (2) given pursuant to such a delegation, to exercise the power.

Section 21C

Division 2—Preservation of Victorian Aboriginal cultural property

21C Emergency declaration of preservation

- (1) An emergency declaration in the prescribed form may be made in relation to an Aboriginal place or Aboriginal object:
 - (a) by:
 - (i) an inspector appointed under section 21R; or
 - (ii) the Minister;
whether after an application is made to him or her by a local Aboriginal community or any person or on his or her own motion; or
 - (b) by a magistrate on an application by a local Aboriginal community;
if the inspector, Minister or magistrate has reasonable grounds for believing that the place or object is under threat of injury or desecration of such a nature that it could not properly be protected unless an emergency declaration is made.
- (2) An emergency declaration ceases to be in force at the end of 30 days after it is made or such longer period, not exceeding 44 days, after it is made as the Minister fixes in any case unless it is sooner revoked or replaced by a temporary declaration under section 21D or a declaration under section 21E.
- (3) An emergency declaration may be varied or revoked:
 - (a) if made by an inspector—by the inspector;
 - (b) if made by the Minister—by the Minister; or
 - (c) if made by a magistrate—by the magistrate on the application of the local Aboriginal community.
- (4) If an emergency declaration is made, varied or revoked by an inspector or the Minister, the inspector or Minister shall, without delay, notify:
 - (a) the local Aboriginal community (if any) of the area where the Aboriginal place or Aboriginal object is found; and

- (b) in the case of an emergency declaration made by an inspector—the Minister;
and shall take all reasonable steps to notify any person who is likely to be affected.
- (5) If an emergency declaration is made by a magistrate on the application of a local Aboriginal community, the community shall, without delay, take all reasonable steps to notify any person who is likely to be affected.

21D Temporary declaration of preservation

- (1) If a local Aboriginal community decides, whether after an application is made to it or on its own motion, that:
 - (a) a place or object in the community area is an Aboriginal place or Aboriginal object; and
 - (b) that place or object is under threat of injury or desecration;the community may advise the Minister that it considers a temporary declaration of preservation should be made.
- (2) On receiving advice under subsection (1) or determining on his or her own motion that a temporary declaration of preservation should be made, the Minister:
 - (a) shall, within 14 days, cause notice of the advice or determination to be given to any person who is likely to be affected by the making of a declaration; and
 - (b) shall give any such person an opportunity to be heard.
- (3) After notice is given under subsection (2) and any objections are heard and the Minister has consulted with any State Minister whose responsibility may be affected by the making of a declaration, the Minister shall:
 - (a) if the Minister considers that, in all the circumstances of the case, it is reasonable and appropriate that a temporary declaration be made for the preservation of the place or object—make the declaration in writing, and, in the declaration, specify the terms of the declaration and the manner of preservation to be adopted in relation to the place or object, including prohibition of access to, or interference with, the place or object; or
 - (b) refuse to make the declaration.

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- (4) The Minister may, at any time, on the application of the local Aboriginal community or on his or her own motion, vary or revoke a temporary declaration or any matters specified in it.
- (5) The Minister shall cause appropriate notice to be given of the making, variation or revocation of a temporary declaration.
- (6) A person affected or likely to be affected by the making, variation or revocation of a temporary declaration of preservation may request the Minister to appoint an arbitrator to review the Minister's decision.
- (7) If the Minister refuses to make, or revokes, a temporary declaration of preservation or makes or varies a declaration, the local Aboriginal community may request the Minister to appoint an arbitrator to review the Minister's decision.
- (8) The Minister shall, after receiving a request under subsection (6) or (7), appoint an arbitrator, being a person whom the Minister considers to be in a position to deal with the matter impartially.
- (9) Subject to section 21F, a temporary declaration of preservation ceases to be in force at the end of 60 days after it is made, or such longer period, not exceeding 120 days, after it is made as the Minister, on the advice of the local Aboriginal community, fixes unless it is sooner revoked or replaced by a declaration under section 21E.

21E Declaration of preservation

- (1) If a local Aboriginal community decides, whether after an application is made to it or on its own motion, that:
 - (a) a place or object in the community area is an Aboriginal place or Aboriginal object; and
 - (b) it is appropriate, having regard to the importance of maintaining the relationship between Aboriginals and that place or object, that a declaration of preservation should be made in relation to that place or object;the community may advise the Minister that it considers a declaration of preservation should be made.

- (2) On receiving advice under subsection (1) or determining on his or her own motion that a declaration of preservation should be made, the Minister:
 - (a) shall within 14 days cause notice of the advice or determination to be given to any person who is likely to be affected by the making of a declaration; and
 - (b) shall give any such person an opportunity to be heard.
 - (3) After notice is given under subsection (2) and any objections are heard and the Minister has consulted with any State Minister whose responsibility may be affected by the making of a declaration, the Minister shall:
 - (a) if the Minister considers that, in all the circumstances of the case, it is reasonable and appropriate that a declaration be made for the preservation of the place or object—make the declaration and, in the declaration, specify the terms of the declaration and the manner of preservation to be adopted in relation to the place or object, including prohibition of access to, or interference with, the place or object; or
 - (b) refuse to make the declaration.
 - (4) The Minister may, at any time, on the application of the local Aboriginal community or on his or her own motion, vary or revoke a declaration or any matters specified in it.
 - (5) A person likely to be affected by the making, variation or revocation of a declaration of preservation may request the Minister to appoint an arbitrator to review the Minister's decision.
 - (6) If the Minister refuses to make, or revokes, a declaration of preservation or makes or varies a declaration, the local Aboriginal community may request the Minister to appoint an arbitrator to review the Minister's decision.
 - (7) The Minister shall, after receiving a request under subsection (5) or (6), appoint an arbitrator, being a person whom the Minister considers to be in a position to deal with the matter impartially.
 - (8) The making, variation or revocation of a declaration under this section:
 - (a) shall be done by notice published in the *Gazette*; and
 - (b) comes into operation on the date of publication or such later date as is specified in the notice.
-

Section 21EA

21EA Declarations have effect subject to certificates under section 12 of the *Protection of Movable Cultural Heritage Act 1986*

A declaration under section 21C, 21D or 21E cannot prevent the export of an object if there is a certificate in force under section 12 of the *Protection of Movable Cultural Heritage Act 1986* authorising its export.

21F Arbitration

- (1) An arbitrator appointed under section 21D or 21E to review a decision of the Minister shall make a decision:
 - (a) confirming the decision of the Minister;
 - (b) varying the decision of the Minister; or
 - (c) setting aside the decision of the Minister and making a decision (being a decision that the Minister could have made under section 21D or 21E, as the case requires) in substitution for the decision of the Minister.
- (2) Subject to subsection (3), a decision of the Minister as varied by an arbitrator, or a decision made by an arbitrator in substitution for a decision of the Minister, shall, except for the purposes of subsection 21D(7) or 21E(6), be deemed to be a decision of the Minister and has effect, unless the arbitrator otherwise determines, on and from the day on which the decision of the Minister had effect.
- (3) Where the decision of an arbitrator results in the making of a declaration under section 21D or 21E, or the variation of a declaration made by the Minister under one of those sections, the declaration or variation, as the case may be, has effect on and from the day on which the decision of the arbitrator is made.

21G Notices

- (1) A local Aboriginal community may cause notices to be placed on or near an Aboriginal place or Aboriginal object in the community area that is the subject of a declaration indicating that the place or object is subject to a declaration of preservation.

- (2) A person authorised in writing by the relevant Aboriginal community may at all reasonable times enter upon any land for the purpose of placing a notice under subsection (1).
- (3) A person is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct:
 - (i) destroys or causes damage to a notice placed under this section; or
 - (ii) causes interference with or the removal of a notice placed under this section.

Penalty:

- (a) if the person is a natural person—\$500; or
 - (b) if the person is a body corporate—\$2,500.
- (4) In subsection (3):

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

21H Offence to contravene declaration

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct contravenes the terms of a declaration under this Part relating to an Aboriginal place.

Penalty:

- (a) if the person is a natural person—\$10,000 or imprisonment for 5 years, or both; or
 - (b) if the person is a body corporate—\$50,000.
- (2) A person is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct contravenes the terms of a declaration under this Part relating to an Aboriginal object.

Penalty:

- (a) if the person is a natural person—\$5,000 or imprisonment for 2 years, or both; or

Section 21J

- (b) if the person is a body corporate—\$25,000.
- (3) In this section:

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

21J Obligation to protect land

The making of a declaration relating to an Aboriginal place does not affect any obligation under any Act or law relating to the protection or conservation of land unless the obligation is inconsistent with the declaration.

21K Aboriginal Cultural Heritage Agreements

- (1) A local Aboriginal community may enter into an Aboriginal Cultural Heritage Agreement with a person who owns or possesses any Aboriginal cultural property in Victoria.
- (2) An agreement may cover the preservation, maintenance, exhibition, sale or use of the property and the rights, needs and wishes of the person and of the Aboriginal and general communities.
- (3) Subsection (1) does not apply to any Aboriginal cultural property in the possession of an Aboriginal if the property has been handed down from generation to generation to that person unless that person expressly agrees that the property should be the subject of an agreement under this section.
- (4) If an agreement under this section relating to land contains a provision requiring its registration under this section, the local Aboriginal community shall without delay:
 - (a) if the land is under the operation of the *Transfer of Land Act* 1958 of Victoria—lodge with the Registrar of Titles under that Act a notice of the agreement in the prescribed form; or
 - (b) in the case of other land—lodge with the Registrar-General under the *Property Law Act* 1958 of Victoria a notice of the agreement in the prescribed form.

- (5) If the Registrar of Titles receives a notice of an agreement, the Registrar may make such entries in the Register Book as the Registrar thinks appropriate for the purposes of this section.

21L Compulsory acquisition

- (1) The Minister may, in accordance with the regulations, compulsorily acquire any Aboriginal cultural property if the Minister is satisfied, whether on the advice of a local Aboriginal community or otherwise, that:
- (a) the property is of such religious, historical or cultural significance that it is irreplaceable; and
 - (b) no other arrangements can be made to ensure its proper continuing preservation and maintenance.
- (2) Property acquired under this section is, upon acquisition, vested in the local Aboriginal community of the area where the property is found to be held on trust for it or, if there is no such community, in the Minister on trust for Aboriginals in Victoria.

21M Compensation for acquisition of property

- (1) Where, but for this section, the operation of this Part would result in the acquisition of property from a person otherwise than on just terms, there is payable to the person by the Commonwealth such reasonable amount of compensation as is agreed upon between the person and the Commonwealth or, failing agreement, as is determined by the Federal Court.
- (2) In subsection (1), *acquisition of property* and *just terms* have the same respective meanings as in paragraph 51(xxxi) of the Constitution.

21N Compensation may be paid in certain circumstances

- (1) The Minister may, from moneys appropriated by the Parliament for the purpose, pay compensation to a person who is or is likely to be affected by a declaration of preservation under section 21E.
- (2) The amount of compensation payable is such amount as is agreed upon between the Minister and the person or, failing agreement, as is determined by an arbitrator appointed by the Minister.

Section 21P

Division 3—Discovery and disposal of Aboriginal remains

21P Discovery of Aboriginal remains

- (1) A person who, in Victoria, discovers anything that he or she has reasonable grounds to suspect to be Aboriginal remains shall report the discovery to the Minister, giving particulars of the remains and of their location.

Penalty: \$500.

- (2) Where the Minister receives a report made under subsection (1) and is satisfied that the report relates to Aboriginal remains, the Minister shall take reasonable steps to consult with any local Aboriginal community that he or she considers may have an interest in the remains, with a view to determining the proper action to be taken in relation to the remains.

21Q Disposal of Aboriginal remains

- (1) Where Aboriginal remains discovered in Victoria are delivered to the Minister, he or she shall:
 - (a) return the remains to a local Aboriginal community entitled to, and willing to accept, possession, custody or control of the remains in accordance with Aboriginal tradition;
 - (b) otherwise deal with the remains in accordance with any reasonable directions of a local Aboriginal community referred to in paragraph (a); or
 - (c) if there is or are no such community or communities—transfer the remains to a prescribed authority for safekeeping.
- (2) Nothing in this section shall be taken to derogate from the right of any local Aboriginal community, Aboriginal or Aborigines accepting possession, custody or control of any Aboriginal remains pursuant to this section to deal with the remains in accordance with Aboriginal tradition.

Division 4—Miscellaneous

21R Inspectors

- (1) The Minister may, in writing, appoint any person after consultation with a local Aboriginal community to be an inspector for the purposes of this Part if the Minister is satisfied that the person has knowledge and expertise in the identification and preservation of Aboriginal cultural property and is able to undertake the duties of an inspector under this Part.
- (2) The Minister shall cause to be issued to each inspector an identity card in the form prescribed, containing a photograph of the inspector.
- (3) An inspector who notifies a person of a declaration made by the inspector under section 21C shall:
 - (a) if it is reasonably practicable to do so—produce his or her identity card for inspection by that person; or
 - (b) in any other case—give that person such particulars of his or her identity card as are prescribed.
- (4) A person who ceases to be an inspector shall forthwith return his or her identity card to the Minister.

Penalty: \$100.

21S Power to enter, search etc.

- (1) If a Magistrate is satisfied, on information on oath by a police officer, that there are reasonable grounds for suspecting that any Aboriginal objects on or in any land, premises or vehicle are under threat of injury or desecration, the Magistrate may issue a warrant authorising any police officer together with the inspector named in the warrant, by such force as is necessary and reasonable:
 - (a) to enter the land, premises or vehicle;
 - (b) to search the land, premises or vehicle;
 - (c) to take possession of, or secure against desecration, any Aboriginal objects that appear to the inspector to be under threat of injury or desecration; and

Section 21S

- (d) to deliver any objects possession of which is so taken into the possession of a person authorised by the Minister to receive them.
- (2) A police officer, together with an inspector, may:
- (a) enter upon land, or upon or into premises;
 - (b) search the land or premises for Aboriginal objects; and
 - (c) seize or secure against desecration any property found in the course of the search that the inspector believes, on reasonable grounds, to be an Aboriginal object;
- but only if acting:
- (d) with the consent of the occupier of the land or premises; or
 - (e) under a warrant issued under this section.
- (3) There shall be stated in a warrant issued under this section:
- (a) a statement of the purpose for which the warrant is issued;
 - (b) a description of the kind of property authorised to be seized; and
 - (c) a date (not being later than 7 days after the issue of the warrant) upon which the warrant ceases to have effect.
- (4) It shall also be stated in a warrant issued under this section whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night.
- (5) If possession is taken of an object under this section:
- (a) the inspector shall forthwith inform the local Aboriginal community (if any) of the area where the object is found; and
 - (b) the object shall be returned to the owner within 60 days after the possession was taken (or such longer period, not exceeding 120 days, after possession was taken as the Minister authorises) unless it is compulsorily acquired under section 21M or otherwise becomes the property of the local Aboriginal community.
- (6) If:
- (a) an object is taken into possession under this section;
 - (b) the object is required to be returned to the owner under paragraph (5)(b); and

Section 21T

- (c) the whereabouts of the owner cannot be ascertained after careful inquiry;
the object is vested in the Minister on trust for Aboriginals in Victoria.
- (7) The powers conferred by this section are in addition to any other powers conferred by law.

21T Honorary keepers or wardens

- (1) A local Aboriginal community may, in writing, appoint honorary keepers or wardens for that community.
- (2) The function of an honorary keeper or warden is to record and maintain Aboriginal cultural property, either generally or as specified by the local Aboriginal community from time to time.
- (3) If an honorary keeper or warden is an Aboriginal who has the responsibility of being custodian for any Aboriginal cultural property, the local Aboriginal community shall not require the honorary keeper or warden to carry out any function that is inconsistent with the duties of the keeper or warden as the custodian.

21U Defacing property

- (1) A person is guilty of an offence if:
 - (a) the person:
 - (i) does an act; and
 - (ii) the act causes damage to, the defacing of, or interference with, an Aboriginal object or an Aboriginal place; or
 - (b) the person does an act likely to endanger an Aboriginal object or Aboriginal place.

Penalty:

- (a) if the person is a natural person—\$10,000 or imprisonment for 5 years, or both; or
- (b) if the person is a body corporate—\$50,000.

Section 21V

- (2) Subsection (1) does not prevent an Aboriginal from entering on or interfering with an Aboriginal place or Aboriginal object in accordance with Aboriginal tradition.
- (3) A person may apply to a local Aboriginal community for consent for the excavation of any Aboriginal place or Aboriginal object in a community area of that community or for the carrying out of scientific research on Aboriginal objects in that area.
- (4) A local Aboriginal community may consent, in writing, to the doing of an act referred to in subsection (1) or (3) in its community area and may, in the consent, specify terms and conditions subject to which the consent is given.
- (5) If:
 - (a) a local Aboriginal community does not, within 30 days after receiving an application for consent under subsection (4), either grant consent or refuse consent; or
 - (b) an application is made to the Minister for consent to the doing of an act referred to in subsection (1) in an area in relation to which there is no local Aboriginal community;the Minister may consent, in writing, to the doing of an act referred to in subsection (1) in the community area or other area, as the case may be, and may, in the consent, specify terms and conditions subject to which the consent is given.
- (6) The Minister shall not grant consent under subsection (5) unless:
 - (a) the Minister has sought a recommendation on the matter from any person or body that in the Minister's opinion should consider the matter; and
 - (b) the Minister has considered any recommendations made and is of the opinion that, in all the circumstances of the case, consent should be granted.
- (7) A person is not guilty of an offence if the person does an act referred to in subsection (1) in accordance with consent given under subsection (4) or (5).

21V Register

- (1) The Minister shall cause to be kept a register containing a summary of particulars of declarations of preservation made under this Part.

- (2) The register shall not be open for inspection except by prescribed persons or in prescribed circumstances.

21W General meetings of local Aboriginal communities

There may be convened, in accordance with the regulations, general meetings of representatives of each local Aboriginal community and of prescribed Aboriginal organisations in Victoria for the purpose of:

- (a) providing advice to the Minister on issues relating to Aboriginal cultural property in Victoria; or
- (b) making recommendations to the Minister on the operation of this Part, including recommendations for its review or amendment.

21X Negotiation for return of Aboriginal remains

If a local Aboriginal community has reason to believe that any Aboriginal remains held by a university, museum or other institution were found or came from its community area, the local Aboriginal community may request the Minister to negotiate with the university, museum or institution for the return of the remains to the community.

21Y Indictable offences

- (1) Subject to subsection (2), the following offences are indictable offences:
- (a) an offence against section 21H or 21U; or
 - (b) an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*;in relation to an offence referred to in paragraph (a) of this subsection.
- (2) A court of summary jurisdiction may hear and determine proceedings in respect of an offence referred to in subsection (1) if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

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- (3) Where, in accordance with subsection (2), a court of summary jurisdiction convicts a person of an offence referred to in that subsection, the penalty that the court may impose is:
- (a) if the person is a natural person—a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both; or
 - (b) if the person is a body corporate—a fine not exceeding \$10,000.

21Z Evidence

- (1) In any proceedings for an offence against section 21H in relation to a declaration under this Part, the proof of the declaration is *prima facie* evidence that the place or object concerned is an Aboriginal place or Aboriginal object, as the case may be.
- (2) For the purposes of subsection (1), a declaration made under section 21E may be proved by the production of the *Gazette* purporting to contain it.
- (3) In proceedings for an offence against section 21H or 21U, where there is evidence that, at the relevant time, the defendant neither knew, nor had reasonable grounds for knowing:
- (a) in the case of an offence against section 21H—of the existence of the declaration alleged to have been contravened; or
 - (b) in the case of an offence against section 21U—that the object or place concerned was an Aboriginal object or an Aboriginal place, as the case may be;
- the defendant shall not be committed for trial or convicted unless the prosecution proves that, at the time, the defendant knew, or ought reasonably to have known, of that fact.

21ZA Alcoa smelter site exempted

This Part does not apply to any site, land, act or activity to which section 13 of the *Alcoa (Portland Aluminium Smelter) Act 1980* of Victoria applies.

Part III—Offences, penalties and legal proceedings

22 Offences and penalties

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct contravenes a provision of a declaration made under Part II in relation to a significant Aboriginal area.

Penalty:

- (a) if the person is a natural person—\$10,000 or imprisonment for 5 years, or both; or
 - (b) if the person is a body corporate—\$50,000.
- (2) A person is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct contravenes the terms of a declaration under this Part relating to a significant Aboriginal object or significant Aboriginal objects.

Penalty:

- (a) if the person is a natural person—\$5,000 or imprisonment for 2 years, or both; or
 - (b) if the person is a body corporate—\$25,000.
- (3) A person who contravenes subsection 20(1) is guilty of an offence punishable, on conviction, by a fine not exceeding \$500.
- (4) A person who contravenes subsection 17(4) is guilty of an offence punishable, on conviction, by a fine not exceeding \$100.

- (5) In this section:

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

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23 Indictable offences

- (1) Subject to subsection (2), the following offences are indictable offences:
 - (a) an offence referred to in subsection 22(1) or (2);
 - (b) an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*; in relation to an offence referred to in paragraph (a) of this subsection.
- (2) A court of summary jurisdiction may hear and determine proceedings in respect of an offence referred to in subsection (1) if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.
- (3) Where, in accordance with subsection (2), a court of summary jurisdiction convicts a person of an offence referred to in that subsection, the penalty that the court may impose is:
 - (a) if the person is a natural person—a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both; or
 - (b) if the person is a body corporate—a fine not exceeding \$10,000.

24 Evidence

- (1) In any proceedings for an offence referred to in subsection 23(1), the proof of a declaration made under Part II in relation to an area, object or objects is *prima facie* evidence that the area is a significant Aboriginal area, the object is a significant Aboriginal object or the objects are significant Aboriginal objects, as the case may be.
- (2) For the purposes of subsection (1), a declaration made by the Minister under Part II may be proved by the production of the *Gazette* purporting to contain it.
- (3) In proceedings for an offence referred to in subsection 23(1), where there is evidence that, at the relevant time, the defendant neither knew, nor had reasonable grounds for knowing, of the existence of the declaration alleged to have been contravened, the

defendant shall not be committed for trial or convicted unless the prosecution proves that, at that time, the defendant knew, or ought reasonably to have known, of the existence of the declaration.

25 Body corporate responsible for acts of servants and agents

- (1) Where, at a particular time, a member of the governing body, director, servant or agent of a body corporate:
 - (a) intends to do, or not to do, a particular act; or
 - (b) knows, or ought reasonably to know, of the existence of a declaration made under Part II or IIA;paragraph (a) or (b), as the case may be, shall be deemed to apply to the body corporate at that time.
- (2) Any conduct engaged in on behalf of a body corporate by a member of the governing body, director, servant or agent of the body corporate, or by any other person at the direction or with the consent or agreement (whether express or implied) of one of the first-mentioned persons, shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.
- (3) In subsection (2), a reference to engaging in conduct is a reference to doing, or failing or refusing to do, any act or thing.
- (4) In relation to a body corporate that does not have a governing body, a reference in this section to a member of the governing body is a reference to a member of the body corporate.

26 Injunctions

- (1) Where, on the application of the Minister, the Federal Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute:
 - (a) a contravention of a provision of a declaration made under Part II or IIA;
 - (b) attempting to contravene such a provision;
 - (c) aiding, abetting, counselling or procuring a person to contravene such a provision;
 - (d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision;

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- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
 - (f) conspiring with others to contravene such a provision;
- the Court may grant an injunction in such terms as the Court determines to be appropriate.
- (2) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).
 - (3) The Court may rescind or vary an injunction granted under subsection (1) or (2).
 - (4) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:
 - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind;
 - (b) whether or not the person has previously engaged in conduct of that kind; and
 - (c) whether or not there is a serious and immediate threat of injury to, or desecration of, the relevant area, place, object or objects, as the case may be, if the person engages in conduct of that kind.
 - (5) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:
 - (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;
 - (b) whether or not the person has previously refused or failed to do that act or thing; and
 - (c) whether or not there is a serious and immediate threat of injury to, or desecration of, the relevant area, place, object or objects, as the case may be, if the person refuses or fails to do that act or thing.

27 Proceedings in camera

In any proceedings in a court arising under this Act, except Part IIA, the court, on application, may, if it is satisfied that it is desirable to do so, having regard to:

- (a) the interests of justice; and
- (b) the interests of Aboriginal tradition;

order the exclusion of the public, or of persons specified in the order, from a sitting of the court and make such orders as it thinks fit for the purpose of preventing or limiting the disclosure of information with respect to the proceedings.

28 Compensation for acquisition of property

- (1) Where, but for this section, the operation of a provision of this Act (except a provision of Part IIA) or of a declaration made under Part II would result in the acquisition of property from a person otherwise than on just terms, there is payable to the person by the Commonwealth such reasonable amount of compensation as is agreed upon between the person and the Commonwealth or, failing agreement, as is determined by the Federal Court.
- (2) In subsection (1), *acquisition of property* and *just terms* have the same respective meanings as in paragraph 51(xxxi) of the Constitution.

29 Powers of courts not limited

Nothing in this Act shall be taken to limit or restrict any powers conferred on a court by any other law.

30 Legal assistance

- (1) A person:
 - (a) who wishes to apply for a declaration under section 9, 10 or 12;
 - (b) who considers that his or her proprietary or pecuniary interests:
 - (i) are likely to be adversely affected by a declaration proposed to be made under section 9, 10, 12 or 18; or
 - (ii) are adversely affected by a declaration so made; or

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- (c) against whom proceedings have been instituted:
 - (i) for an offence referred to in subsection 23(1); or
 - (ii) under section 26 (not being proceedings in relation to a declaration under Part IIA);may apply to the Attorney-General for a grant of assistance under subsection (2).

- (2) Where an application is made by a person under subsection (1), the Attorney-General, or a person appointed or engaged under the *Public Service Act 1999* (the *public servant*) authorized in writing by the Attorney-General, may, if he or she is satisfied that it would involve hardship to that person to refuse the application and that, in all the circumstances, it is reasonable that the application should be granted, authorize the grant by the Commonwealth to the person, either unconditionally or subject to such conditions as the Attorney-General or public servant determines, of such legal or financial assistance as the Attorney-General or public servant determines.

Part IV—Miscellaneous

31 Delegation

- (1) The Minister may, either generally or as otherwise provided in the instrument of delegation, by writing signed by him or her, delegate to a person all or any of his or her powers and functions under this Act (other than sections 9, 10 and 12, subsection 13(2) Part IIA and section 26), the regulations, or a declaration, other than this power of delegation.
- (2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, the regulations or the declaration, as the case may be, be deemed to have been exercised or performed by the Minister.
- (3) A delegation under this section does not prevent the exercise of a power or performance of a function by the Minister.
- (4) In this section, *declaration* means a declaration made under Part II.

32 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule—Local Aboriginal communities

Section 21A

Ballarat and District Aboriginal Co-operative Ltd.
Bendigo Dja Dja Wrung Aboriginal Association Incorporated
Brambuk Incorporated
Camp Jungai Co-operative Ltd.
Central Gippsland Aboriginal Health and Housing Co-operative Ltd.
Dandenong and District Aborigines Co-operative Ltd.
Echuca Aboriginal Co-operative Ltd.
Far East Gippsland Aboriginal Corporation
Framlingham Aboriginal Trust
Gippsland and East Gippsland Aboriginal Co-operative Ltd.
Goolum-goolum Aboriginal Co-operative Ltd.
Gunditjmara Aboriginal Co-operative Ltd.
Healesville and District Aboriginal Co-operative Ltd.
Kerrup-Jmara Elders Aboriginal Corporation
Lake Condah Aboriginal Co-operative Ltd.
Lake Tyers Aboriginal Trust
Lakes Entrance Aboriginal Corporation
Moogji Aboriginal Council East Gippsland Incorporated
Murray Valley Aboriginal Co-operative Ltd.
Rumbalara Aboriginal Co-operative Ltd.
Shepparton Aboriginal Arts Council Co-operative Ltd.
Sunraysia and District Aboriginal Corporation
Swan Hill and District Aboriginal Co-operative Ltd.
Wamba-Wamba Local Aboriginal Land Council
Wathaurong Aboriginal Co-operative Ltd.
West Gippsland Aboriginal Co-operative Ltd.
Wurundjeri Tribe Land Compensation and Cultural Heritage Council Incorporated
Yorta-yorta Cultural Heritage Council Incorporated
Yorta Yorta Murray Goulburn Rivers Clans Incorporated

Table of Acts**Notes to the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*****Note 1**

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* as shown in this compilation comprises Act No. 79, 1984 amended as indicated in the Tables below.

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* was amended by the *Aboriginal and Torres Strait Islander Heritage Protection Regulations (Amendment)*. The amendments are incorporated in this compilation.

For all relevant information pertaining to application, saving or transitional provisions see Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Aboriginal and Torres Strait Islander Heritage (Interim Protection) Act 1984</i>	79, 1984	25 June 1984	25 June 1984	
<i>Aboriginal and Torres Strait Islander Heritage (Interim Protection) Amendment Act 1986</i>	83, 1986	24 June 1986	24 June 1986	—
<i>Aboriginal and Torres Strait Islander Heritage Protection Amendment Act 1987</i>	39, 1987	5 June 1987	10 July 1987 (see <i>Gazette</i> 1987, No. S171)	—
<i>Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988</i>	99, 1988	2 Dec 1988	2 Dec 1988	—
<i>Aboriginal and Torres Strait Islander Commission Act 1989</i>	150, 1989	27 Nov 1989	5 Mar 1990 (see <i>Gazette</i> 1990, No. S48)	—
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 5 (items 1–3); Royal Assent (a)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 20, 21): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (b)	—
<i>Environment and Heritage Legislation Amendment (Application of Criminal Code) Act 2001</i>	15, 2001	22 Mar 2001	Schedule 1 (items 1–11): 24 May 2001 (c)	S. 4
<i>Aboriginal and Torres Strait Islander Commission Amendment Act 2005</i>	32, 2005	22 Mar 2005	Schedule 4 (items 1, 2): 24 Mar 2005	Sch. 4 (item 2)
<i>Aboriginal and Torres Strait Islander Heritage Protection Amendment Act 2006</i>	152, 2006	7 Dec 2006	Schedule 1: 8 Dec 2006 Schedule 2 (items 1–13): [see Note 2] Schedule 3: Royal Assent	—

Act Notes

- (a) The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* was amended by Schedule 5 (items 1-3) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (b) The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* was amended by Schedule 1 (items 20 and 21) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
 - (2) Subject to this section, this Act commences at the commencing time.
- (c) The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* was amended by Schedule 1 (items 1-11) only of the *Environment and Heritage Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(c) of which provides as follows:
- (1) Subject to this section, this Act commences on the latest of the following days:
 - (c) the day on which item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* commences.

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Title	am. No. 83, 1986
Part I	
S. 1	am. No. 83, 1986
S. 6A	ad. No. 15, 2001
S. 7	am. No. 39, 1987; No. 43, 1996; No. 15, 2001
S. 8A	ad. No. 39, 1987
Part II	
Division 1	
Ss. 9, 10	am. No. 43, 1996; No. 152, 2006
S. 12	am. No. 43, 1996; No. 152, 2006
S. 13	am. No. 43, 1996
S. 14	am. No. 152, 2006
S. 15	am. No. 99, 1988 rep. No. 152, 2006
S. 16	am. No. 43, 1996
Division 2	
S. 17	am. No. 43, 1996
S. 18	am. No. 152, 2006
S. 19	am. No. 43, 1996
Division 3	
Ss. 20, 21	am. No. 39, 1987; No. 43, 1996
Part IIA	
Part IIA	ad. No. 39, 1987
Division 1	
S. 21A	ad. No. 39, 1987
S. 21B	ad. No. 39, 1987 am. No. 150, 1989; No. 32, 2005
Division 2	
Ss. 21C–21E	ad. No. 39, 1987
S. 21EA	ad. No. 152, 2006
S. 21F	ad. No. 39, 1987
S. 21G	ad. No. 39, 1987 am. No. 15, 2001
S. 21H	ad. No. 39, 1987 rs. No. 15, 2001
Ss. 21J–21N	ad. No. 39, 1987
Division 3	
Ss. 21P, 21Q	ad. No. 39, 1987
Division 4	
Ss. 21R–21T	ad. No. 39, 1987

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 21U.....	ad. No. 39, 1987 am. No. 15, 2001
Ss. 21V–21X.....	ad. No. 39, 1987
S. 21Y.....	ad. No. 39, 1987 am. No. 15, 2001
S. 21Z.....	ad. No. 39, 1987
S. 21ZA.....	ad. No. 39, 1987
Part III	
S. 22.....	am. No. 15, 2001
S. 23.....	am. No. 15, 2001
Ss. 25–28.....	am. No. 39, 1987
S. 30.....	am. No. 39, 1987; No. 43, 1996; 146, 1999
Part IV	
S. 31.....	am. No. 39, 1987; No. 43, 1996
S. 33.....	rep. No. 83, 1986
Schedule	
Schedule.....	ad. No. 39, 1987 am. Statutory Rules 1987 No. 153; 1989 No. 420; 1992 No. 121; 1994 No. 28

Note 2

Aboriginal and Torres Strait Islander Heritage Protection Amendment Act 2006
(No. 152, 2006)

The following amendments commence on proclamation. However if not proclaimed before 7 December 2007 they are repealed on that day, *see* subsection 2(1) (item 3):

Schedule 2

1 Subsection 7(1)

Omit “, except Part IIA,”.

2 Subsection 7(1A)

Repeal the subsection.

3 Section 8A

Repeal the section.

4 Subsection 20(1)

Omit “, except in Victoria,”.

5 Subsection 21(1)

Omit “, other than remains discovered in Victoria,”.

6 Part IIA

Repeal the Part.

7 Paragraph 25(1)(b)

Omit “or IIA”.

8 Paragraph 26(1)(a)

Omit “or IIA”.

9 Section 27

Omit “except Part IIA,”.

Note 2

10 Subsection 28(1)

Omit “(except a provision of Part IIA)”.

11 Subparagraph 30(1)(c)(ii)

Omit “(not being proceedings in relation to a declaration under Part IIA)”.

12 Subsection 31(1)

Omit “Part IIA”.

13 Schedule

Repeal the Schedule.

As at 11 December 2006 the amendments are not incorporated in this compilation.

Table A

Table A

Application, saving or transitional provisions

Environment and Heritage Legislation Amendment (Application of Criminal Code) Act 2001 (No. 15, 2001)

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Aboriginal and Torres Strait Islander Commission Amendment Act 2005
(No. 32, 2005)

Schedule 4

2 Saving provision

Despite the amendment of section 21B of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, any delegation by the Minister to an officer of the Department that was in force under that section immediately before the day Schedules 1 and 2 to this Act commence continues in force on and after that day as if it were a delegation made by the Minister under that section as amended by this Act.