



# **Aboriginal and Torres Strait Islander Heritage Protection Act 1984**

**Act No. 79 of 1984 as amended**

This compilation was prepared on 13 June 2001  
taking into account amendments up to Act No. 15 of 2001

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

Prepared by the Office of Legislative Drafting,  
Attorney-General's Department, Canberra

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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.

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

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- (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
  - (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 Aborigines 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 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 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 Aborigines 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

- (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 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);

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- (f) the duration of any declaration;
- (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 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.
- (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 Aboriginals 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 satisfaction of the applicant or applicants and the Minister, any matter to which the application relates.

**Part II** Protection of significant Aboriginal areas and objects  
**Division 1** Declarations by Minister

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- (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 date of publication in the *Gazette* 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.

**15 Declarations reviewable by Parliament**

Sections 48 (other than paragraphs (1)(a) and (b) and subsection (2)), 48A, 48B, 49 and 50 of the *Acts Interpretation Act 1901* apply to declarations as if in those sections references to regulations were references to declarations, references to a

regulation were references to a provision of a declaration and references to repeal were references to revocation.

**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.
- (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.